No. 16150

FRANCE
and
SENEGAL

Tax Convention (with protocol and exchanges of letters). Signed at Paris on 29 March 1974

Authentic text: French.

Registered by France on 29 December 1977.

FRANCE
et
SÉNÉGAL

Convention fiscale (avec protocole et échanges de lettres). Signée à Paris le 29 mars 1974

Texte authentique : français.

Enregistrée par la France le 29 décembre 1977.

[TRANSLATION — TRADUCTION]

TAX CONVENTION[1] BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF SENEGAL

The Government of the French Republic and the Government of the Republic of Senegal,

Considering the friendly relations between the two countries,

Desiring to co-operate in tax matters on the basis of reciprocity, equality and mutual respect and interest,

Desiring to avoid double taxation as far as is possible and to establish rules of reciprocal assistance with respect to income taxes, inheritance taxes, registration duties and stamp duties,

Have for that purpose agreed upon the following provisions:

PART I. GENERAL PROVISIONS

Article 1. For the purposes of this Convention:

1. The term "person" means:

(*a*) any individual;

(*b*) any body corporate;

(*c*) any unincorporated group of individuals.

2. The term "France" means the European *départements* and overseas *départements* (Guadeloupe, Guiana, Martinique and Réunion) of the French Republic and any areas outside the territorial waters of France in which it may, in accordance with international law and its legislation, exercise rights with respect to the sea-bed and subsoil thereof and their natural resources;

The term "Senegal" means the territory of the Republic of Senegal, and any areas outside the territorial waters of Senegal in which it may, in accordance with international law and its legislation, exercise rights with respect to the sea-bed and subsoil thereof and their natural resources.

Article 2. 1. For the purposes of this Convention, an individual shall be deemed to be domiciled in the place in which he has his "permanent home", the latter expression being understood to mean the centre of vital interests — i.e., the place with which his personal relations are closest.

When the domicile of an individual cannot be determined on the basis of the foregoing paragraph, he shall be deemed to be domiciled in that one of the Contracting States in which he principally resided. If he resides for equal periods in each of the two States, he shall be deemed to have his domicile in the Contracting State of which he is a national. If he is a national of neither Contracting State, the competent authorities of the Contracting States shall determine the question by agreement.

2. For the purposes of this Convention, a body corporate shall be deemed to have its domicile in the place in which its registered office is situated; an unincorporated group

[1] Came into force on 24 April 1976, the date of the last of the notifications (effected on 21 January and 24 April 1976) by which the Parties informed each other of the completion of their legal procedures, in accordance with article 43 (1).

of individuals shall be deemed to have its domicile in the place from which it is actually managed.

Article 3. The term "permanent establishment" means a fixed place of business at which an enterprise conducts all or part of its business.

(*a*) The following, in particular, shall be deemed to be permanent establishments:

(*aa*) a management office;

(*bb*) a branch;

(*cc*) an office;

(*dd*) a factory;

(*ee*) a workshop;

(*ff*) a mine, quarry or other place of extraction of natural resources;

(*gg*) a building or assembly site;

(*hh*) a fixed place of business used for the purpose of storage, display and delivery of goods belonging to the enterprise;

(*ii*) a warehouse where goods belonging to the enterprise are kept for the purpose of storage, display and delivery;

(*jj*) a fixed place of business used for the purpose of purchasing goods or for collecting information which is the actual object of the business of the enterprise;

(*kk*) a fixed place of business used for advertising purposes.

(*b*) The term "permanent establishment" shall not be deemed to apply if:

(*aa*) Goods belonging to the enterprise are being held for the sole purpose of processing by another enterprise;

(*bb*) A fixed place of business is used solely for the purpose of supplying information, for scientific research or for similar activities which, so far as the enterprise is concerned, are preparatory in character.

(*c*) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State — other than an agent of independent status within the meaning of paragraph (*e*) below — shall be deemed to be a "permanent establishment" in the former State if he has and habitually exercises in that State authority to conclude contracts in the name of the enterprise.

Such authority shall, in particular, be deemed to be exercised by an agent who habitually has available to him in the former Contracting State a stock of products or goods belonging to the enterprise from which he regularly fills orders received by him on behalf of the enterprise.

(*d*) An insurance enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that State or insures risks situated therein through a representative who is not an agent within the meaning of paragraph (*e*) below.

(*e*) An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of independent status if such persons are acting in the ordinary course of their business. However, if the agent whose services are used has available to him a stock of goods on consignment from which the sales and deliveries are made, such stock shall be deemed to imply the existence of a permanent establishment of the enterprise.

(*f*) The fact that a company domiciled in a Contracting State controls or is controlled by a company which is domiciled in the other Contracting State or which carries on

business in that State (whether through a permanent establishment or otherwise) shall not of itself make either company a permanent establishment of the other.

Article 4. For the purposes of this Convention rights which are governed by the tax legislation relating to real property and rights of usufruct in immovable property, with the exception of claims of any kind secured by pledge of immovables, shall be deemed to be immovable property.

