No. 29904

MEXICO
and
FRANCE

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (with protocol). Signed at Mexico City on 7 November 1991

Authentic texts: Spanish and French.

Registered by Mexico on 16 April 1993.

MEXIQUE
et
FRANCE

Convention en vue d'éviter les doubles impositions et de prévenir l'évasion fiscale en matière d'impôts sur le revenu (avec protocole). Signé à Mexico le 7 novembre 1991

Textes authentiques : espagnol et français.

Enregistré par le Mexique le 16 avril 1993.

[TRANSLATION — TRADUCTION]

CONVENTION[1] BETWEEN THE GOVERNMENT OF THE UNITED MEXICAN STATES AND THE GOVERNMENT OF THE FRENCH REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the United Mexican States and the Government of the French Republic,

Desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows:

Article 1. PERSONAL SCOPE

This Convention shall apply to persons who are residents of one or both of the Contracting States.

Article 2. TAXES COVERED

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable and immovable property and capital gains taxes.

3. The existing taxes to which the Convention shall apply are, in particular:

(*a*) In the case of Mexico:

(i) The income tax;

(ii) The assets tax;

(hereinafter referred to as "Mexican tax");

(*b*) In the case of France:

(i) The income tax;

(ii) The corporation tax;

(hereinafter referred to as "French tax").

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

[1] Came into force on 1 January 1993, the date of receipt of the last of the notifications by which the Parties informed each other of the completion of the required procedures, in accordance with article 27.

Article 3. General definitions

1. For the purposes of this Convention, unless the context otherwise requires:

(*a*) The terms "a Contracting State" and "the other Contracting State" mean Mexico or France, as the context requires;

(*b*) The term "Mexico" means the territory of the United Mexican States, consisting of the integrated parts of the Federation; the islands, including the reefs and cays in the adjacent waters; the islands of Guadalupe and Revillagigedo; the continental shelf and the seabed and sub-soil of the islands, cays and reefs; the waters of the territorial seas to the extent and limits established by international law and the inland waters; and the air space of the national territory to the extent and conditions established by the international law;

(*c*) The term "France" means the European and overseas departments of the French Republic, including its territorial sea and any area outside it over which, in accordance with international law, the French Republic exercises sovereign rights for the purposes of the exploration and exploitation of the natural resources of the seabed, the sub-soil thereof, and the superjacent waters;

(*d*) The term "person" includes an individual, a company and any other body of persons;

(*e*) The term "company" means any legal entity or any entity which is treated as a legal entity for tax purposes;

(*f*) The terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(*g*) The term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(*h*) The term "competent authority" means:

(i) In Mexico, the Ministry of Finance and Public Credit; and

(ii) In the case of France, the Minister of the Budget or his authorized representative.

2. As regards the application of the Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

Article 4. Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. However, this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, his status shall be determined as follows:

(*a*) He shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

(*b*) If the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

(*c*) If he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

(*d*) If he is not a national of either State, or if, under French law, he is considered to be a national of both States, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated. This provision shall be applicable in particular to companies and other bodies of persons which are treated as legal entities for tax purposes.

Article 5. PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

(*a*) A place of management;

(*b*) A branch;

(*c*) An office;

(*d*) A factory;

(*e*) A workshop; and

(*f*) A mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. The term "permanent establishment" likewise encompasses a building site, a construction or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than six months.

4. Notwithstanding the preceding provisions of this article, the term "permanent establishment" shall be deemed not to include:

(*a*) The use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(*b*) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(*c*) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(*d*) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;

(*e*) The maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, for activities in preparation for the placement of loans or for any other activities of a preparatory or auxiliary character;

(*f*) The maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs *a* to *e*, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person — other than an agent of an independent status to whom paragraph 7 applies — is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. Notwithstanding the preceding provisions of this article, an insurance enterprise which is a resident of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it insures risks situated in the territory of that other State through a person other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business and, in their commercial or financial relations with that enterprise, are not bound by conditions, made or imposed, which differ from those which would generally be made by independent agents.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6. INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of

general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

5. Where the ownership of shares or other rights in a company or other legal entity entitles the owner of such shares or rights to the use of immovable property owned by that company or legal entity and situated in a Contracting State, the income earned by the owner from the direct use, letting or use in any other form of that right may be taxed in that State.

Article 7. BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. For the purposes of paragraphs 1 and 2, the income or gains attributable to a permanent establishment in the course of its existence shall be taxable in the Contracting State in which that permanent establishment is situated, even if the payments are deferred until after the permanent establishment has ceased to exist.

4. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on monies lent to the permanent establishment. Moreover, in the determination of the profits of a permanent establishment, no account shall be taken of amounts charged by that permanent establishment (other than reimbursement of actual expenses) to the head office of the enterprise or any of its other offices by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of com-

mission, for specific services performed or for management or, except in the case of a banking enterprise, by way of interest on monies lent to the head office of the enterprise or to any of its other offices.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other articles of this Convention, then the provisions of those articles shall not be affected by the provisions of this article.

Article 8. SHIPPING AND AIR TRANSPORT

1. (*a*) Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

(*b*) The profits referred to in subparagraph *a* do not include profits derived from the provision of accommodation or transportation other than the operation of ships or aircraft in international traffic.

2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9. ASSOCIATED ENTREPRISES

1. Where:

(*a*) An enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

(*b*) The same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

Article 10. DIVIDENDS

1. Without prejudice to the provisions of paragraph 2, dividends paid by a company which is a resident of a Contracting State to a resident of the other Con-

tracting State may be taxed in that other State only when the recipient of the dividends is their beneficial owner.

2. (*a*) Where the dividends are paid by a company which is a resident of a Contracting State to a company of the other Contracting State, more than 50 per cent of whose capital is held directly or indirectly by one or more residents of third States, such dividends may also be taxed in the first State according to the laws of that State, but if the company which receives the dividends is the beneficial owner thereof, the tax so charged shall not exceed 5 per cent of the gross amount of the dividends.

(*b*) Notwithstanding the provisions of subparagraph *a*, dividends paid by a company which is a resident of France to a resident of Mexico other than a company which holds directly or indirectly at least 10 per cent of the capital of the first company may also be taxed in France, in accordance with French laws, but if the recipient of the dividends is the beneficial owner thereof, the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

3. The provisions of paragraphs 1 and 2 shall not affect the taxation of the company which distributes the dividends in respect of the profits out of which the dividends are paid.

4. (*a*) A resident of Mexico who receives from a company which is a resident of France dividends which, if received by a resident of France, would entitle such resident to a tax credit *(avoir fiscal)* shall be entitled to a payment from the French Treasury equal to such tax credit *(avoir fiscal)* subject to the deduction of tax as provided for under subparagraph 2 *b* of this article.

(*b*) The provisions of subparagraph *a* of this paragraph shall apply only to a resident of Mexico who is:

(i) An individual, or

(ii) A company which holds directly or indirectly less than 10 per cent of the capital of the company paying the dividends;

(*c*) The provisions of subparagraph *a* shall not apply if the recipient of the payment from the French Treasury is not subject to Mexican tax in respect of the dividends and payment;

(*d*) Payments from the French Treasury provided for under subparagraph *a* shall be deemed to be dividends for the purposes of this Convention.

5. A resident of Mexico who receives dividends paid by a company which is a resident of France and who is not entitled to the payment from the French Treasury provided for in paragraph 4 may obtain the refund of the prepayment *(précompte)* to the extent that it has actually been paid by such company in respect of such dividends. The gross amount of the prepayment refunded shall be deemed to be dividends for the purposes of the Convention. The provisions of paragraph 2 shall apply to this gross amount.

6. The term "dividends" as used in this article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the regulations governing dividends under French tax law when the company distributing the shares is a resident of France, or the income from other corporate shares subject under Mexican law to the same tax

treatment as income from shares when the company distributing them is a resident of Mexico.

7. The provisions of paragraphs 1, 2, 3, 4 and 5 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of article 7 or article 14, as the case may be, shall apply.

8. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11. INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, the interest mentioned in paragraph 1 shall be taxable only in the Contracting State where the recipient of the interest is a resident, if that person is the beneficial owner of the interest, and if one of the following requirements is fulfilled:

(*a*) The person is one of the Contracting States, one of its political subdivisions in the case of Mexico, or one of its territorial authorities;

(*b*) The interest is paid by such a person mentioned in subparagraph *a*;

(*c*) The interest is paid in respect of loans granted or guaranteed for a period of not less than three years by a financial or guarantee institution of a public character with the objective of promoting exports if the credit granted or guaranteed contains an element of subsidy.

4. The term "interest" as used in this article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent estab-

lishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of article 7 or article 4, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner of the interest or between both of them and some other person, the amount of the interest exceeds for any reason the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention. The excess part may be determined on the basis of either an individual loan or all the loans.

8. The provisions of this article shall not be applicable if the loan in respect of which the interest is paid is granted with the main objective of obtaining the advantages of this article.

