# No. 30723

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# FRANCE
# and
# VENEZUELA

## Convention for the avoidance of double taxation and the prevention of fiscal evasion and fraud with respect to taxes on income (with protocol). Signed at Caracas on 7 May 1992

*Authentic texts: French and Spanish.*

*Registered by France on 28 February 1994.*

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# FRANCE
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## Convention en vue d'éviter les doubles impositions et de prévenir l'évasion et la fraude fiscales en matière d'impôts sur le revenu (avec protocole). Signée à Caracas le 7 mai 1992

*Textes authentiques : français et espagnol.*

*Enregistrée par la France le 28 février 1994.*

[TRANSLATION — TRADUCTION]

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

The Government of the French Republic and

The Government of the Republic of Venezuela,

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

Have agreed as follows:

## CHAPTER I. SCOPE OF THE CONVENTION

### *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 or of its local authorities, 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 or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, 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 France:

(i) The income tax;

(ii) The corporation tax;

(iii) The tax on wages;

(hereinafter referred to as "French tax");

(*b*) In the case of Venezuela: the income tax;

(hereinafter referred to as "Venezuelan 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,

[1] Came into force on 15 October 1993, the date of the last of the notifications (of 14 July and 15 October 1993) by which the Contracting Parties informed each other of the completion of the required procedures, in accordance with paragraph 1 of article 29.

or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of substantial changes which have been made in their respective taxation laws.

## CHAPTER II. DEFINITIONS

### *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 France or Venezuela, as the case may be;

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

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

(*d*) 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;

(*e*) 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;

(*f*) The term "nationals" means:

(i) All individuals possessing the nationality of a Contracting State;

(ii) All legal persons, partnerships and associations deriving their status as such from the legislation in force in a Contracting State;

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

(i) In the case of France, the Minister in charge of the budget or his authorized representative;

(ii) In the case of Venezuela, the Internal Revenue Service *(Dirección General Sectorial de Rentas)* of the Ministry of Finance.

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. The term "law of that State" means primarily tax law, which shall take precedence over other branches of the 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. However, this term does not include persons who are 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, 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 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;

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

3. A construction or assembly site shall not constitute a permanent establishment unless it is in operation for more than twelve months, calculated from the effective date of the start of work.

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, activities relating to publicity, the supply of information or scientific research or 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 a 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 business 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.

## CHAPTER III. TAXATION OF INCOME

### *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 also 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 ownership of shares or other rights in a company or other legal person gives the owner the right to dispose of immovable property situated in a Contracting State and owned by that company or that other legal person, the income derived by the owner from the direct use, letting or any other use of the said right shall be taxable in that State.

### *Article 7.* BUSINESS PROFITS

1. An enterprise of a Contracting State shall be subject to taxation 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. 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 business 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. In so far 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 State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted 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 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

Taxation of profits from the operation of ships or aircraft in international traffic shall be governed by the Agreement between the Government of the French Republic and the Government of the Republic of Venezuela for the avoidance of double taxation in respect of shipping and air transport, signed on 4 October 1978[1] and modified by the Amendment of 24 November 1987.[2]

[1] United Nations, *Treaty Series*, vol. 1493, No. I-25660.
[2] *Ibid.*, vol. 1530, No. A-25660.

*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.

*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. Such dividends 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:

(*a*) Fifteen per cent of the gross amount of the dividends referred to in paragraph 3;

(*b*) Five per cent of the gross amount of other dividends; however, these dividends may not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner is a company which holds directly or indirectly at least 10 per cent of the capital of the former company.

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 Venezuela 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 fiscal credit *(avoir fiscal)*, shall be entitled to a payment from the French Treasury equal to such fiscal credit *(avoir fiscal)*, subject to the deduction of the tax referred to in paragraph 2 (*a*).

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

(i) An individual; or

(ii) A company which owns directly or indirectly less than 10 per cent of the share capital of the company which is a resident of France and which pays the dividends.

(*c*) The provisions of subparagraph (*a*) shall not apply if the person receiving the dividends is not subject to Venezuelan tax in respect of the dividends and of the payment from the French Treasury.

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

4. A resident of Venezuela 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 the prepayment *(précompte)* in respect of such dividends, in so far as it has effectively been paid by the company. The gross amount of the prepayment *(précompte)* refunded shall be deemed to be dividends 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 subjected to the same distribution treatment by the tax 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 dividends shall be taxable in the other Contracting State according to its laws, due regard being had to the other provisions of this Convention.