The question whether a property or a right is an immovable property or a right in respect of immovable property or can be considered to be an accessory to immovable property shall be decided in accordance with the laws of the State in which the property in question or the property to which the right in question relates is situated.

Article 5. 1. Nationals and companies and other associations (*groupements*) of one Contracting State shall not be subject in the other State to any taxation other or higher than the taxation to which nationals, companies and other associations of the latter State in the same circumstances are subject.

2. In particular, nationals of one of the Contracting States who are liable to taxation in the territory of the other Contracting State shall be entitled, on the same conditions as nationals of that State, to such exemptions, reliefs, rebates and reductions of any taxes or charges as may be granted in respect of dependants.

Article 6. In the application of the provisions of this Convention, the term "competent authorities" shall mean:

— in the case of France, the Minister of Finance and Economic Affairs, or his duly authorized representative;

— in the case of Senegal, the Minister of Finance, or his duly authorized representative.

Article 7. In the application of this Convention by either Contracting State, any term not defined in this Convention shall, unless the context otherwise requires, have the meaning which it has under the laws in force in that State with respect to the taxes referred to in this Convention.

PART II. DOUBLE TAXATION

Chapter I. INCOME TAXES

Article 8. 1. This chapter shall apply to income taxes levied in whatsoever manner on behalf of either Contracting State and its local authorities.

Income taxes shall be deemed to mean taxes levied on total income or on elements of income (including capital appreciation).

2. The object of the provisions of this chapter is to avoid such double taxation as might result, for persons (as defined in article 1) having their fiscal domicile, determined in accordance with article 2, in one of the Contracting States from the simultaneous or successive levying in that State and the other Contracting State of the taxes referred to in paragraph 1 above.

3. The existing taxes to which this chapter shall apply are:

— in the case of France:

(*a*) the income tax;

(*b*) the corporation tax;

(*c*) the annual levy on bodies corporate, and any withholdings, deductions at source and prepayments with respect to the aforesaid taxes.

— in the case of Senegal:

(*a*) the tax on industrial and commercial profits and on profits from farming;
(*b*) the minimum levy on corporations;
(*c*) the tax on profits from non-commercial occupations;
(*d*) the tax on income from securities and liquid assets;
(*e*) the general income tax;
(*f*) the real estate tax on built-on property;
(*g*) the development tax;
(*h*) the levy on wages and the employers' contribution for the improvement of housing.

4. The Convention shall also apply to any identical or similar taxes which may in future be added to or substituted for the existing taxes. The competent authorities of the Contracting States shall notify each other of any changes made in their tax legislation as soon as such changes are promulgated.

5. If, owing to changes in the tax legislation of either of the Contracting States, it appears expedient to adapt certain articles of the Convention without altering its general principles, the necessary adjustments may be made, by agreement, through an exchange of diplomatic notes.

Article 9. Income from immovable property, including profits from farming and forestry, shall be taxable only in the State in which the property is situated.

Article 10. 1. Income from industrial mining, commercial or financial enterprises shall be taxable only in the State in which a permanent establishment is situated.

2. When an enterprise has permanent establishments in both Contracting States, each State may tax only the income derived from the operations of the permanent establishments situated in its territory.

3. Taxable income may not exceed the amount of the industrial, mining, commercial or financial profits made by the permanent establishment, including, if applicable, any profits or advantages derived indirectly from that establishment or assigned or granted to third parties by either increasing or decreasing purchase or selling prices or any other means.

4. A fraction of the overhead expenses of the head office of the enterprise shall be charged against the earnings of the individual permanent establishments in proportion to their turnovers.

When in the conditions set out above, the overhead expenses of the head office are such that a normal profit is not yielded, the competent authorities of the two States may, with due regard for the provisions of article 41 of the Convention, make the adjustments necessary to determine the profit of the permanent establishment.

The same procedure shall apply when the said apportionment would lead to the assignment to the permanent establishment in one of the two States of a fraction substantially higher than that which would result from the application of the internal legislation of that State.

5. If taxpayers with business in both Contracting States do not keep regular accounts showing separately and exactly the profits accruing to the permanent establishments situated in each State, the amount of profit taxable by each State may be determined by apportioning the total earnings in proportion to the turnover realized in each of them.

6. If one of the establishments situated in either Contracting State realizes no turnover or if the business carried on in the two States is not comparable, the competent

authorities of the two States shall co-operate to establish the manner in which paragraphs 4 and 5 are to be applied.

Article 11. 1. When an enterprise of one of the Contracting States, by virtue of its participation in the management or the capital of an enterprise of the Contracting State, stipulates or imposes on that enterprise, in their commercial or financial relations, conditions differing from those which would be stipulated to a third enterprise, all profits which would normally have appeared in the accounts of one of the enterprises but which have in this manner been transferred to the other enterprise may be incorporated in the taxable profits of the former.

2. In particular, an enterprise shall be deemed to participate in the management or the capital of another enterprise when the same persons participate directly or indirectly in the management or the capital of both enterprises.