Article 12. ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed only in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 15 per cent of the gross amount of the royalties.

3. Notwithstanding the provisions of paragraph 2, royalties in respect of copyright and other similar payments relating to the production or reproduction of a literary, dramatic, musical or artistic work (excluding royalties for cinematograph films and recordings for television) deriving from a Contracting State and paid to a resident of the other Contracting State who is liable to tax on those royalties may be taxed only in that other State.

4. (*a*) The term "royalties" as used in this article means payments of any kind received as a consideration for:

(i) The use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and recordings for television;

(ii) The use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process;

(iii) Information concerning industrial, commercial or scientific experience ("know-how");

(iv) The use of, or the right to use, industrial, commercial or scientific equipment.

(*b*) The term "royalties" as used in this article also means gains derived from the alienation of the rights or property referred to in subparagraphs *a*, (i) and *a*, (ii) to the extent that the amounts received from such alienation are determined on the basis of the productivity or use of such rights or property.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of article 7 or article 14, as the case may be, shall apply.

6. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the payer of the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base with which the right or property in respect of which the royalties are paid is effectively connected and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties for any reason exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. The excess part of the payments shall be taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

8. The provisions of this article shall not be applicable if the right or the property in respect of which the royalty is paid is agreed upon or assigned with the main objective of obtaining the advantages of this article.

Article 13. CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of shares or other rights in a company or other legal entity whose assets principally, directly or indirectly, consist of immovable property situated in a Contracting State or rights pertaining to such immovable property may be taxed in that State. For the purposes of this paragraph immovable property used by a company or other legal entity in its industrial, commercial or agricultural activities or in the conduct of professional services should not be taken into account.

3. Gains from alienation of movable property forming part of the business assets of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the

alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

4. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

5. Gains from the alienation of any property other than that referred to in article 12, subparagraph 4 *b* and in paragraphs 1, 2, 3 and 4 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14. INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State; however, such income may also be taxed in the other Contracting State in the following cases:

(*a*) If the resident has a fixed base regularly available to him in that other State for the purpose of performing his activities; in such cases, only the portion of the income which is attributable to that fixed base shall be taxable in that other Contracting State; or

(*b*) If he is present in the other Contracting State for a period or periods of a total duration equal to or exceeding 183 days during the fiscal year concerned; in such cases, only the portion of the income obtained from activities carried on by him in that other State shall be taxable in that State.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15. DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

(*a*) The recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days within any period of 12 consecutive months; and

(*b*) The remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and

(*c*) The remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Without prejudice to the provisions of articles 19 and 20, and notwithstanding the provisions of paragraphs 1 and 2, remuneration derived by a person in respect of his activities as a teacher or researcher who is, or who was immediately

prior to entering a Contracting State a resident of the other Contracting State, and who stays in the first State for the sole purpose of teaching or carrying out research at a university or other officially recognized teaching or research centre, shall be taxable only in that other State if such remuneration is paid by a resident of the other State. The provisions of this paragraph shall apply during a period not to exceed 24 months from the date of the initial arrival of the teacher or researcher in the first State in order to teach or carry out research there.

4. Notwithstanding the provisions of paragraphs 1 and 2, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16. DIRECTORS' PEES

Directors' fees and other payments derived by a resident of a Contracting State in his capacity as a member of the board of directors and in the case of Mexico in his capacity as an "*administrador*" or a "*comisario*" of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17. ENTERTAINERS AND SPORTSMEN

1. Notwithstanding the provisions of articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State. The income referred to in this paragraph shall include additional income derived from performances associated with that resident's professional reputation, when he is present in that other State and such income derives from that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. Notwithstanding the provisions of paragraph 1, income derived by an entertainer or sportsman who is a resident of one Contracting State from his personal activities as such exercised in the other Contracting State may be taxed in the first State only when those activities in the other State are substantially supported by public funds of the first State, a political subdivision of that State in the case of Mexico, a territorial authority of that State, or one of its legal entities under public law.

4. Notwithstanding the provisions of paragraph 2, where income in respect of personal activities exercised in one Contracting State by an entertainer or sportsman in his capacity as such who is a resident of the other Contracting State accrues not to the entertainer or sportsman himself but to another person, that income, notwithstanding the provisions of articles 7, 14 and 15, may be taxed only in the first State when that person is substantially supported by public funds from that State, a political subdivision of that State in the case of Mexico, a territorial authority of that State, or one of its legal entities under public law.

