

No. 26172

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**FRANCE**  
**and**  
**MADAGASCAR**

**Convention for the avoidance of double taxation, the prevention of fiscal evasion and the establishment of rules for administrative assistance with respect to taxes (with exchanges of letters). Signed at Antananarivo on 22 July 1983**

*Authentic text: French.*

*Registered by France on 1 October 1988.*

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**FRANCE**  
**et**  
**MADAGASCAR**

**Convention en vue d'éviter les doubles impositions, de prévenir l'évasion fiscale et d'établir des règles d'assistance administrative en matière fiscale (avec échanges de lettres). Signée à Tananarive le 22 juillet 1983**

*Texte authentique : français.*

*Enregistré par la France le 1<sup>er</sup> octobre 1988.*

## [TRANSLATION — TRADUCTION]

CONVENTION<sup>1</sup> BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE DEMOCRATIC REPUBLIC OF MADAGASCAR FOR THE AVOIDANCE OF DOUBLE TAXATION, THE PREVENTION OF FISCAL EVASION AND THE ESTABLISHMENT OF RULES FOR ADMINISTRATIVE ASSISTANCE WITH RESPECT TO TAXES

The Government of the French Republic and the Government of the Democratic Republic of Madagascar,

Desiring to conclude a convention for the avoidance of double taxation, the prevention of fiscal evasion and the establishment of rules for administrative assistance with respect to taxes,

Have agreed as follows:

*Article 1. PERSONAL SCOPE*

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

*Article 2. TAXES COVERED*

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

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

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

(a) In France:

- (i) The income tax;
- (ii) The corporation tax;

including any withholding tax, prepayment (*précompte*) or advance payment with respect to the aforesaid taxes

(hereinafter referred to as “French tax”);

(b) In Madagascar:

- (i) The tax on commercial profits;
- (ii) The tax on non-salary income of individuals;
- (iii) The tax on salary and other equivalent income;
- (iv) The tax on income from movable capital;

including any withholding tax, prepayment or advance payment with respect to the aforesaid taxes

(hereinafter referred to as “Malagasy tax”).

<sup>1</sup> Came into force on 1 October 1984, i.e., the first day of the second month following the date of receipt of the last of the notifications (effected on 5 July and 1 August 1984) by which the Parties informed each other of the completion of the required procedures, in accordance with article 30 (1).

4. The Convention shall apply also to any taxes identical or substantially similar to those covered by paragraph 3 of this article which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the States shall notify each other of significant changes made in their respective taxation laws.

5. This Convention shall not prevent the application by Madagascar of specific provisions of its legislation concerning hydrocarbon extraction activities.

### *Article 3. GENERAL DEFINITIONS*

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

- (a) The terms “a State” and “the other State” shall mean, according to the case, France and Madagascar;
- (b) The term “person” includes individuals, companies 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 State” and “enterprise of the other State” mean respectively an enterprise carried on by a resident of a State and an enterprise carried on by a resident of the other 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 State, except when the ship or aircraft is operated solely between places in the other State, as well as any transport by container when such transport only complements transport in international traffic;
- (f) The term “competent authority” means:
  - (i) In the case of the French Republic, the Minister for the Budget or his authorized representative;
  - (ii) In the case of the Democratic Republic of Madagascar, the Minister of Finance or his authorized representative.

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

### *Article 4. RESIDENT*

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

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both 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 in which his personal and economic interests are greatest (centre of vital interests);

(b) If the State in which he has his centre of vital interests cannot be determined, or if he has no 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 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 States, then it shall be deemed to be a resident of the State in which its registered place of business is situated.

#### Article 5. PERMANENT ESTABLISHMENT

The term “permanent establishment” means a fixed place of business through which an enterprise carries on all or part of its business.

1. 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, quarry or other place of extraction of natural resources;
- (g) A construction site.

2. The term “permanent establishment” shall be deemed not to include:

- (a) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (b) The maintenance of a fixed place of business solely for the purpose of furnishing information or carrying on scientific research or similar activity of a preparatory character;
- (c) The maintenance of a fixed place of business for the purpose of storage, or display of goods or merchandise belonging to the enterprise;
- (d) The maintenance of a stock of goods or merchandise belonging to the enterprise for the purpose of storage or display;
- (e) The maintenance of a fixed place of business for the purpose of purchasing goods or merchandise or of collecting information for the enterprise;
- (f) The maintenance of a fixed place of business for advertising purposes.