Article 12. Income derived from the operation of aircraft in international traffic shall be taxable only in the Contracting State in which the enterprise has its fiscal domicile.

Article 13. 1. Subject to the provisions of articles 15 to 17, income from securities and income treated as such (earnings from shares, founders' shares and company or partnership shares; interest on bonds or on any other negotiable certificates of indebtedness) paid by companies or by public or private authorities having their fiscal domicile in one of the Contracting States shall be taxable in that State.

2. Dividends distributed by a French company which, if received by a person domiciled in France, would create an entitlement to reimbursement of the tax already paid to the Treasury (fiscal credit) shall entitle the recipient to be paid an amount equal to such fiscal credit less the education at source, computed at the rate of 15 per cent of the sum of the dividend distributed and such fiscal credit, provided they are paid to an individual or company domiciled in Senegal and meeting the conditions set out in paragraphs 3 and 4.

3. An individual having his fiscal domicile in Senegal may receive the payment provided for in paragraph 2 only if he includes the amount of that payment as a dividend in his assessable income for the purpose of the tax referred to in article 26, paragraph 5.

4. A company having its fiscal domicile in Senegal may receive the payment provided for in paragraph 2 only if both the dividend paid by the French company and the payment, mentioned above, are included in its assessable income for the purpose of the income tax to which the recipient company is subject in Senegal.

Article 14. A company of one of the Contracting States may not be subject in the territory of the other Contracting State to a tax on the distributed income from securities and income treated as such (earnings from shares, founders' shares and company or partnership shares; interest on bonds or on any other negotiable certificates of indebtedness) solely by virtue of its participation in the management or the capital of companies domiciled in that State or because of any other relationship with such companies. Nevertheless, earnings distributed by those companies and liable to the tax shall, where appropriate, be combined with any profits or advantages which the company of the first-mentioned State has indirectly derived from the said companies, either by increasing or decreasing purchase or selling prices or by any other means.

Article 15. 1. If a company having its fiscal domicile in one of the Contracting States is liable in that State to a tax on the distributed income from securities and income treated as such (earnings from shares, founders' shares and company or partnership shares; interest on bonds or on any other negotiable certificates of indebtedness) and it has one or more permanent establishments in the other Contracting State in respect of which it is also liable in the latter State to the same tax, the income subject to that tax shall be apportioned between the two States, in order to avoid double taxation.

2. The apportionment provided for in the foregoing paragraph shall be established for each fiscal year on the basis of the ratio:

$\frac{A}{B}$ for the State in which the company's fiscal domicile is not situated,

$\frac{B - A}{B}$ for the State in which the company has its fiscal domicile,

— the letter *A* representing the book value of the trading results of the company from all its permanent establishments in the State in which it does not have its fiscal domicile, after setting off against each other the profits and losses of those establishments. By book value of the trading results shall be understood the profits deemed to have been earned in the said establishments in the light of the provisions of articles 10 and 11 of this Convention;

— the letter *B* representing total book value of the company's trading results, as shown by its general balance-sheet.

In determining the total book value of the trading results, no account shall be taken of overall losses declared for all the company's permanent establishments in either State after setting off against each other the profits and losses of those establishments.

If the trading results for a financial year are nil or show a loss, the apportionment shall be effected by a method previously specified.

In the absence of a previously specified method, the apportionment shall be effected in proportions determined by agreement between the competent authorities of the Contracting States concerned.

3. If the distributed profits include earnings from the company's holdings in the capital of other companies and such holdings satisfy the requirements for the granting of special tax treatment to affiliated companies laid down by the domestic legislation either of the State in which the company has its fiscal domicile or of the other State (depending on whether the holdings are shown as a balance-sheet asset of a permanent establishment in the former or in the latter State), each State shall apply to such part of the said distributed profits as consists of earnings from holdings governed by its domestic legislation the provisions of that legislation, while that part of the said distributed profits which does not consist of earnings from such holdings shall be taxed by each State in accordance with the apportionment procedure provided for in paragraph 2.

Article 16. 1. When, as a result of inspections by the competent taxation administrations, the amount of the profits earned during a fiscal year is adjusted in such a way as to modify the ratio specified in article 15, paragraph 2, such adjustments shall be taken into account in the apportionment between the two Contracting States of the assessments pertaining to the fiscal year in which the adjustments took place.

2. Adjustments to the amount of earnings to be apportioned which do not affect the ratio of profits earned taken into account in the apportionment of the earnings to which the adjustments relate shall give rise, in accordance with the rules applicable in each State, to an additional assessment apportioned in the same manner as the original assessment.

Article 17. 1. The apportionment of assessments referred to in article 15 shall be made by the company and communicated by it to each of the competent taxation administrations within the time-limit prescribed by the legislation of each State for declaring such distributions of taxable earnings as the company is carrying out.

In support of such apportionment, the company shall furnish to each of the said administrations, in addition to the documents which it is required to produce or submit

under domestic legislation, copies of the documents produced or submitted to the administration of the other State.