Article 18. PENSIONS

Subject to the provisions of paragraph 1 of article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

Article 19. REMUNERATION AND PENSIONS

1. Remuneration and pensions paid to an individual, either directly by, or out of funds created by, a Contracting State, one of its political subdivisions in the case of Mexico, or one of its territorial authorities or legal entities under public law, shall be taxable only in that State.

2. The provisions of articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State, one of its political subdivisions in the case of Mexico, one of its territorial authorities or one of its legal entities under public law.

Article 20. STUDENTS

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

Article 21. METHODS FOR ELIMINATION OF DOUBLE TAXATION

1. In the case of Mexico, double taxation shall be avoided as follows:

(*a*) Residents of Mexico may credit income tax paid in France against the income tax due from them in any amount not exceeding the tax payable in Mexico on such income; and

(*b*) Under the conditions laid down in Mexican law, companies which are residents of Mexico may credit against the tax on their income derived from dividends the income tax paid in France on the profits out of which the company which is a resident of France paid the dividends.

2. In the case of France, double taxation shall be avoided as follows:

(*a*) Income derived from Mexico which is taxable, or which may be taxed in that State only in accordance with the provisions of this Convention, shall be taken into account in calculating the French tax when the beneficiary is a resident of France who is not exempt from the corporation tax under French law. In such cases, the Mexican tax shall not be deductible from such income, but the beneficiary shall be entitled to a tax credit against the French tax. This tax credit shall amount to:

(i) In the case of income other than the income referred to in subparagraph (ii), the French tax on such income;

(ii) In the case of the income referred to in articles 10, 11 and 12, article 13, paragraphs 1 and 2, article 15, paragraph 4, and articles 16 and 17, the tax paid in Mexico in accordance with the provisions of those articles; however, this credit may not exceed the French tax on such income.

(*b*) For the purposes of paragraph *a*, subparagraph ii, dividends paid to a resident of France who is the beneficial owner of those dividends by a company which is a resident of Mexico and does not control directly or indirectly any company which is a resident of a third State shall be treated as if they were liable in Mexico to a tax equal to:

(i) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds, directly or indirectly, at least 10 per cent of the capital of the company paying the dividends;

(ii) 15 per cent of the gross amount of the dividends in all other cases.

A company which is a resident of Mexico shall be deemed to control, directly or indirectly, a company which is a resident of a third State when it holds, directly or indirectly, more than 50 per cent of the capital of the latter company.

(*c*) For the purposes of applying paragraph *a* to the income referred to in articles 11 and 12, when the amount of tax paid in Mexico, in accordance with the provisions of those articles, exceeds the amount of French tax on such income, the resident of France who receives the income may submit his case to the competent French authority. If it considers that the situation results in taxation which is not comparable to taxation on net income, the competent authority may allow, under the conditions it determines, the deduction of the non-credited tax paid in Mexico from the French tax on that resident's other income from foreign sources.

Article 22. NON-DISCRIMINATION

1. Individuals having the nationality of a Contracting State shall not be liable in the other Contracting State to any tax or any requirement connected therewith which is other or more burdensome than the tax and connected requirements to which individuals having the nationality of that other State in the same circumstances, especially by reason of residence, are or may be subjected.

2. The tax on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision should not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of article 9, paragraph 7 of article 11, or paragraph 7 of article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any tax or any requirement connected therewith which is other or more burdensome than the tax and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. (*a*) The exemptions or other fiscal benefits envisaged under the tax law of one Contracting State for the benefit of that State, its political subdivisions or territorial authorities (in the case of Mexico), its territorial authorities (in the case of France), or its legal entities under public law which do not carry on business shall apply under the same conditions to the other State, its political subdivisions or territorial authorities (in the case of Mexico), its territorial authorities (in the case of France) or its legal entities under public law when such legal entities operate within the framework of an agreement between the Contracting States.

(*b*) Non-profit bodies, whatever their affiliation, which have been established or constituted in a Contracting State and carry on their activities in the scientific, artistic, cultural, educational or charitable fields, shall be entitled in the other Contracting State, under the conditions laid down in the legislation of that other State, to the exemptions and other tax benefits granted to entities of the same type which have been established or constituted in that other State, in respect of the tax on donations or bequests. However, these exemptions or other benefits shall be applicable only when these bodies are entitled to similar exemptions or benefits granted in the first State.

6. Notwithstanding the provisions of article 2, the provisions of this article shall apply to all taxes of every kind and description collected on behalf of the Contracting States. With regard to paragraph 5, subparagraph *a*, the provisions of this article shall apply also, where there is reciprocity, to other taxes collected in France, with the exception of taxes due for services rendered.