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 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 5 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, the interest referred to in paragraph 1 shall be exempted from tax in the Contracting State in which it arises if:

(*a*) The payer of the interest is that Contracting State, one of its local authorities or a public agency of either; or

(*b*) The interest is paid to the other Contracting State, one of its local authorities or a public agency of either; or

(*c*) The interest is paid in respect of financing made available as part of public assistance to foreign trade or under agreements concluded between the Contracting Parties.

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. Penalty charges for late payment shall not be regarded as interest for the purpose of this article.

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 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 therewith. In such case, the interest shall be taxable in that Contracting State according to its laws, due regard being had to the other provisions of this Convention.

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 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 the Convention.

### *Article 12.* ROYALTIES

1. Royalties 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 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 5 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this article means payments of any kind received as a consideration:

(*a*) For the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or recordings for radio or television broadcasting;

(*b*) For the use of, or the right to use, any patent, trade mark, design, model, plan or secret formula or process, or for information concerning industrial, commercial or scientific experience (know-how).

4. The provisions of paragraphs 1 and 2 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 therewith. In such case, the royalties shall be taxable in the other Contracting State according to its laws, due regard being had to the other provisions of this Convention.

5. 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 contract to pay the royalties was concluded, 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 the fixed base is situated.

6. 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 use, right or information for 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. The excess part shall be taxable according to the laws of each Contracting State, due regard being had to the other provisions of the 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 or other rights in a company or other legal person the business property of which consists directly or indirectly principally of immovable property situated in a Contracting State or of rights in respect of such property may be taxed in that State.

3. 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 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.

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 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, 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, 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 in the fiscal year concerned; 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 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' FEES AND SIMILAR PAYMENTS

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 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 an athlete who is a resident of a Contracting State from his personal activities exercised in his capacity as such in the other Contracting State may be taxed only in the first-mentioned State if these activities in the other State are supported primarily by public funds of the first-mentioned State, one of its local authorities or a public agency of either.

4. Notwithstanding the provisions of paragraph 2, where income in respect of personal activities exercised by an entertainer or an athlete who is 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, notwithstanding the provisions of articles 7, 14 and 15, may be taxed only in the first-mentioned State if that other person is supported primarily by public funds of that State, one of its local authorities or a public agency of either.

### *Article 18.* PENSIONS

1. Subject to the provisions 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.

2. Notwithstanding the provisions of paragraph 1, pensions and other payments made under the social security legislation of a Contracting State may be taxed in that State.

### *Article 19.* GOVERNMENT REMUNERATION

1. Remuneration, including a pension, paid to an individual by, or out of funds created by, a Contracting State or one of its local authorities, or by a public agency of either, shall be taxable only in that State.

2. The provisions of articles 15, 16 and 18 shall apply to remuneration, including pensions, in respect of services rendered in connection with a business carried on by a Contracting State or one of its local authorities, or by a public agency of either.

### *Article 20.* TEACHERS AND RESEARCHERS

Teachers and researchers who are temporarily present in a Contracting State for a period not exceeding two years for the purpose of teaching or conducting research in a university, college, school or other similar institution and who are, or were immediately before this visit, residents of the other Contracting State shall be taxed only in that other State in respect of remuneration which is derived from the teaching or research activities and which does not arise in the first-mentioned State.

### *Article 21.* 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 22.* 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 and not paid from trusts 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.

## CHAPTER IV. MISCELLANEOUS PROVISIONS

### *Article 23.* ELIMINATION OF DOUBLE TAXATION

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

(*a*) Income arising in Venezuela and taxable, or taxable only, in that State under the provisions of this Convention shall be taken into account in calculating French tax if the recipient is a resident of France and the income is not exempt under French law from the corporation tax. In such case, Venezuelan tax is not deductible from such income, but the recipient shall be entitled to a tax credit against French tax. The tax credit shall be equal to:

(i) In respect of income other than the income referred to in subparagraph (ii), the amount of the corresponding French income tax;

(ii) In respect of the income referred to in paragraph 2 of article 10, paragraph 2 of article 11, paragraph 2 of article 12, paragraphs 1 and 2 of article 13, paragraph 3 of article 15, article 16, paragraphs 1 and 2 of article 17 and paragraph 2 of article 18, the amount of the tax paid in Venezuela under the provisions of the said articles; such credit shall not, however, exceed the amount of the corresponding French income tax.