2. Any difficulties or disputes which may arise in connection with the apportionment of assessments shall be settled by agreement between the competent taxation administrations.

Failing agreement, the dispute shall be settled through the procedure laid down in article 41.

Article 18. Percentages of profits, attendance fees and other emoluments received by members of the boards of directors or boards of trustees of limited companies, companies limited by shares or co-operative societies in their capacity as members of such boards shall be taxable in the Contracting State in which the company has its fiscal domicile, subject to the application of articles 22 and 23 in respect of emoluments received by them in any other effective capacity.

If the company or society has one or more permanent establishments in the other Contracting State, the aforementioned percentages, attendance fees and other emoluments shall be taxable in accordance with the provisions of articles 15 to 17.

Article 19. 1. Income from loans, deposits, deposits accounts, bank cash certificates and any other debts not represented by negotiable instruments shall be taxed in the State in which the creditor has his fiscal domicile.

2. However, each Contracting State shall retain the right, if its domestic legislation so provides, to tax the income referred to in paragraph 1 by deduction at source.

3. The provisions of paragraphs 1 and 2 above shall not apply if the recipient of the interest in question, being domiciled in one of the Contracting States, has in the other Contracting State, in which the interest arises, a permanent establishment with which the debt producing the interest is effectively connected. In that case, article 10 on the assignment of profits to permanent establishments shall apply.

Article 20. 1. Royalties paid for the use of immovable property or the working of mines, quarries or other natural resources shall be taxable only in the Contracting State in which such property, mines, quarries or other natural resources are situated.

2. Copyright royalties and proceeds or royalties from the sale or grant of licenses for the use of patents, trade marks or secret processes and formulae paid in one of the Contracting States to a person having his fiscal domicile in the other Contracting State shall be taxable only in the latter State.

3. The royalties referred to in paragraph 2 shall be deemed to include payments made for the hire of or right to use cinematographic films, similar remuneration for the provision of information concerning industrial, commercial or scientific experience and rentals for the use of or the right to use industrial, commercial or scientific equipment, unless such equipment is immovable property, in which case paragraph 1 shall apply.

4. If a royalty exceeds the intrinsic and normal value of the rights for which it is paid, the exemption provided for in paragraphs 2 and 3 shall apply only to that part of the royalty which corresponds to the said intrinsic and normal value.

5. The provisions of paragraphs 2 and 3 shall not apply if the recipient of the royalties or other payments maintains in the Contracting State in which the income arises a permanent establishment or fixed place of business used for the practice of a profession or any other independent activity and if the said royalties or other payments accrue to that permanent establishment or fixed place of business. In such cases, the State in question shall be entitled to tax the income in accordance with its legislation.

Article 21. Pensions and annuities shall be taxable only in the Contracting State in which the recipient has his fiscal domicile.

Article 22. 1. Failing specific agreements providing for special treatment in the matter, wages, salaries and other similar remuneration received by a person domiciled in one of the two Contracting States in respect of gainful employment shall be taxable only in that State, unless the employment occurs in the other Contracting State. If the employment occurs in the other Contracting State, the remuneration derived from it shall be taxable in the latter State.

2. Notwithstanding the provisions of paragraph 1, remuneration received by a person domiciled in a Contracting State in respect of gainful employment in the other Contracting State shall be taxable only in the former State if:

(*a*) the recipient resides in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned;

(*b*) the remuneration is paid by or on behalf of an employer who is not domiciled in the other State; and

(*c*) The remuneration is not deducted from the profits of a permanent establishment or fixed base maintained by the employer in the other State.

3. Notwithstanding the foregoing provisions of this article, remuneration for work done on board a ship or aircraft in international traffic shall be taxable only in the Contracting State in which the enterprise is domiciled.

Article 23. 1. Income derived by a person domiciled in a Contracting State from a profession or other independent occupation of a similar character shall be taxable only in that State, unless the person in question habitually uses a fixed base in the other Contracting State for the exercise of his occupation. If he has such a fixed base, such part of the income as is attributable to that base shall be taxable in the other State.

2. For the purposes of this article, professions shall be deemed to include scientific, artistic, literary, educational or teaching activities and those of doctors, lawyers, architects or engineers.

Article 24. Monies which a student or trainee from one of the Contracting States residing in the other Contracting State solely for the purpose of his education or training receives for his maintenance, education or training shall not be taxed in that other State, provided that they come from sources outside that other State.

Article 25. Income not mentioned in the foregoing articles shall be taxable only in the Contracting State in which the recipient has his fiscal domicile, unless such income is connected with the activity of a permanent establishment owned by the recipient in the other Contracting State.

Article 26. It is agreed that double taxation shall be avoided in the following manner:

1. A Contracting State may not include in assessments for the purpose of the taxes on income referred to in article 8 any income which is taxable only in the other Contracting State by virtue of this Convention, but each State shall retain the right to calculate the tax at a rate corresponding to the total income taxable under its legislation.

