

CONVENTION BETWEEN THE PEOPLE'S REPUBLIC OF BULGARIA AND THE FRENCH REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

Prom. SG. 41/31 May 1988

The People's Republic of Bulgaria and the French Republic;

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasions with respect to taxes on income and to promote and deepen the economic relationship between the two countries on the base of the principles of the Final Act of the Security and Cooperation Conference in Europe,

Decided to conclude a convention and have appointed herewith as their representatives:

On behalf of the State Council of the People's Republic of Bulgaria,

Mr. Andrei Loukanov,

Senior Deputy Prime Minister,

On behalf of the President of the French Republic,

Mr. Michel Noir,

State Secretary, attached to the Ministry of State, Ministry of Economy, Finance and the Privatisation, in charge of the foreign trade,

who after the exchange of their authorisation find to be in due form,

Have agreed for the following provisions:

Personal Scope

Art. 1

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

2. For the purposes of this Convention, residents are considered to be:

(a) for the People's Republic of Bulgaria, any individual who is a national of Bulgaria, as well as any legal person or body of persons which has its head office in the People's Republic of Bulgaria or is registered therein;

(b) for the French Republic, every person who, under the French legislation is subject to tax in France by reason of its domicile, residence, place of management or any other criterion of a similar nature.

3. Where by reason of the provisions of paragraph 2, an individual is a resident of both Contracting States, then he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests). If the Contracting State in which he has his centre of vital interest cannot be determined, the competent authorities of the Contracting States shall settle the question by mutual agreement.

4. Where by reason of the provisions of paragraph 2 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

Taxes Covered

Art. 2

1. This Convention shall apply to the following taxes:

(a) as far as Bulgaria is concerned:

(I) the tax on the total income;
(II) the tax on the income of single males and females, divorced persons and spouses without children;
(III) the tax on profit;
(hereinafter referred to as "Bulgarian tax")
(b) as far as France is concerned:
(I) the individual income tax;
(II) the corporation tax;
including all withholdings at the source and all advanced payments deductible from the foregoing taxes;
(hereinafter referred to as "French tax");
2. This Convention shall also apply to any identical or substantially similar taxes of those referred to in paragraph 1 of this Art. which are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

General Definitions

Art. 3

1. For the purpose of this Convention, unless the context otherwise requires
(a) the terms "a Contracting State" and "the other Contracting State" mean Bulgaria or France, as the context requires;
(b) the term "person" includes:
- the individuals,
- the legal persons, including a company and any other entity considered as a body corporate for tax purposes;
- any other body of persons;
It includes, especially, in Bulgaria, the partnerships set up in accordance with Decree 535 from 1980 of the State Council of the People's Republic of Bulgaria, and in France, the unlimited partnership;
(c) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
(d) the term "international traffic" means any transport by ship or aircraft operated by an enterprise, which place of effective management is situated in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
(e) the term "competent authority" means:
(I) in the case of the People's Republic of Bulgaria, the Minister of Finance or his authorised representative.
(II) in the case of the French Republic, the Minister in charge with the budget or his authorised representative.
2. As regards the application of this Convention by a Contracting State any term not defined therein, shall unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State concerning the taxes to which this Convention applies.

Permanent Establishment

Art. 4

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

2. The term "permanent establishment" includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop and namely a repair workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
- (g) a construction or installation project but solely if it lasts more than twelve months.

3. Notwithstanding the provisions of the preceding paragraphs of this Art., the term "permanent establishment" shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the merchandise are exposed by the enterprise on a fair or exhibition and are sold after the conclusion of such fair or exhibition;
- (d) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information for the enterprise;
- (f) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (g) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (f), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraph 1 and 2, where a person - other than an agent of an independent status to whom the provisions of paragraph 5 apply - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that Contracting State in respect of any activities which that person undertakes for the enterprise, unless the activities of such a person are limited to those mentioned in paragraph 3 which, if exercised through a fixed place of business, would not make that fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that Contracting State through a broker, a general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

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

Income From Immovable Property

Art. 5

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

2. The term "immovable property" shall have the meaning which it has under the laws of the Contracting State in which the property in question is situated.

