No. 31236

AUSTRIA
and
FRANCE

Convention for avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income and on capital (with protocol). Signed at Vienna on 26 March 1993

Authentic texts: German and French.

Registered by Austria on 27 September 1994.

AUTRICHE
et
FRANCE

Convention en vue d'éviter les doubles impositions et de prévenir l'évasion fiscale en matière d'impôts sur le revenu et sur la fortune (avec protocole). Signée à Vienne le 26 mars 1993

Textes authentiques : allemand et français.

Enregistrée par l'Autriche le 27 septembre 1994.

[TRANSLATION — TRADUCTION]

CONVENTION[1] BETWEEN THE REPUBLIC OF AUSTRIA AND THE FRENCH REPUBLIC FOR AVOIDANCE OF DOUBLE TAXATION AND PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Federal President of the Republic of Austria and the President of the French Republic, desiring to avoid double taxation and prevent fiscal evasion with respect to taxes on income and capital, have decided to conclude a Convention and have appointed as their plenipotentiaries for this purpose:

The Federal President of the Republic of Austria: Mr. Wolfgang Nolz, Section Chief in the Federal Ministry of Finance

The President of the French Republic: Mr. André Lewin, Ambassador of the French Republic to Austria

who, having exchanged their full powers, found in good and due form, 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 and on capital imposed on behalf of a Contracting State or of its territorial subdivisions, irrespective of the manner in which they are levied.

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

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

(*a*) In the case of the French Republic:

(i) The income tax;

(ii) The corporation tax;

(iii) The tax on wages and salaries;

(iv) The wealth tax;

(v) The local tax on businesses;

[1] Came into force on 1 September 1994, i.e., the first day of the second month following the date of receipt of the last of the notifications (5 July 1994) by which the Contracting Parties had informed each other of the completion of the required procedures, in accordance with article 31 (1).

including any withholding tax, prepayment *(précompte)* or advance payment with respect to the aforesaid taxes; (hereinafter referred to as "French tax");

(*b*) In the case of the Republic of Austria:

(i) The income tax;

(ii) The corporation tax;

(iii) The capital tax;

(iv) The tax on property eluding death duties;

(v) The tax on commercial and industrial enterprises, including the tax levied on the total amount of wages;

(hereinafter referred to as "Austrian tax").

4. The Convention shall also apply 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.

Article 3. GENERAL DEFINITIONS

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

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

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

(*c*) 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;

(*d*) 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;

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

(i) In the case of the French Republic, the Minister for the Budget or his authorized representative;

(ii) In the case of the Republic of Austria, the Federal Minister of Finance or his authorized representative.

2. As regards the application of the Convention by a Contracting State, any term or expression 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. The term "law of that State" means especially the tax law, which, for the purposes of the Convention, shall take precedence over the other branches of law of that State.

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. But 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 or capital situated therein.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then 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 a national of both States or of neither of them, the competent authorities of the Contracting States shall endeavour to 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.

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. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve 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 carrying on, for the enterprise, any other activity 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 6 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. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that 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.

7. 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, boats 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 possession of shares, holdings or other rights in a company or other corporate entity gives the owner a beneficial interest in immovable property situated in France and held by that company or other corporate entity, income derived by the owner from the direct use, letting or use in any other form of his beneficial interest shall be liable to taxation in France.

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 the 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. 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.

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment shall, however, be such that the result shall be in accordance with the principles contained in this article.

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, INLAND WATERWAYS TRANSPORT AND AIR TRANSPORT

1. Profits 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.

2. Profits from the operation of boats engaged in inland waterways transport shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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

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

Article 9. ASSOCIATED ENTERPRISES

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.

2. Where a Contracting State includes in the profits of an enterprise of that State — and taxes accordingly — profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits if it deems that the adjustment is justified. In the determination of such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10. DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. (*a*) The dividends referred to in paragraph 1 may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed 15 per cent of the gross amount of the dividends;

(*b*) However, if the beneficial owner is a company subject to corporation tax that holds, directly or indirectly, at least 10 per cent of the capital of the company paying the dividends, the said dividends shall be taxable only in the Contracting State of which the beneficial owner is a resident.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. (*a*) A resident of Austria who receives from a company which is a resident of France dividends that would entitle him to a tax credit *(avoir fiscal)* if they were received by a resident of France shall be entitled to a payment from the French Treasury in an amount equal to such tax credit *(avoir fiscal)*, subject to deduction of the tax for which provision is made in paragraph 2.