3. Where a person other than an agent of independent status to whom paragraph 5 below applies, is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a “permanent establishment” in the first State if the person has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise.

An agent shall be deemed to be exercising such authority if he habitually maintains in the first Contracting State a stock of goods and merchandise belonging to the enterprise by means of which he regularly fills orders he has received on behalf of the enterprise.

4. An insurance enterprise of a State shall be deemed to have a permanent establishment in the other State if it collects premiums in the territory of that other State or insures risks situated therein through an authorized representative.

5. 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 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. However, when the agent through whom the business is conducted maintains a stock of goods and merchandise on consignment from which sales and deliveries are made, it is acknowledged that this stock demonstrates the existence of a permanent establishment of the enterprise.

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

#### *Article 6. INCOME FROM IMMOVABLE PROPERTY*

1. Income derived by a resident of a State from immovable property (including income from agriculture or forestry) situated in the other 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 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, renting 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. Income shall also be considered as income from immovable property if it is treated as such by the tax legislation of the State from which it is derived.

#### *Article 7. BUSINESS PROFITS*

1. The profits of an enterprise of a State shall be taxable only in that State unless the enterprise carries on business in the other 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 State carries on business in the other State through a permanent establishment situated therein, there shall in each State be attributed to that permanent establishment the profits which it might be expected to make if it were operating wholly independently from the enterprise of which it is a permanent establishment.

3. In the determination of the profits of a permanent establishment, expenses which are incurred for the purposes of the business of the permanent establishment shall be allowed as deductions: a share of the overhead expenses of the main office shall be charged to the profits of the various permanent establishments and prorated according to the total amount realized in each one.

4. In so far as it has been customary in a 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 by that permanent establishment of goods or merchandise for the enterprise.

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

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

#### *Article 8. SHIPPING AND AIR TRANSPORT*

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the State in which the registered place of business of the enterprise is situated, or if that differs from the place of effective management, in the State where the place of effective management of the enterprise is situated.

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

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

#### *Article 9. ASSOCIATED ENTERPRISES*

Where

- (a) An enterprise of a State participates directly or indirectly in the management, control or capital of an enterprise of the other State, or
- (b) The same persons participate directly or indirectly in the management, control or capital of an enterprise of a State and an enterprise of the other 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 not so accrued, may be included in the profits of that enterprise and taxed accordingly.

#### *Article 10. DIVIDENDS*

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

2. However, the tax so charged shall not exceed:

- (a) 15 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;
- (b) 25 per cent of the gross amount of the dividends in all other cases.

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

3. The term “dividends” as used in this article means income from shares, “jouissance” shares or “jouissance” rights, mining shares, founders’ shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a State, carries on business in the other State of which the company paying the dividends is a resident, either through a permanent establishment situated therein, or performs in that 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 a permanent establishment or fixed base. In such a case, the provisions of article 7 or article 14, as the case may be, shall apply.

#### *Article II. INTEREST*

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

2. However, if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraphs 1 and 2, interest arising in a State and paid to the other State, one of its political subdivisions or its central bank in respect of a debt-claim at preferred rates financed directly or indirectly by a public body of the other State for the financing of foreign trade shall be exempted from taxation in the first State.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a State, carries on business in the other State in which the interest arises through a permanent establishment situated therein, or performs in the other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such cases the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each State, due regard being given to the other provisions of this Convention.

#### *Article 12. ROYALTIES*

1. Royalties arising in a State and paid to a resident of the other State may be taxed in the first State. However, the tax thus established shall not exceed:

- 10 per cent of the gross amount for payments of any kind for the use of, or the right to use, any copyright for a literary, artistic or scientific work, including cinematographic films and works recorded for radio or television broadcasting and any other audiovisual works;
- 15 per cent of the gross amount for payments of any kind for the use of, or the right to use, any patent, trademark, design or model, plan, secret formula or process as well as information concerning industrial, commercial or scientific experience.