(*b*) For the purposes of subparagraph (*a*), (ii), the term "amount of the tax paid in Venezuela" means:

(i) The amount of Venezuelan tax effectively and definitively paid, under the provisions of the Convention, in respect of such income by a resident of France who is the recipient of the income;

(ii) The amount of Venezuelan tax on the interest referred to in paragraph 2 of article 11 and on the royalties referred to in paragraph 2 of article 12, which ought to have been paid by virtue of the common law legislation of Venezuela and within the limits set by the Convention but which was subject to an exemption or a reduction pursuant to special legislation which was in force in Vene-

zuela on the date of signature of the Convention and which provided for a temporary tax-incentive scheme to promote the economic development of Venezuela. The provisions of this subparagraph shall remain in force for ten years from the date of entry into force of the Convention. This ten-year period may be extended by mutual agreement between the competent authorities of the Contracting States.

(*c*) With regard to the application of subparagraph (*a*) to the income referred to in articles 11 and 12, a resident of France receiving such income may, where the amount of the tax paid in Venezuela in accordance with the provisions of these articles exceeds the amount of the corresponding French income tax, submit his case to the competent French authority. If it deems that such a situation results in taxation which is not comparable to taxation of net income, the competent authority may, on the conditions it specifies, allow as a deduction from the French tax on other income derived from foreign sources by that resident the non-credited amount of the tax paid in Venezuela.

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

(*a*) Subject to the provisions of subparagraph (*b*), where a resident of Venezuela derives income which, in accordance with the provisions of the Convention, may be taxed in France, such income shall be exempted from Venezuelan tax.

(*b*) Where a resident of Venezuela receives dividends which, in accordance with the provisions of article 10, may be taxed in France, Venezuela shall allow as a deduction from the amount of the tax on such dividends an amount equal to the tax paid in France. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to the dividends which may be taxed in France.

### *Article 24.* NON-DISCRIMINATION

1. Individuals possessing the nationality 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 possessing the nationality of that other State in the same circumstances, especially in respect of 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 article 9, paragraph 7 of article 11, or paragraph 6 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 taxation or any requirement connected therewith which is other or more burdensome than the taxation or connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. Contributions paid by or on behalf of an individual who is a resident of a Contracting State and who does not possess the nationality of that State to a pension scheme recognized for tax purposes in the other Contracting State shall receive the same tax treatment in the first-mentioned State as contributions paid to a pension scheme recognized for tax purposes in that first-mentioned State, provided that the competent authority of that State agrees that the pension scheme corresponds to a pension scheme recognized for tax purposes in that State. For the purposes of this paragraph, the term "pension scheme" means, in particular, a pension scheme established under a public social security system.

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

### *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 two 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 or doubts arising as to the interpretation or application of the Convention. They may, in particular, consult together to establish an identical crediting of profits in the case of associated enterprises within the meaning of article 9. 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.

5. The competent authorities of the Contracting States may settle the mode of application of the Convention and, in particular, the requirements to which the residents of a Contracting State shall be subjected in order to obtain, in the other Con-

tracting State, the tax reliefs or exemptions and other tax advantages provided for by the Convention. Such requirements may include the submission of a proof-of-residence form indicating, in particular, the nature and amount of the income in question, certified by the internal revenue services of the first-mentioned State.

### *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, 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 which are the subject of 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 order *(ordre public)*.

### *Article 27.* DIPLOMATIC AGENTS AND CONSULAR OFFICERS

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

### *Article 28.* TERRITORIAL SCOPE

1. This Convention may be extended, either in its entirety or with any necessary modification, to the French territorial authorities of Mayotte and Saint-Pierre-et-Miquelon and to the overseas territories of the French Republic, which levy taxes substantially similar in nature to those to which the Convention applies. Any such extension shall take effect from such date, together with such modifications and according to such conditions, including conditions relating to termination, as may be specified and agreed between the Contracting States, by means of an exchange of notes through the diplomatic channel 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 30 shall also terminate, in the manner

provided for in that article, the application of the Convention to the territorial authorities and overseas territories of the French Republic to which it has been extended under this article.

## CHAPTER V. FINAL PROVISIONS

### *Article 29.* ENTRY INTO FORCE

1. Each Contracting State shall notify the other, through the diplomatic channel, of the completion of the procedures required by its laws for the entry into force of this Convention. The Convention shall enter into force on the date of the later of these notifications.

2. The provisions of the Convention shall apply:

(*a*) In respect of taxes withheld at the source, to amounts credited or payable on or after 1 January of the year following that of its entry into force;

(*b*) In respect of other taxes on income, to taxable periods beginning on or after 1 January of the year following that of its entry into force.

3. The provisions of the first two sentences of article XXV of the Basic Agreement on cultural, scientific and technical co-operation between the Government of the French Republic and the Government of the Republic of Venezuela, signed at Caracas on 15 November 1974,[1] shall cease to apply to income to which the corresponding provisions of this Convention shall apply.