(*b*) The provisions of subparagraph (*a*) shall apply only to a resident of Austria who is

(i) An individual, or

(ii) A company that holds, directly or indirectly, less than 10 per cent of the French resident company paying the dividends.

(*c*) The provisions of subparagraph (*a*) shall not apply if the resident of Austria, other than a resident referred to in 1 (*b*) of the Protocol, is not subjected to Austrian tax in respect of the dividends and the payment from the French Treasury.

(*d*) The payments from the French Treasury referred to in subparagraph (*a*) shall be deemed dividends for the purposes of this Convention.

4. A resident of Austria 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 referred to in paragraph 3, may obtain a refund of any prepayment *(précompte)* actually effected by the company in respect of such dividends. The gross amount of such refunded prepayment *(précompte)* shall be deemed a dividend for the purposes of this Convention. It shall be taxable in France in accordance with the provisions of paragraph 2.

5. 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 same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident.

6. The provisions of paragraphs 1, 2, 3 and 4 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.

7. 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 insofar as such dividends are paid to a resident of that other State or insofar 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 shall be taxable only in that other State if such resident is the beneficial owner of the interest.

2. 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, and any other products assimilated to income from money lent by the taxation law of the Contracting State in which the income arises. The term "interest" does not include elements of income deemed to be dividends under article 10.

3. The provisions of paragraph 1 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 establishment 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 14, as the case may be, shall apply.

4. 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.

5. 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 interest, having regard to the debt-claim for which it is paid, 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. 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.

Article 12. ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if such resident is the beneficial owner of the royalties.

2. The term "royalties" as used in this article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

3. The provisions of paragraph 1 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.

4. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying 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 in connection with which the liability to pay the royalties was incurred, 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.

5. 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, having regard to the entitlement in consideration of which they are paid, 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. 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.

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, holdings or other rights in a company or other corporate entity whose assets are constituted mainly, either directly or through one or more other companies or corporate entities, of immovable property situated in a Contracting State or of rights in respect of such property, may be taxed in that State. For the purposes of this provision, immovable property used by the company or other corporate entity for its own industrial, commercial or agricultural operations, or for the performance of a non-commercial professional activity, shall not be taken into account.

3. (*a*) Gains from the alienation of shares, holdings or other rights (other than the shares, holdings or other rights referred to in paragraph 2 that are part of a substantial equity participation in a company which is a resident of a Contracting State may be taxed in that State. A substantial equity participation is deemed to exist where the alienator, whether alone or with related persons, has directly or indirectly owned, at any time during the five years preceding the alienation, shares, holdings or other rights which in the aggregate entitle him to at least 25 per cent of the profits of the company;

(*b*) However, where gains from the alienation, by a resident of a Contracting State, of shares, holdings or other rights that are part of a substantial equity participation in a company which is a resident of the other Contracting State are entitled to a tax deferral in the first-mentioned State in accordance with its laws, in the context of taxation treatment applicable to companies in a specific category or as a result of a merger, divestment, equity contribution or stock swap, such gains shall be taxable only in that first-mentioned State. This provision shall apply only where the operation creating the entitlement to a tax deferral has been performed for valid economic reasons and not primarily to secure the benefit of this provision.

4. Gains from the alienation of movable property forming part of the business property 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 permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

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

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5 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 unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.

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, 17, 18, 19 and 20, 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 during 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. Notwithstanding the preceding provisions of this article, remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft operated in international traffic, or aboard a boat engaged in inland waterways transport, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16. MEMBERS OF BOARDS OF DIRECTORS

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17. ENTERTAINERS AND ATHLETES

1. Notwithstanding the provisions of articles 7, 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 an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete 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 athlete are exercised.

3. Notwithstanding the provisions of paragraph 1, income derived by an entertainer or athlete, who is a resident of a Contracting State, from his personal activities as such exercised in the other Contracting State, shall be taxable only in the first-mentioned State where the competent authority of the first-mentioned State certifies that those activities in the other State are supported substantially by public funds of the first-mentioned State, one of its territorial subdivisions or a public agency thereof.

4. Notwithstanding the provisions of paragraph 2, where income in respect of personal activities exercised by an entertainer or an athlete, being a resident of a Contracting State, in his capacity as such in the other Contracting State accrues not to the entertainer or athlete himself but to another person, that income shall, notwithstanding the provisions of articles 7, 14 and 15, be taxable only in the first-mentioned State where the competent authority of that State certifies that that other person is supported substantially by public funds of that State, one of its territorial subdivisions or a public agency thereof.