2. Income of the kinds referred to in articles 13, 15, 18 and 19 originating in Senegal and accruing to persons domiciled in France shall be subject in Senegal only to the tax on income from movable capital.

Conversely, similar income originating in France and accruing to persons domiciled in Senegal shall be subject in France only to the tax deducted at source on income from movable capital. The rate of this deduction shall be reduced to 15 per cent on the income covered by the provisions of article 13, paragraph 2.

3. The gross amount of income from movable capital and interest originating in Senegal which is covered by the provisions of articles 13, 15, 18 and 19 and accrues to

persons domiciled in France shall be included in that State in assessments for the purpose of the taxes referred to in article 8, paragraph 3, subject to the following provisions:

(*a*) Income from movable capital originating in Senegal which is covered by the provisions of articles 13, 15 and 18 shall, when liable under the terms of the said articles to the Senegalese tax on income from movable capital, entitle the recipient to a deduction to be applied to taxes levied in France on the same income and not exceeding the amount of those taxes. This deduction shall equal the actual amount of tax paid in Senegal upon verification of that amount. However, with regard to dividends, the deduction in respect of the tax actually paid in Senegal shall equal 25 per cent.

(*b*) The interest covered by article 19 and originating in Senegal shall, when liable under that article to the Senegalese tax on income from movable capital, entitle a recipient of the said interest domiciled in France to a tax credit of 16 per cent in France. This credit shall be set off against either the income tax or corporation tax.

4. The expression "gross amount" in paragraph 3 means the amount of taxable income before deduction of tax levied on it in Senegal.

5. Income from movable capital and interest originating in France which is covered by articles 13, 15, 18 and 19 and accrues to persons domiciled in Senegal shall be subject in that State:

(*a*) in the case of individuals, only to the general income tax;

(*b*) in the case of bodies corporate, only to the tax on the profits of industrial and commercial professions.

Chapter II. INHERITANCE TAXES

Article 27. 1. This chapter shall apply to inheritance taxes levied on behalf of either Contracting State.

Inheritance taxes shall be understood to mean taxes levied at death in the form of estate duties, inheritance taxes, real estate transfer taxes or taxes on bequests.

2. The existing duties to which this chapter shall apply are:

— in the case of France: the inheritance tax;

— in the case of Senegal: the inheritance tax.

Article 28. Immovable property (including fittings) shall be liable to inheritance tax only in the Contracting State in which it is situated; equipment or livestock of agricultural or forestry enterprises shall be taxable only in the Contracting State in which the enterprise is situated.

Article 29. Tangible or intangible movable property left by a deceased person who at the time of his death was domiciled in one of the Contracting States and invested in a commercial, industrial or handicraft enterprise of any kind shall be liable to inheritance tax in accordance with the following rule:

(*a*) If the enterprise has a permanent establishment in only one of the two Contracting States, the property shall be liable to tax only in that State; this provision shall apply even if the enterprise extends its operations to the territory of the other Contracting State, without having a permanent establishment there.

(*b*) If the enterprise has a permanent establishment in each of the two Contracting States, the property shall be liable to tax in each State to the extent that it is used for a permanent establishment situated in the territory of that State.

However, the provisions of this article shall not apply to investments made by the deceased in associations of capital (public companies, companies limited by shares, limited liability companies, co-operative societies, non-trading companies subject to the tax

regulations governing associations of capital) or in the form of a partnership in limited partnership.

Article 30. Tangible or intangible movable property associated with permanent facilities and used in the practice of a profession in one of the Contracting States shall be liable to inheritance tax only in the Contracting State in which such permanent facilities are situated.

Article 31. Tangible movable property other than the movables referred to in articles 29 and 30, including furniture, linen and household goods and art objects and collections, shall be liable to inheritance tax only in the State in which such property was on the date of death.

However, ships and aircraft shall be liable to tax only in the Contracting State in which they were registered.

Article 32. Property of a deceased person's estate to which articles 28 to 31 do not apply shall be liable to inheritance taxes only in the Contracting State in which the deceased was domiciled at the time of death.

Article 33. 1. Debts associated with the enterprises referred to in articles 29 and 30 shall be charged against the property of those enterprises. If the enterprise has a permanent establishment or permanent facilities, as the case may be, in both Contracting States, the debts shall be charged against the property of the establishment or facilities with which they are associated.

2. Debts secured by immovable property or rights in immovable property, by the ships or aircraft referred to in article 31, by property used in the practice of a profession as provided for in article 30, or by the property of an enterprise of the kind referred to in article 29 shall be charged against such property. If a debt is secured by property situated in both States, it shall be charged against the property situated in each of them in proportion to the taxable value thereof.

This provision shall apply to the debts referred to in paragraph 1 only to the extent to which they are not covered in the manner provided for in that paragraph.

3. Debts not provided for in paragraphs 1 and 2 shall be charged against the property to which the provisions of article 32 apply.