Article 23. MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident. The case must be presented within two years of the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties arising as to the interpretation or application of the Convention. In particular, they may try to reach agreement on methods for calculating the transfers of the profits referred to in article 9 in cases other than cases of fraud or bad faith.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. Where it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a commission consisting of representatives of the competent authorities of the Contracting States.

5. The competent authorities of the Contracting States may settle the mode of application of the Convention and, especially, the requirements to which the residents of a Contracting State shall be subjected in order to obtain, in the other Contracting State, the tax reliefs or exemptions and other tax benefits provided for by the Convention. These formalities may include the submission of a form certifying residence, indicating in particular the nature and amount of the income in question and including certification by the fiscal authorities of the first State.

Article 24. EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes included in the Convention, in so far as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes imposed on behalf of that State. Such persons or authorities shall use the information only for these purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

(*a*) To carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(*b*) To supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State; or

(*c*) To supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy *(ordre public).*

Article 25. DIPLOMATIC AND CONSULAR OFFICERS

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic and consular missions and of permanent missions to international organizations under the general rules of international law or under the provisions of special agreements.

Article 26. TERRITORIAL SCOPE

1. The Convention may be extended, either in its entirety or with any necessary modifications, to the overseas territories and other territorial authorities of the French Republic which impose taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed between the Contracting States in notes to be exchanged through diplomatic channels or in any other manner in accordance with their constitutional procedures.

2. Unless otherwise agreed by both Contracting States, the termination of the Convention by one of them under article 28 shall also terminate, in the manner provided for in that article, the application of the Convention to any territory or other territorial authority to which it has been extended under this article.

Article 27. ENTRY INTO FORCE

1. Each Contracting State shall notify the other that the procedures required by its legislation for the entry into force of this Convention have been complied with. This Convention shall enter into force on the date of receipt of the last notification.

2. The provisions of the Convention shall apply to income paid or attributed on or after the first day of January of the calendar year following the date of the entry into force of this Convention or for the fiscal periods in progress, beginning from the first day of January.

Article 28. TERMINATION

1. This Convention shall remain in force indefinitely. However, as of the fifth calendar year following the year in which this Convention enters into force, either State may terminate the Convention by giving at least six months' notice of termination, through the diplomatic channel, with effect from the end of the calendar year.

2. The provisions of the Convention shall apply for the last time to the income paid or attributed in the calendar year at the end of which the termination was notified or to the income corresponding to the fiscal period ending in that year.

IN WITNESS WHEREOF, the undersigned, duly authorized to that effect, have signed this Convention.

DONE at Mexico City, on 7 November 1991, in two originals in the Spanish and French languages, both texts being equally authentic.

For the Government
of the United Mexican States:

[*Signed*]

Dr. PEDRO ASPE ARMELLA
Minister of Finance
and Public Credit

For the Government
of the French Republic:

[*Signed*]

MICHEL CHARASSE
Minister of the Budget

PROTOCOL

At the time of signature of the Convention between the Government of the United Mexican States and the Government of the French Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed that the following provisions shall form an integral part of the Convention.

1. In respect of article 4, paragraph 1, it is understood that the term "resident of a Contracting State" includes that State, its political subdivisions in the case of Mexico, its territorial authorities, and its legal entities under public law.

2. In respect of article 5, paragraph 3, it is understood that:

(*a*) An enterprise which carries out supervisory activities at a construction site or installation project has a permanent establishment only when those activities last longer than six months;

(*b*) The time spent on a project by an enterprise which carries out supervisory activities shall be considered time spent on the project by the enterprise which is responsible for executing the entire project.

3. With regard to article 7, paragraph 1, where an enterprise of a Contracting State sells merchandise in the other Contracting State through a permanent establishment situated therein and sells in that other State merchandise that is identical or similar to the merchandise normally sold through that permanent establishment, such merchandise shall be considered to be sold through that permanent establishment, unless the enterprise is able to demonstrate that this distribution channel was used for sound economic reasons.

4. In respect of article 7, paragraphs 1 and 2, in the case of contracts, especially contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when an enterprise which is a resident of one Contracting State has a permanent establishment in the other Contracting State, the profits of such permanent establishment are not to be determined on the basis of the total amount of the contract, but are to be determined only on the basis of that part of the contract which has been effectively carried out by the permanent establishment in the Contracting State where the permanent establishment is situated. The profits related to that part of the contract which is carried out in the Contracting State in which the place of effective management is situated shall be taxable only in that State.