Article 18. PENSIONS

1. 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. GOVERNMENT SERVICE

1. (*a*) Remuneration and pensions paid by, or out of funds created by, a Contracting State or one of its territorial subdivisions or a public agency thereof, to an individual in respect of services rendered to that State, subdivision or agency shall be taxable only in that State.

(*b*) However, such remuneration and pensions shall be taxable only in the other Contracting State if the services, in the case of remuneration, are rendered in that State and if the individual is a resident of that State who is a national of that State and is not simultaneously a national of the first-mentioned 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 or one of its territorial subdivisions or a public agency thereof.

Article 20. STUDENTS AND TEACHERS

1. (*a*) 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.

(*b*) Remuneration received by students who are residents of one of the Contracting States and are employed by a firm of the other Contracting State for a period not exceeding six months during any calendar year, for the purpose of receiving necessary practical training, shall not be taxable in that other State.

2. Teachers and other educational personnel of a Contracting State who go to the other Contracting State for the purpose of teaching for a period not exceeding two years at a university, college or other educational institution in that other State, shall be taxable only in the first-mentioned State in respect of the remuneration they receive for such teaching.

Article 21. OTHER INCOME

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income is 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.

Article 22. CAPITAL

1. (*a*) Capital represented by immovable property referred to in article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

(*b*) Capital consisting of shares, holdings or other rights in a company or other corporate entity whose assets are constituted mainly, either directly or through one or more other companies or corporate entities, of immovable property situated in a Contracting State or of rights in respect of such property, may be taxed in that State. For the purposes of this provision, immovable property used by the company or other corporate entity for its own industrial, commercial or agricultural operations, or for the performance of a non-commercial professional activity, shall not be taken into account.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, or by 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, may be taxed in that other State.

3. Capital represented by ships and aircraft operated in international traffic and by boats engaged in inland waterways transport, and by movable property pertaining to the operation of such ships, aircraft and boats, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

5. Notwithstanding the provisions of the preceding paragraphs of this article, in the case of an individual who is a resident of France and is a national of Austria without being a national of France, property situated outside France owned by such individual at 1 January in each of the five calendar years following the year in which he becomes a resident of France shall not be considered for the purpose of computing his liability in respect of the wealth tax for each of those five years. If the individual ceases to be a resident of France for a period of not less than three years and then again becomes a resident of France, property situated outside France owned by such individual at 1 January in each of the five calendar years following the year in which he again becomes a resident of France shall not be considered for the purpose of computing his liability in respect of the wealth tax for each of those five years.

Article 23. ELIMINATION OF DOUBLE TAXATION

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

(*a*) Income arising in Austria that is taxable in or only in that State, in accordance with the provisions of this Convention, shall be taken into account for the purpose of computing French tax where the beneficial owner of the income is a resident of France and the income is not exempt from corporation tax under French law. In such case, Austrian tax shall not be deductible from the income in question, but the beneficial owner shall be entitled to a tax credit in respect of French tax. The amount of that tax credit shall be:

(i) In the case of income not referred to in subparagraph (ii), equal to the amount of French tax attributable to such income;

(ii) In the case of income referred to in paragraph 2 of article 10, paragraphs 1, 2 and 3 of article 13, paragraph 3 of article 15, article 16, and paragraphs 1 and 2 of article 17, equal to the amount of tax paid in Austria in accordance with the provisions of those articles; however, the tax credit shall not exceed the amount of French tax attributable to such income.

It is understood that the expression "amount of tax paid in Austria" designates the amount of Austrian tax actually and definitively paid in respect of the income, in accordance with the provisions of this Convention, by the resident of France who is the beneficial owner of the income.

(*b*) The provisions of the Convention shall not be construed as preventing France from:

(i) Applying articles 209 quinquies and 209 B of its General Tax Code or other similar provisions amending or replacing the provisions of those articles;

(ii) Determining the profits of residents of France by subtracting the losses of subsidiaries that are residents of Austria or permanent establishments situated in Austria and including the profits of such subsidiaries or such permanent establishments up to the amount of the losses.

(*c*) A resident of France who owns capital that is taxable in Austria in accordance with the provisions of paragraphs 1 and 2 of article 22 shall also be liable to tax in France in respect of such capital. French tax shall be computed subject to deduction of a tax credit equal to the amount of Austrian tax on the capital in question. Such tax credit shall not exceed the amount of French tax attributable to such capital.