4. If, after the procedure provided for in the foregoing three paragraphs, there remains an outstanding balance in one of the Contracting States, such balance shall be deducted from the value of the other property liable to inheritance tax in that State. If there remains no other property subject to tax in that State or if after such deduction a balance still remains, such balance shall be charged against the property subject to tax in the other Contracting State.

Article 34. Notwithstanding the provisions of articles 28 to 33, each Contracting State shall retain the right to compute the tax on such inherited property as is taxable solely by it at the average rate applicable to the sum of the property which would be liable to tax under its internal legislation.

Chapter III. REGISTRATION DUTIES OTHER THAN INHERITANCE TAXES; STAMP DUTIES

Article 35. 1. Duties applicable to an instrument or judgement for which registration is required shall, subject to the provisions of paragraphs 2 and 3, be payable in the country in which the instrument or judgement was drawn up or rendered.

When an instrument or judgement drawn up or rendered in one of the Contracting States is submitted for registration in the other Contracting State, the duties applicable in the latter State shall be determined in accordance with the provisions of its internal

legislation, provided that the duties due in that State shall be reduced by the amount, if any, of registration duties already levied in the former State.

2. Subject to paragraphs (*a*) and (*b*) below, a company's articles of association or amendments thereto shall be liable to the *ad valorem* assets transfer tax only in the State in which the company has its registered office. In the case of a merger or similar operations, the tax shall be levied in the State in which the new or absorbing company has its registered office.

(*a*) Assets transfer tax on immovable property and goodwill or the usufruct thereof and the right to lease or to benefit by an option to lease all or part of an immovable property shall be levied only in the Contracting State in whose territory the property or goodwill is situated.

(*b*) When a company having its registered office in one of the Contracting States and one or more permanent establishments in the territory of the other Contracting State increases its capital through the incorporation of reserves or is taxed by reason of its reserves, the capital increase or the reserves shall be subject to tax in accordance with the provisions of articles 15 to 17.

3. Instruments or judgements transferring the ownership or usufruct of an immovable property or goodwill or altering the enjoyment of an immovable property and instruments or judgements recording the transfer of a right to lease or to benefit by an option to lease all or part of an immovable property may be subject to a transfer tax and the fee for public notices regarding real estate only in the Contracting State in whose territory the property or goodwill is situated.

Article 36. Instruments or documents drawn up in one Contracting State shall not be subject to stamp duty in the other Contracting State if such duty has actually been paid on them at the rate applicable in the former State or if they are legally exempt from such duty in that State.

PART III. ADMINISTRATIVE ASSISTANCE

Article 37. 1. The taxation authorities of each of the Contracting States shall transmit to the taxation authorities of the other Contracting State any fiscal information available to them and useful to the latter authorities to ensure the proper assessment and collection of the taxes to which this Convention relates and the application with respect to such taxes of the statutory provisions concerning the prevention of tax evasion.

2. The information so exchanged shall be treated as confidential and shall not be disclosed to persons other than those concerned with the assessment and collection of the taxes to which this Convention relates. No information shall be exchanged which would reveal a commercial, industrial or professional secret. Assistance may be withheld where the requested State considers that it might endanger its sovereignty or security or injure its general interests.

3. Information shall be exchanged automatically or on request in specific cases. The competent authorities of the two Contracting States shall agree on the list of types of information to be provided automatically.

Article 38. 1. The Contracting States agree to lend each other assistance and support with a view to the recovery, according to rules consistent with their respective legislation or regulations, of the taxes referred to in this Convention and of any tax increases, surcharges, overdue payment penalties, interest and costs pertaining to the said taxes when such sums are finally due under the laws or regulations of the requesting State.

2. Requests for assistance shall be accompanied by such documents as are required under the laws or regulations of the requesting State as evidence that the sums to be collected are finally due.

3. On receipt of the said documents, writs shall be served and measures of recovery and collection taken in the requested State in accordance with the laws or regulations governing the recovery and collection of its own taxes.

4. Tax debts to be recovered shall enjoy the same safeguards and privileges as similar tax debts in the requested State.

Article 39. In the case of tax debts still subject to appeal, the taxation authorities of the creditor State may, in order to safeguard its rights, request the competent taxation authorities of the other Contracting State to take such measures of conservation as its legislation or regulations permit.

Article 40. The measures of assistance specified in articles 38 and 39 shall also apply to recovery of any taxes and duties other than those referred to in this Convention and, in general, to all debts of whatsoever nature of the Contracting States.

PART IV. MISCELLANEOUS PROVISIONS

Article 41. 1. A taxpayer who proves that, as a result of measures taken by the taxation authorities of the Contracting States, he has been subjected to double taxation in respect of the taxes to which this Convention relates may make application to the competent authorities of the State in the territory of which he has his fiscal domicile or to those of the other State. If the application is upheld, the competent authorities of the two States shall reach agreement with a view to the equitable avoidance of double taxation.

2. The competent authorities of the Contracting States may also reach agreement with a view to the prevention of double taxation in cases not provided for in this Convention and in cases in which the application of the Convention would give rise to difficulties.