2. Payments arising in a State payable to a resident of the other State who provides, exclusively in the first State, technical services, analysis or studies of a geological, scientific or technical nature, engineering consultation including plans and designs, or consulting or monitoring services, are taxable in the first State. However, the tax so established may not exceed 10 per cent of the gross amount of such payments.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a State, carries on business in the other State in which the royalties arise through a permanent establishment situated therein, or performs independent personal services by means of a fixed base situated therein, and such royalties are borne by such permanent establishment or fixed base. In such cases, the provisions of article 7 or article 14, as the case may be, shall apply.

4. 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. In such case, the excess part of the payments shall remain taxable according to the laws of each State, due regard being given to the other provisions of this Convention.

### *Article 13. CAPITAL GAINS*

1. Gains derived from the alienation of immovable property referred to in article 6, or from the alienation of shares, stocks or other similar rights in companies dealing in the construction or acquisition of buildings or groups of buildings with a view to dividing them into shares to be allotted to their members in tenancy or ownership, or to manage buildings or groups of buildings so divided and allotted, or in companies whose principal assets are immovable property, shall be taxable in the Contracting State where the immovable property is situated. For purposes of this provision, buildings owned by this company for use in its own industrial, commercial or agricultural operations or for the exercise of a non-commercial profession shall not be taken into consideration.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of one State has in the other State, or of movable property pertaining to a fixed base available to a resident of one State in the other State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or of movable property pertaining directly to such an activity shall be taxable only in the State in which the registered place of business of the enterprise is situated.

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

*Article 14. INDEPENDENT PERSONAL SERVICES*

1. Income derived by a resident of a 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 State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in the other State;
- In the absence of a fixed base, he actually carries out his activities in whole or in part in the other State. In such a case, remuneration for this activity arising in that other State shall be taxable in that State, but the tax so established shall not exceed 15 per cent of the gross amount.

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

*Article 15. DEPENDANT 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 State in respect of salaried employment shall be taxable only in that State, unless the employment is exercised in the other 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 State in respect of employment exercised in the other 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 by a resident of a State may be taxed only in that State.

*Article 16. DIRECTORS' FEES*

Directors' fees and other similar payments derived by a resident of a State in his capacity as a member of the Board of Directors of a company which is a resident of the other 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 State as an entertainer, such as a theatre, motion picture, radio or television artist, or a musician, or as an athlete, from his personal activities as such exercised in the other State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or 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 State in which the activities of the entertainer or athlete are exercised.

3. Notwithstanding the provisions of paragraph 1, the remuneration or benefits and salaries, wages and other similar income derived by an entertainer or athlete who is a resident of a State in respect of his personal activities as such exercised in the other State, shall be taxable only in the first-mentioned State if such activities in the other State are substantially supported by public funds of the first State, or by any territorial authority or body corporate thereof under public law.

4. Notwithstanding the provisions of paragraph 2, where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such in a State accrues not to the entertainer or athlete himself but to another person, that income shall, notwithstanding the provisions of articles 7, 14 and 15, be taxable only in the other State if that other person is substantially supported by public funds of that other State, or by any territorial authority or body corporate thereof under public law or if that other person is a non-profit organization of that other State.

#### *Article 18. PENSIONS*

1. Subject to the provisions of paragraph 2 of article 19, pensions and other similar remuneration paid to a resident of a State in consideration of past employment shall be taxable only in that State.

#### *Article 19. GOVERNMENT SERVICE*

1. Subject to the provisions of individual agreements, remuneration, other than a pension, paid by a State or by any territorial authority or body corporate thereof under public law to an individual in respect of services rendered to that State, authority or body shall be taxable only in that State.

2. Any pension paid by, or out of, funds created by a State or any territorial authority or body corporate thereof under public law to an individual in respect of services rendered to that State, authority or body shall be taxable only in that State.

3. The provisions of articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a State or a territorial authority or body corporate thereof under public law.

#### *Article 20. STUDENTS*

1. Payments which a student or business apprentice who is or was immediately before visiting a State a resident of the other 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.

2. Notwithstanding the provisions of articles 14 and 15, the remuneration which a student or business apprentice who is or was immediately before visiting a State a resident of the other State and who is present in the first-mentioned State solely for the purpose of his education or training receives in respect of services rendered in the first-mentioned State shall not be taxed in the first-mentioned State, provided that such services are related to his education or training or that the remuneration for such services is necessary to supplement the resources available for his maintenance.