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

(*a*) Where a resident of Austria derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in France, Austria shall, subject to the provisions of (*b*) and (*c*), exempt such income or capital from tax.

(*b*) Where a resident of Austria derives items of income which, in accordance with the provisions of article 10 and paragraphs 2 and 3 of article 13, may be taxed in France, Austria shall allow as a deduction from the Austrian tax on the income of that resident an amount equal to the French tax. Such deduction shall not, however, exceed that part of the Austrian tax, as computed before the deduction is given, which is attributable to such items of income derived from France.

(*c*) Where in accordance with any provision of this Convention income derived or capital owned by a resident of Austria is exempt from tax in Austria, Austria may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

Article 24. NON-DISCRIMINATION

1. Individuals who are nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which individuals who are nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of article 1, also apply to individuals who are not residents of one or both of the Contracting States.

2. The taxation 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 shall 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 paragraph 1 of article 9, paragraph 5 of article 11 or paragraph 5 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. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted 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 taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. Contributions paid by an individual who is a resident of a Contracting State but was formerly a resident of the other Contracting State to a statutory social security scheme or supplementary old-age security or death benefit scheme of that other State shall be subject in the first-mentioned State to the same taxation treatment as contributions paid for the same purposes in that first-mentioned State.

6. The preceding provisions of this article shall, notwithstanding the provisions of article 2, apply to taxes of every kind and description.

7. Subject to case-by-case agreement between the competent authorities of the Contracting States, tax exemptions or other fiscal advantages provided for in the legislation of a Contracting State for the benefit of that State, its territorial subdivisions or the public agencies thereof whose activities are not industrial or commercial shall apply respectively on the same terms to the other State, its territorial subdivisions or the public agencies thereof having identical or similar activities. The provisions of this article shall, notwithstanding the provisions of article 2, apply to taxes of every kind and description except inheritance taxes, taxes on donations, and taxes owed in consideration of services rendered.

Article 25. 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 or, if his case comes under paragraph 1 of article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from 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. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

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. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

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. When 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.

Article 26. 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 covered by the Convention insofar 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 covered by the Convention. Such persons or authorities shall use the information only for such 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;

(*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)*.

3. The exchange of information shall take place routinely or on specific request in particular cases. The competent authorities of the Contracting States shall consult each other to determine the list of information to be supplied routinely.

Article 27. ASSISTANCE WITH COLLECTION

1. The two Contracting States shall render each other assistance and support with a view to the collection, in accordance with the provisions of their respective laws or regulations, of the taxes covered by this Convention together with any increases, surcharges, penalties for late payment, interest and costs relating to such taxes.

2. At the request of the requesting State, the requested State shall proceed to collect any taxes owed to the first State in accordance with the laws and administrative practice applicable to the collection of its own tax debts, unless the Convention provides otherwise.

3. The provisions of the preceding paragraph shall apply only to tax debts for which a document authorizing collection in the requesting State has been issued and which are uncontested.

4. Assistance with the collection of the tax debts relating to a deceased person or his estate shall be limited to the value of the estate or of the part thereof received by each of the beneficiaries, according to whether the debt is to be collected from the estate or from the beneficiaries thereof.

5. The requested State shall not be obliged to comply with the request:

(*a*) If the requesting State has not exhausted in its own territory all means of collecting its tax debt, unless collection in the requesting State gives rise to considerable difficulties;

(*b*) If and to the extent that it considers that the tax debt is incompatible with the provisions of this Convention or with those of any other convention to which both States are parties.

6. A request for administrative assistance with a view to collection of a tax debt shall be accompanied by:

(*a*) A statement that the tax debt relates to a tax covered by the Convention and is uncontested;

(*b*) An official copy of the document authorizing enforcement in the requesting State;

(*c*) Any other document required for collection of the debt;

(*d*) Where appropriate, a certified true copy of any decision of an administrative body or a court relating to collection of the debt.

7. At the request of the requesting State, the requested State shall take precautionary measures to ensure collection of the tax debt if such debt is contested or if the document authorizing enforcement has not yet been issued.

8. The document authorizing enforcement in the requesting State shall, where appropriate, and in accordance with the regulations in force in the requested State, be acknowledged, approved, supplemented or replaced, as soon as possible after the date of receipt of the request for assistance, by a document authorizing enforcement in the requested State.

9. Questions concerning the time limit applicable to the tax debt shall be regulated exclusively by the law of the requesting State. The request for assistance with a view to collection shall include information about the time limit applicable to the tax debt.