### *Article 30.* TERMINATION

This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may, by giving at least six months' notice through the diplomatic channel, terminate it with effect from the end of any calendar year beginning with the fifth calendar year following that of its entry into force. In such event, its provisions shall apply for the last time:

(*a*) In respect of taxes withheld at the source, to amounts credited or payable on or before 31 December of the calendar year at the end of which the termination is to take effect;

(*b*) In respect of other taxes on income, to taxable periods ending on or before 31 December of that same year.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Convention.

DONE at Caracas, on 7 May 1992, in duplicate in the French and Spanish languages, both texts being equally authentic.

For the Government
of the French Republic:

GEORGES KIEJMAN
Deputy Minister for Foreign Affairs

For the Government
of the Republic of Venezuela:

HUMBERTO CALDERÓN BERTI
Minister for Foreign Affairs

[1] United Nations, *Treaty Series*, vol. 1047, p. 165.

## PROTOCOL

At the time of the signature of the Convention between the Government of the Republic of Venezuela and the Government of the French Republic for the avoidance of double taxation and the prevention of fiscal evasion and fraud with respect to taxes on income, the undersigned have agreed to the following provisions, which shall be an integral part of the Convention.

I. With respect to the scope of the Convention, the term "fiscal evasion and fraud" includes petty offences *(contravenciones)* in the case of Venezuela. The provisions of the Convention shall not preclude France from applying articles 209 B and 212 of its *Code général des impôts* and other similar provisions which may amend or replace them.

II. It is understood that the provisions of the Convention shall apply to activities relating to the exploration and development of the natural resources of the sea bed and the subsoil thereof and the superjacent waters.

III. With respect to the first sentence of paragraph 1 of article 4, the term "resident of a Contracting State" includes:

(*a*) That State, its local authorities and public agencies of either;

(*b*) Partnerships and other business associations which have their place of management in that State and each of whose members is personally subject to taxation on his share of the profits.

IV. With respect to paragraphs 1 and 2 of article 7, where an enterprise of a Contracting State sells goods or carries on business in the other Contracting State through a permanent establishment situated therein, the profits of this permanent establishment shall not be determined on the basis of the total amount received by the enterprise but only on the basis of the payments that are attributable to the actual activity of the permanent establishment in connection with such sales or business. In particular, in the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, the profits of the permanent establishment, where the enterprise has such a permanent establishment, shall not be determined on the basis of the total amount of the contract but only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the Contracting State in which it is situated. The profits related to that part of the contract which is carried out in the State in which the place of effective management is situated shall be taxable only in that State.

V. With respect to paragraph 5 of article 10, it is understood that the term "dividends" does not include the kinds of income referred to in article 16.

VI. Remuneration for technical services, including scientific, geological or technical analyses or surveys, in connection with engineering projects and any related plans, or for advisory or supervisory services shall be deemed to be remuneration to which the provisions of article 7 or article 14 apply.

VII. The provisions of the Convention, in particular those of articles 7 and 23, shall not preclude the application of the legislation of a Contracting State:

(*a*) Which authorizes companies resident in that State to determine their taxable profits on the basis of a consolidation comprising, in particular, the perfor-

mance of their subsidiaries resident in the other Contracting State or of their permanent establishments situated in that other State; or

(*b*) Pursuant to which the first-mentioned State determines the profits of its residents by deducting the losses of their subsidiaries resident in the other Contracting State or of their permanent establishments situated in that other State, and by consolidating the profits of such subsidiaries or such permanent establishments up to the amount of the losses deducted.

VIII. The provisions of paragraph 1 of article 24 shall apply also to the Contracting States, their local authorities and public agencies of those States and authorities, even if their status differs in respect of residence.

IX. It is understood that only the provisions of this Convention shall apply in the matter of taxation, with the express exception of non-discrimination clauses or most-favoured-nation clauses included in other agreements, treaties or conventions between the Contracting States.

X. A resident of a Contracting State who has one or more domiciles in the other Contracting State may not be subjected in that other State to a tax on income established nationally on the basis of the rental value of such domicile or domiciles.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Protocol.

DONE at Caracas, on 7 May 1992, in duplicate in the French and Spanish languages, both texts being equally authentic.

For the Government
of the Republic of Venezuela:

HUMBERTO CALDERÓN BERTI
Minister for Foreign Affairs

For the Government
of the French Republic:

GEORGES KIEJMAN
Deputy Minister for Foreign Affairs