3. If it appears that agreement would be facilitated by negotiations, the matter shall be referred:

(*a*) if a matter of principle is at issue, to the Inter-State Franco-Senegalese Ministerial Committee provided for in the Treaty of Friendship and Co-operation between the French Republic and the Republic of Senegal;[1]

(*b*) if a specific case is at issue, to a joint commission composed of an equal number of representatives of each Contracting State, appointed by the Ministers of Finance. The commission shall be presided over alternately by a member of each delegation. The commission's conclusions shall be submitted for the approval of the competent authorities. Periodic reports shall be made to the Inter-State Franco-Senegalese Ministerial Committee on the decisions taken.

Article 42. The competent authorities of the two Contracting States shall consult each other in order to determine, by agreement and so far as may be necessary, the procedures for the application of this Convention.

Article 43. 1. Each of the Contracting States shall notify the other of the completion of the procedures required by its legislation for the entry into force of this Convention. The Convention shall enter into force on the date of the later notification and shall be applicable:

— in respect of taxes on income, to the taxation of income relating to the calendar year in which it enters into force or to financial years ending in the course of that year. However, in the case of the income referred to in articles 13, 15, 18 and 19, the Convention shall apply to income distributed as from the entry into force of the Convention;

[1] See p. 185 of this volume.

— in respect of inheritance taxes, to the estates of persons whose death occurs on or after the date of entry into force of the Convention;
— in respect of other registration taxes and stamp duties, to instruments and judgements delivered after the entry into force of this Convention;
— in respect of the recovery of any debts other than fiscal debts, to those arising out of a transaction which took place after the entry into force of this Convention.

2. The entry into force of this Convention shall terminate the Tax Agreement, the annexed Protocol and the Exchange of Letters between France and Senegal of 3 May 1965.[1]

The provisions of those agreements shall cease to have effect as from the date on which the corresponding provisions of this Convention take effect in purchase of paragraph 1.

Article 44. This Convention is concluded for a period of five years, renewable by tacit agreement.

However, on or after 1 January of the third year following the year of the entry into force of this Convention either of the Contracting States may give notice to the other of its intention to terminate the Convention, such notice to be given before 30 June of any year. In that event the Convention shall cease to apply as from 1 January of the year following the year in which the notice was given, on the understanding that its effects shall be limited:

— in respect of taxes on income, to income acquired or distributed during the year in which notice of termination was given;
— in respect of inheritance taxes, to successions opened not later than 31 December of that year;
— in respect of other registration taxes and stamp duties, to instruments and judgements dated not later than 31 December of that year;
— in respect of the recovery of debts of any nature, to those arising out of a transaction which took place not later than 31 December of the said year.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Agreement, drawn up in two original copies.

DONE at Paris, on 29 March 1974.

For the Government of the French Republic:
The Secretary of State to the Minister for Foreign Affairs,
[*Signed*]
JEAN DE LIPKOWSKI

For the Government of the Republic of Senegal:
The Minister for Foreign Affairs,
[*Signed*]
ASSANE SECK

PROTOCOL ANNEXED TO THE TAX CONVENTION

On signing the Tax Convention between the Government of the French Republic and the Government of the Republic of Senegal, the signatories have, in view of the specific situation existing between the two States, agreed on the following declaration, which shall form an integral part of the Convention:

When a company having its fiscal domicile in one of the Contracting States is liable in that State to a tax on the distribution of income from securities and income treated as

[1] United Nations, *Treaty Series*, vol. 667, p. 13.

such (earnings from shares, founders' shares and company or partnership shares; interest on bonds or on any other negotiable certificates of indebtedness) and, while not having a permanent establishment in the territory of the other state, possesses in that State immovable property which is occupied by a tenant and is liable in that State to a tax of the same nature, the income subject to the said tax shall be apportioned between the two States in order to avoid double taxation.

This apportionment shall be effected in a manner similar to that laid down in articles 15 to 17 of the Convention, according to the amount of income derived from such immovable property.

In such cases, the provisions of article 26, paragraphs 3 (*a*) and 5, shall apply.

DONE at Paris, on 29 March 1974.

For the Government
of the French Republic:
The Secretary of State
to the Minister for Foreign Affairs,
[*Signed*]
JEAN DE LIPKOWSKI

For the Government
of the Republic of Senegal:
The Minister
for Foreign Affairs,
[*Signed*]
ASSANE SECK

EXCHANGES OF LETTERS

I *a*

Paris, 29 March 1974

Sir,

During the negotiations which led to the signing of the Convention on Assistance in Personnel Matters by the Government of the French Republic to the Government of the Republic of Senegal,[1] it was agreed that the tax régime applicable to French personnel seconded to the Government of the Republic of Senegal under that Convention would be reconsidered by the joint commission provided for in the Tax Convention signed today by our two Governments.

This commission will meet within two months from the date of the entry into force of the Tax Convention.

I should be grateful if you would confirm that this proposal is acceptable to your Government, in which case this letter and your reply will be deemed to constitute an agreement between our two Governments.