10. Collection measures which the requested State takes following a request for assistance and which, under the law of that State, would have the effect of suspending or interrupting the time limit, shall have the same effect with respect to the laws of the requesting State. The requested State shall inform the requesting State of the action taken to this end.

11. The requested State may consent to a deferment of payment or to payment in instalments if its laws or administrative practice so allow in similar circumstances; it shall so inform the requesting State.

12. Objections as to the existence or the amount of the debt may be raised only before the competent jurisdiction of the requesting State.

13. The provisions of this article shall not be construed in such a way as to impose on the requested State the obligation:

(*a*) To take action at variance with its laws or administrative practice or with the laws or administrative practice of the requesting State;

(*b*) To take action which it considers to be contrary to public policy *(ordre public)*.

Article 28. DIPLOMATIC AGENTS AND CONSULAR OFFICERS

1. Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

2. Notwithstanding the provisions of article 4, an individual who is a member of a diplomatic mission, consular post or permanent delegation of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed for the purposes of this Convention to be a resident of the sending State if he is liable in that State to the same obligations in respect of tax on his total income or capital as are residents of that State.

3. This Convention shall not apply to international organizations or organs or officials thereof, nor shall it apply to persons who are members of a diplomatic mission, consular post or permanent delegation of a third State, being present in a Contracting State and not liable in either Contracting State to the same obligations in respect of tax on their total income or capital as are residents of those States.

Article 29. IMPLEMENTATION PROCEDURES

1. The competent authorities of the Contracting States shall establish, jointly or severally, appropriate procedures for the implementation of this Convention and, in particular, shall determine what formalities are to be completed by applicants for coverage under the Convention.

2. None of the provisions of this Convention shall be construed as preventing a Contracting State from withholding tax at source, in accordance with its domestic law, on income arising in that State and accruing to a resident of the other State. In such case, where the amount of the tax is reduced or eliminated under the Convention, the remainder shall be refunded at the request of the beneficial owner of the income.

3. To obtain, in a Contracting State, the tax exemptions or reductions and other fiscal advantages for which provision is made in this Convention, residents of the other Contracting State shall, except where the competent authorities stipulate otherwise, submit a proof-of-residence form indicating, in particular, the nature and the amount or value of the income or capital involved, such form to be duly certified by the tax authorities of that other State.

Article 30. TERRITORIAL EXTENSION

1. This Convention shall apply to:

(*a*) The European and overseas departments of the French Republic, including the territorial sea, and to areas beyond the territorial sea over which, under international law, the French Republic has sovereign rights with respect to the exploration

and exploitation of the natural resources of the sea bed and subsoil thereof and of the superjacent waters;

(*b*) The territory of the Republic of Austria.

2. This Convention may be extended, either in its entirety or with any necessary amendments, to the overseas territories and other territorial subdivisions 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 the diplomatic channel or in any other manner in accordance with their constitutional procedures.

3. Unless otherwise agreed by the Contracting States, the termination of the Convention by one of them under article 32 shall also terminate, in the manner provided for under that article, the application of the Convention to any territory or territorial subdivision to which it has been extended under this article.

Article 31. ENTRY INTO FORCE

1. Each Contracting State shall notify the other of the completion of the procedures which it must carry out in order to bring this Convention into force. The Convention shall enter into force on the first day of the second month following the receipt of the latter such notification.

2. This Convention shall apply for the first time:

(*a*) In respect of income tax, to income accruing during the calendar year following the date of entry into force of the Convention or during the accounting period starting in the course of that calendar year;

(*b*) In respect of other taxes, to taxation for which the taxable event occurs on or after 1 January of the calendar year following the date of entry into force of the Convention.

3. The Convention between the French Republic and the Republic of Austria for the avoidance of double taxation and the establishment of principles for reciprocal assistance with respect to taxes on income and fortune and succession duties, signed at Vienna on 8 October 1959[1] and amended by the Additional Agreement of 30 October 1970[2] and the Amendment of 26 February 1986,[3] shall cease to have effect in respect of the income and capital to which the corresponding provisions of this Convention shall apply.

Article 32. TERMINATION

1. This Convention shall remain in force indefinitely. However, either Contracting State may terminate the Convention with effect from the end of any calendar year by giving at least six months' notice of termination through the diplomatic channel.

[1] United Nations, *Treaty Series*, vol. 453, p. 95.
[2] *Ibid.*, vol. 832, p. 344.
[3] *Ibid.*, vol. 1530, No. A-6521.