*Article 21. OTHER INCOME*

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

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of article 6, if the recipient of such income, being a resident of a State, carries on business in the other 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 a case, the provisions of article 7 or article 14, as the case may be, shall apply.

*Article 22. PROVISIONS FOR THE ELIMINATION OF DOUBLE TAXATION*

Double taxation shall be avoided in the following manner:

1. In the case of Madagascar:

(a) Income taxable in France under this Convention shall be exempt from the Malagasy taxes mentioned in Article 2, paragraph 3 (b);

(b) Notwithstanding the provisions of subparagraph (a), Malagasy tax is computed on income taxable in Madagascar by virtue of this Convention at the rate appropriate to the total income taxable in accordance with Malagasy law.

2. In the case of France:

(a) Income other than that referred to in subparagraph (b) below shall be exempt from the French taxes referred to in Article 2, paragraph 3 (a) if the income is taxable in Madagascar under this Convention.

However, no exemption shall be granted if the income in question is not taxable in Madagascar, by virtue of the domestic legislation of that State.

(b) Income referred to in Articles 10, 11, 12, 16 and 17 arising in Madagascar may be taxed in France in accordance with the provisions of these articles, on its gross amount. The Malagasy tax levied on this income entitles residents of France to a tax credit corresponding to the amount of the Malagasy tax levied but not exceeding the amount of French tax attributable to such income. Such credit shall be allowed against taxes referred to in Article 2, paragraph 3 (a) in the bases of which such income is included;

(c) Notwithstanding the provisions of subparagraphs (a) and (b), French tax is computed on income taxable in France by virtue of this Convention at the rate appropriate to the total income taxable in accordance with French law.

*Article 23. NON-DISCRIMINATION*

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

2. The term "nationals" means:

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

(b) All legal persons, partnerships and associations deriving their status as such from the laws in force in a State.

3. Stateless persons who are residents of a State shall not be subjected in the other State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of the State concerned in the same circumstances are or may be subjected.

4. The taxation on a permanent establishment which an enterprise of a State has in the other 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 State to grant to residents of the other 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.

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

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

#### *Article 24. MUTUAL AGREEMENT PROCEDURE*

1. Where a person considers that the actions of one or both 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 domestic law of those States, present his case to the competent authority of the State of which he is a resident or, if his case comes under paragraph 1 of article 21, to that of the State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other State, with a view to the avoidance of taxation which is not in accordance with this Convention. Any agreement reached shall be implemented notwithstanding any time-limits in the domestic law of the States.

3. The competent authorities of the States shall endeavour to resolve by mutual agreement any difficulties arising as to the application of the Convention.

The competent authorities of the two States may, in particular, consult together for the purpose of reaching an agreement:

- (a) On equal treatment in the two States of the profits attributable to a permanent establishment situated in a State of an enterprise of the other State;
- (b) On equal treatment of the income derived by a resident of a Contracting State and an associated person, as mentioned in article 9, who is a resident of the other State.

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

They may also consult together with a view to settling difficulties in the implementation of assistance in collection provided under article 26 of this Convention.

4. The competent authorities of the two States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

If it appears that oral exchanges of views would facilitate such agreement, such exchanges of views may take place in the context of a commission consisting of representatives of the competent authorities of the States.

5. The competent authorities of the two States shall establish by mutual agreement the methods for implementation of the Convention, including in particular the procedures which must be followed by residents of a State in order to obtain, in the other State, the tax reductions or exemptions provided for by the Convention. The competent authorities of the two States may also consult together on any amendments to this Convention that may be necessary because of changes made to the domestic tax legislation of either State.

#### Article 25. EXCHANGE OF INFORMATION

1. The competent authorities of the States shall exchange such information as is necessary for carrying out the provisions of this Convention.

2. Exchanges of information shall be carried out automatically or upon request. Information so exchanged shall be treated as secret and shall be disclosed only to persons or competent authorities 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.

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

- (a) To carry out administrative measures at variance with the laws and administrative practice of that or of the other State;
- (b) To supply information which is not obtainable under the laws or in the normal course of the administration of that or the other State;
- (c) To supply information which would disclose any trade, business, industrial, commercial or professional secrets or information, the disclosure of which would be contrary to public policy (*ordre public*).