Accept, Sir, etc.

[*Signed*]
ASSANE SECK
Minister for Foreign Affairs
of the Republic of Senegal

H.E. Mr. Jean de Lipkowski
Secretary of State to the Minister for Foreign Affairs
of the French Republic

[1] United Nations, *Treaty Series*, vol. 1062, No. I-16173.

II *a*

Paris, 29 March 1974

Sir,

By letter of today's date, you transmitted to me a letter which reads as follows:

[*See letter I* a]

I have the honour to inform you that my Government agrees to the foregoing.

Accept, Sir, etc.

[*Signed*]

JEAN DE LIPKOWSKI
Secretary of State to the Minister for Foreign Affairs
of the French Republic

H.E. Mr. Assane Seck
Minister for Foreign Affairs
of the Republic of Senegal

I *b*

Paris, 29 March 1974

Sir,

During the negotiations which led to the signing of certain agreements by us today, we mentioned the concern of the Government of the Republic of Senegal, on the one hand, with regard to the recovery of sums owed by French nationals to the Senegalese treasury, and of the Government of the French Republic, on the other, with regard to the recovery of sums owed by Senegalese nationals to the French treasury in connexion with which recovery the Tax Convention between France and Senegal of 29 March 1974 provides, in article 38, that the two States shall lend each other assistance.

With a view to pursuing this course, the two Parties have agreed that the joint commission provided for in article 41 of the above-mentioned Convention shall meet, without prejudice to meetings which may be convened for other reasons, twice a year, alternately in France and in Senegal, with a view to examining the status of transactions concerning such recoveries as have been requested in pursuance of the said Convention.

The joint commission mentioned above shall meet for the first time within a month from the date of entry into force of the Convention in order to take stock of the position with regard to the amounts due by the two States to each other.

I should be grateful if you would confirm that this proposal is acceptable to your Government, in which case this letter and your reply will constitute an agreement between our two Governments on this subject.

Accept, Sir, etc.

[*Signed*]

ASSANE SECK
Minister for Foreign Affairs
of the Republic of Senegal

H.E. Mr. Jean de Lipkowski
Secretary of State for Foreign Affairs
of the French Republic

II *b*

Paris, 29 March 1974

Sir,

By letter of today's date, you communicated to me the following:

[*See letter I* b]

I have the honour to inform you that my Government agrees to the foregoing.

Accept, Sir, etc.

[*Signed*]
JEAN DE LIPKOWSKI
Secretary of State for Foreign Affairs
of the French Republic

H.E. Mr. Assane Seck
Minister for Foreign Affairs
of the Republic of Senegal

I *c*

Paris, 29 March 1974

Sir,

As you are aware, articles 38 to 40 of the Tax Convention between the Government of the French Republic and the Government of the Republic of Senegal, signed at Paris on 29 March 1974, provide for measures of reciprocal assistance with a view to the recovery of the taxes to which the Agreement relates, of all other taxes and duties and, in general, of debts of any kind owed to the Contracting States.

In order that the application of this provision may not give rise, in certain cases, to procedural difficulties and to preserve the climate of confidence prevailing between the Governments of our two countries, I have the honour to propose that if, in pursuance of the provisions of the above-mentioned articles 38 to 40, proceedings are instituted against a taxpayer in one of our two States for the recovery of taxes or debts owed in the other State, the taxpayer may request the competent authorities of the former State to stay the proceedings if he is able to establish title to property situated in the State in which the taxes in question were assessed or to substantiate a claim against a public or quasi-public authority of the said State.

If the request which must be supported by the necessary documents, appears to be justified, the application of the provisions of article 38 shall be stayed without prejudice to the implementation of the measures of conservation provided for in article 39 of the Convention. The matter shall be submitted to the competent authorities of the applicant State within two months for consideration of the merits of the documents submitted by the debtor.

They shall intimate, likewise within two months, whether or not action to enforce recovery is to be taken. In case of difficulty, the matter shall be referred to the joint commission provided for in article 41.

As a general rule, disputes relating to recovery shall be deemed to be difficulties of application within the meaning of article 41 of the Convention.

The referring of the matter to the joint commission shall not preclude the application of the provisions of article 39 of the Convention.

I should be grateful if you would inform me whether this proposal is acceptable to your Government.

Accept, Sir, etc.

[*Signed*]
JEAN DE LIPKOWSKI
Secretary of State for Foreign Affairs
of the French Republic

H.E. Mr. Assane Seck
Minister for Foreign Affairs
of the Republic of Senegal

II *c*

Paris, 29 March 1974

Sir,

By letter of today's date, you communicated to me the following:

[*See letter I* c]

I have the honour to confirm that my Government agrees to the foregoing.

Accept, Sir, etc.

[*Signed*]
ASSANE SECK
Minister for Foreign Affairs
of the Republic of Senegal

H.E. Mr. Jean de Lipkowski
Secretary of State for Foreign Affairs
of the French Republic