2. In such event, the Convention shall apply for the last time:

(*a*) In respect of income tax, to income accruing during the calendar year for the end of which the termination has been notified or relating to the accounting period ended during that year;

(*b*) In respect of other taxes, to taxation for which the taxable event occurs during the calendar year for the end of which the termination has been notified.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Convention and have affixed their seals.

DONE at Vienna on 26 March 1993 in duplicate in the German and French languages, both texts being equally authentic.

For the Republic
of Austria:

Dr WOLFGANG NOLZ

For the French
Republic:

ANDRÉ LEWIN

PROTOCOL TO THE CONVENTION BETWEEN THE REPUBLIC OF AUSTRIA AND THE FRENCH REPUBLIC FOR AVOIDANCE OF DOUBLE TAXATION AND PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

At the time of signature of the Convention between the Republic of Austria and French Republic for avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income and on capital, the plenipotentiaries of the two Contracting States agree that the following provisions shall form an integral part of the Convention.

1. As regards paragraph 1 of article 4, it is understood that the term "resident of a Contracting State" includes:

(*a*) That State, its territorial subdivisions and the public agencies thereof;

(*b*) Retirement funds, provident funds and pension funds established in that State and recognized for tax purposes by the laws of that State;

(*c*) Partnerships and other bodies of persons which under French law are subjected to taxation treatment similar to that to which partnerships are subjected, having their head office in France and not being liable to the corporation tax in France.

2. As regards article 8, it is understood that an enterprise whose place of effective management is situated in Austria and which operates ships or aircraft in international traffic shall automatically be exempt in France from the local tax on businesses in respect of such operation. Reciprocally, an enterprise which has its place of effective management in France and which operates ships or aircraft in international traffic shall be exempt in Austria from the tax on commercial and industrial enterprises, including the tax levied on the total amount of wages, in respect of such operation.

3. As regards article 10, so long as Austria is not a member of the European Economic Community, the dividends referred to in subparagraph (*b*) of paragraph 2 shall be taxable in the Contracting State of which the company paying the dividends is a resident, but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed 5 per cent of the gross amount of the dividends.

4. As regards paragraph 5 of article 10, it is understood that the term "dividends" also includes income subject to the taxation treatment in respect of distributed earnings under the tax laws of the Contracting State of which the company making the distribution is a resident, but does not include the income referred to in article 16.

5. As regards articles 10 and 11, an investment company or fund which is established in a Contracting State where it is not subjected to any tax referred to in subparagraph (*a*), (i) or (ii) or subparagraph (*b*), (i) or (ii) of paragraph 3 of article 2 and which receives dividends or interest arising in the other Contracting State may apply for an overall tax reduction or exemption or other fiscal advantage under this Convention in respect of that part of such income which is attributable to the holdings in the company or fund of residents of the first-mentioned State and taxable on behalf of those residents.

6. As regards article 19, it is understood that:

(*a*) The provisions of paragraph 1 shall also apply to remuneration paid to the members of Austrian trade missions in France;

(*b*) At the request of the taxpayer concerned, and subject to an agreement between the competent authorities, the provisions of paragraph 1 may apply in respect of any tax years not barred by time limit which precede the date of entry into force of the Convention.

7. As regards paragraph 1 of article 23, it is understood that the term "the amount of French tax attributable to such income" shall designate:

(*a*) Where the tax liability in respect of the income is computed on a pro-rata basis, the product of the amount of the net income in question multiplied by the rate actually applied;

(*b*) Where the tax liability in respect of the income is computed by the application of a progressive scale, the product of the amount of the net income in question multiplied by the rate resulting from the ratio between the effective tax liability in respect of the total net income taxable under French law and the amount of such total net income.

This interpretation shall apply by analogy to the term "the amount of French tax attributable to such capital".

8. The provisions of the Convention shall not prevent France from applying the provisions of article 212 of the General Tax Code or other similar provisions amending or replacing those of that article.

9. Each Contracting State may proceed directly by means of the postal service to deliver a document to a person situated in the territory of the other Contracting State.

10. Each of the Contracting States reserves the right to tax, in accordance with its laws, the income of its residents which is liable to taxation by the other Contracting State but is not taken into account for the purpose of assessing tax in that State, in cases where such double exemption results from a divergent categorization of the income in question.

DONE at Vienna on 26 March 1993 in duplicate in the German and French languages, both texts being equally authentic.

For the Republic
of Austria:

Dr WOLFGANG NOLZ

For the French
Republic:

ANDRÉ LEWIN