#### Article 26. ASSISTANCE IN COLLECTION

1. The Contracting States agree to assist and support one another with a view to collecting, in accordance with the provisions of their own laws and regulations, the taxes to which this Convention applies and any surcharges, or additional charges, late payment penalties, interest and costs pertaining to the said taxes, where such sums are finally due under the laws or regulations of the requesting State.

2. Upon request by the requesting State, the requested State shall proceed to collect the outstanding tax owed to the said State according to the laws and administrative practice applicable to the collection of its own outstanding taxes, unless otherwise specified in this Convention.

3. The provisions of the preceding paragraph shall apply only to claims which can no longer be disputed and for which there is documentary evidence that collection proceedings can be instituted in the requesting State.

4. The requested State shall not be required to act on the request:

- (a) If the requesting State has not exhausted all means available in its own territory of collecting the tax;
- (b) If, and in so far as, it believes that the claim is contrary to the provisions of this Convention.

5. The request for assistance in the collection of an outstanding tax shall be accompanied by:

- (a) A statement specifying that the claim involves a tax covered by the Convention which can no longer be disputed;
- (b) An official copy of the enforceable instrument in the requesting State;
- (c) Any other document required for collection; and
- (d) If necessary, a certified true copy of any decision pertaining to the matter issued by an administrative body or tribunal.

6. If necessary, and in accordance with the measures in force in the requested State, the instrument that is enforceable in the requesting State shall be accepted, approved, completed or replaced as soon as possible after the date on which the request for assistance is received by a title that is enforceable in the requested State.

7. Questions regarding limitation of the claim shall be governed exclusively by the law of the requesting State.

8. Measures taken by the requested State with respect to collection, following a request for assistance, which, under the law of that State, would have the effect of suspending or interrupting the limitation, shall have the same effect under the law of the requesting State. The requested State shall inform the requesting State of the measures taken to that effect.

9. The claim in respect of which assistance in collection is granted shall enjoy the same guarantees and privileges as claims of the same nature in the requested State.

10. When a claim of one State is being appealed and the guarantees provided under the law of that State have not been obtained, the tax authorities of that State may, in order to safeguard its rights, request the tax authorities of the other State to take whatever protective measures are authorized under its law or regulations.

If it believes that the taxation has not been determined in accordance with the provisions of the Convention, that other State shall immediately request a meeting of the mixed commission provided in article 25.

#### *Article 27.* COLLECTION OF DEBT-CLAIMS NOT RELATED TO TAXES

1. The measures of assistance outlined in article 26 shall also apply to the collection of any taxes and duties other than those covered by this Convention, and also generally to debt-claims of any type of the Contracting States.

2. In the application of article 27 of the Convention, the provisions of the Convention of 2 June 1960 concerning relations between the French Treasury and the Malagasy Treasury which relate to the recovery of debt-claims of the Contracting States shall be deemed to be an agreement within the meaning of article 24.

#### *Article 28.* DIPLOMATIC AND CONSULAR OFFICIALS

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

*Article 29.* TERRITORIAL SCOPE

1. This Convention shall apply

- (a) In the case of Madagascar, to all Malagasy territory, including territorial waters and any area beyond the territorial waters over which, in accordance with international law, the Democratic Republic of Madagascar has sovereign rights with respect to the exploration and exploitation of the resources of the seabed, and the subsoil thereof and of the superjacent waters.
- (b) To the European and overseas departments of the French Republic including the territorial sea and any area beyond it over which, in accordance with international law, the French Republic has sovereign rights with respect to the exploration and exploitation of the resources of the seabed and the subsoil thereof and of the superjacent waters.

2. This Convention may be extended, either in its entirety or with any necessary modifications, to the overseas territories or authorities of the French Republic which impose taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from the date mutually agreed by the States through an exchange of diplomatic notes or in any other manner in accordance with their constitutional procedures. Such an agreement shall also allow for necessary amendments to the Convention and its conditions of application to overseas territories to which it is extended.

3. Unless the two States have agreed otherwise, termination of the Convention by one of them under article 31 shall also terminate, under the conditions laid down in that article, the application of the Convention to any territory to which it has been extended in conformity with this article.