5. The provisions of the Convention shall not prevent the Contracting States from applying the provisions of their legislation relating to undercapitalization, in the case of France, primarily article 212 of the Code général des Impôts, in so far as these provisions of domestic law are in accordance with the provisions of article 11, paragraph 7.

6. Where under one or more conventions or agreements with third States which are members of the Organization for Economic Cooperation and Development Mexico agrees on rates which are lower than 15 per cent (including a zero rate) on the gross amount of interest or royalties or on certain forms of income paid by a resident of Mexico pursuant to article 11 or article 12, the lowest rates agreed upon for interest or royalties, as applicable, shall apply automatically within the framework of this Convention. In the case of conventions or agreements with third States

which are not members of the European Economic Community, the lowest rates established in them shall apply automatically within the framework of this Convention, but they may not be lower than 10 per cent.

7. In respect of article 12, paragraph 4, subparagraph *a*, (iii), payments received as a consideration for technical or technical assistance services, including studies or surveys of a scientific, geological or technical nature, or for engineering contracts, including blueprints and plans related thereto, or for advisory or supervisory services shall be deemed not to be payments received as a consideration for information concerning industrial, commercial or scientific experience but as income to which the provisions of article 7 or article 14 apply, as the case may be, provided that these payments are not made for information consisting of the communication of know-how.

8. In respect of article 21, concerning the income referred to in paragraph 2, subparagraph *a*, (ii), it is understood that the term "the tax paid in Mexico" means the amount of Mexican tax actually and finally paid on that income, in accordance with the provisions of the Convention, by the resident of France receiving such income.

9. In respect of article 21, paragraph 2, subparagraph *b*, when one or more conventions or agreements between Mexico and third States which are members of the European Economic Community limit the period for which the regime of fictitious tax credit applies or do not provide for such a regime, the most restrictive provisions of the treaty or agreement shall apply automatically under this Convention, either with regard to the duration of that regime or to its elimination. The conventions or agreements referred to in this paragraph shall be those which contain a clause similar to paragraph 6 of this Protocol.

10. In respect of article 22 and this Protocol, where any other agreement, treaty or convention between Mexico and France contains a non-discrimination clause or a most-favoured-nation clause, it is understood that only the provisions of this Convention, to the exclusion of such clauses, are applicable in fiscal matters.

11. In respect of article 22, paragraph 6, it is understood that the expression "all taxes of every kind and description" shall not include customs duties.

12. (*a*) Where the legislation of a Contracting State allows companies which are residents of that State to determine their taxable profits on the basis of a consolidation which covers mainly the fiscal income of subsidiaries which are residents of the other Contracting State or of permanent establishments situated in that other State, it shall not be deemed that the provisions of the Convention run counter to the application of that legislation.

(*b*) Where a Contracting State, in accordance with its legislation, determines the profits of enterprises which are residents of that State by deducting the losses of subsidiaries which are residents of the other Contracting State or of permanent establishments situated in that other State and by incorporating the profits of those subsidiaries or permanent establishments up to the amount of the losses, it shall not be deemed that the provisions of the Convention run counter to the application of that legislation.

13. The provisions of the Convention shall not prevent France from applying the provisions of article 209 B of its Code général des Impôts, or other similar

provisions replacing it, or Mexico from applying the provisions of its domestic law which are similar to those of the above-mentioned article 209 B.

14. Social security contributions, and amounts replacing those contributions, paid for or by an individual who is a resident of a Contracting State or who is present there temporarily to a pension establishment which is recognized, for fiscal purposes, by the competent authority of the other Contracting State of which that person was formerly a resident, shall be subject to the same tax regime in the first State as that applicable to contributions paid to a pension institution recognized for tax purposes by the competent authority of that first State.

15. Without prejudice to any agreement between the competent authorities of the Contracting States, each of the States reserves the right to tax, in accordance with its legislation, income of its residents which is taxable in the other State under the Convention but is not actually taxed under the legislation of that other State.

IN WITNESS WHEREOF, the undersigned, duly authorized to that effect, have signed this Protocol.

DONE at Mexico City, on 7 November 1991, in two originals in the Spanish and French languages, both texts being equally authentic.

For the Government
of the United Mexican States:

[*Signed*]

DR PEDRO ASPE ARMELLA
Minister of Finance
and Public Credit

For the Government
of the French Republic:

[*Signed*]

MICHEL CHARASSE
Minister of the Budget