*Article 30.* ENTRY INTO FORCE

1. Each State shall notify the other when the procedures required under its laws for the entry into force of this Convention have been completed; the Convention shall take effect on the first day of the second month following the receipt of the later notification.

2. Its provisions shall apply for the first time:

- (a) In respect of withholding taxes, to sums payable as of the date of entry into force of the Convention;
- (b) In respect of other taxes on income, to income received during the calendar year in which the Convention enters into force or relating to the financial year which concludes in the course of that year.

3. The Convention of 29 September 1962 for the avoidance of double taxation and the establishment of rules of reciprocal administrative assistance with respect to taxation<sup>1</sup> shall cease to have effect:

- In respect of taxes on income, on the date on which the corresponding provisions of this Convention shall enter into force;
- In respect of succession duties, to the estates of persons deceased after 31 December of the year in which the Convention enters into force;
- In respect of other registration taxes and of stamp taxes, to deeds and judgements dated after 31 December of that year.

<sup>1</sup> United Nations, *Treaty Series*, vol. 1500, No. I-25818.

*Article 31.* TERMINATION

1. This Convention shall remain in force indefinitely. However, each State may, by giving at least six months' notice in advance through the diplomatic channel, terminate it at the end of any calendar year.

2. In that case, its provisions shall apply for the last time:

- (a) In respect of withholding taxes, to sums payable no later than 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, on income realized during the calendar year at the end of which the termination is to take effect or relating to the financial year which concluded during that year.

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

DONE at Antananarivo on 22 July 1983 in two original copies.

For the Government  
of the French Republic:

[Signed]

PAUL BLANC

For the Government  
of the Democratic Republic  
of Madagascar:

[Signed]

PASCAL RAKOTOMAVO

## EXCHANGES OF LETTERS

Ia

Antananarivo, 22 July 1983

Sir,

The Tax Convention which we have just signed should be issued in both the French and Malagasy languages, both copies being authentic.

The drafting in Malagasy has not yet been completed, but I propose that it be done at a later date, without this postponement affecting the entry into force of the Convention under the conditions and time limits established in its article 30.

I would be grateful if you would inform me whether this proposal meets with the approval of the Government of the Democratic Republic of Madagascar.

Accept, Sir, etc.

[Signed]

PAUL BLANC  
Ambassador of France

H.E. Mr. Pascal Rakotomavo  
Minister in charge of Economic  
and Financial Affairs  
Office of the President

IIa

Antananarivo, 22 July 1983

Sir,

Concerning your letter dated 22 July 1983 which reads as follows:

[See letter Ia]

I have the honour of informing you that the Democratic Republic of Madagascar agrees to the above proposals.

Accept, Sir, etc.

[Signed]

PASCAL RAKOTOMAVO  
Minister in charge of Economic and Financial Affairs  
Office of the President

H.E. Mr. Paul Blanc  
Ambassador of France  
Antananarivo

*Ib*

Antananarivo, 22 July 1983

Sir,

On signing the Tax Convention, it became apparent that its provisions, particularly article 26 regarding assistance in collection, for the most part met the concerns which led to the establishment in Madagascar of the requirement concerning final discharge in respect of payment of taxes.

Thus, the French Government has the honour to request the Malagasy Government that from this date, French nationals leaving Madagascar temporarily should no longer be required to obtain this final discharge.

Under these conditions, French nationals would remain subject to this obligation only when their departure is final, involving in particular the removal of all their goods from Madagascar.

I would be grateful if you would inform me whether this proposal meets with the agreement of the Government of the Democratic Republic of Madagascar.

Accept, Sir, etc.

[Signed]

PAUL BLANC  
Ambassador of France

H.E. Mr. Pascal Rakotomavo  
Minister in charge of Economic and Financial Affairs  
Office of the President

*Iib*

Antananarivo, 22 July 1983

Sir,

With reference to your letter dated 22 July 1983 which reads as follows:

[See letter *Ib*]

I have the honour of informing you that the Democratic Republic of Madagascar agrees to the foregoing proposals.

Accept, Sir, etc.

[Signed]

PASCAL RAKOTOMAVO  
Minister in charge of Economic and Financial Affairs  
Office of the President