3. The provisions of paragraph 1 shall apply to income derived from the direct usage, letting or usage 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 a resident and to income from immovable property used for the performance of independent professional services.

Business Profits

Art. 6

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

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

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere.

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

5. Where profits include items of income which are dealt with separately in other Art.s of this Convention, the provisions of those Art.s shall not be affected by the provisions of this Art..

International Traffic

Art. 7

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

Such profits include also additional profits derived by that enterprise from the exploitation of containers in the international transport of goods and merchandise.

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 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Dividends

Art. 8

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

(a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than an unlimited partnership) which holds directly at least 15 per cent of the capital of the company paying the dividends;

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

The provisions of 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 Art. means income from 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 tax treatment as income from shares by the taxation laws of the Contracting State of which the company making the distribution is a resident.

The profits derived, in proportion with their rights, by partners in the French unlimited partnership, as well as by a partnership set up in accordance with Decree 535 from 1980 of the State Council of the People's Republic of Bulgaria are not considered to be dividends.

4. The provisions of paragraph 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying dividends is a resident, through a permanent establishment situated therein, or performs in that other Contracting State independent professional services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment on fixed base. In such a case, the provisions of Art. 6 or Art. 12, as the case may be, shall apply.

5. A resident of Bulgaria who receives dividends paid by a company which is a resident of France may obtain an advanced payment of the balance due on behalf of the company and related to the dividends. This payment may be subject to tax in France according to the provisions of paragraph 2.

The gross amount of the payment shall be considered as dividend with regards to the application of the provisions of this Convention.

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

7. Notwithstanding the provisions of paragraph 6, where a company, which is a resident of a Contracting State performs business activities in the other Contracting State through a permanent establishment, situated therein, the profits of that permanent establishment may, after the taxation with corporate tax, be subjected to an additional taxation at a rate which shall not exceed 5 per cent, in accordance with the legislation of that other State.

Interest

Art. 9

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

2. The term "interest" as used in this Art. means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalties for late payment shall not be considered as interest for the purposes of this Art..

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other Contracting State independent professional services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Art. 6 or Art. 12, as the case may be, shall apply.

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

Royalties

Art. 10

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

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Art. means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes for radio or television broadcasting, any invention protected by a patent or certificate of invention and any innovation project, trade mark, design or model, plan, secret formula or process, industrial, or for information concerning industrial, commercial or scientific experience (know-how).

The term "royalties" shall include remuneration paid for the use of machine programs, as well as payments received as a consideration for use of, or the right to use, industrial, commercial or scientific equipment, but only to the extent that such remunerations are paid as a consideration for the transfer of know-how.

4. The provisions of this Art. shall likewise apply with respect to fees for technical services, to the extent that such payments are connected with the use of, or the right to use the rights or goods mentioned in paragraph 3.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated

therein, or performs in that other Contracting State independent professional services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such a permanent establishment or fixed base. In such case the provisions of Art. 6 or Art. 12, as the case may be, shall apply.

6. Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a local authority thereof, a statutory body of public law, or a resident of that Contracting State. Where, however the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to have arisen in the Contracting State in which the permanent establishment or fixed base is situated.

Capital Gains

Art. 11

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Art. 5 may be taxed in the Contracting State in which the immovable property is situated.

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

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

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

Liberal Professions and Other of That Kind

Art. 12

1. Income derived by a resident of a Contracting State in respect of a liberal profession or other activities of an independent character shall be taxable only in that Contracting State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in that other Contracting State but only so much of it as is attributable to that fixed base.

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

Dependent Professional Services

Art. 13

1. Subject to the provisions of Art.s 14, 16, 17 and 18 salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment

shall be taxable only in that Contracting State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such a remuneration as is derived therefrom may be taxed in that other Contracting State.

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

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

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

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

3. Notwithstanding the preceding provisions of this Art., salaries and other similar remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft in international traffic are taxable in the Contracting State in which the place of effective management of the enterprise is situated.

Members of Boards of Directors and Supervisory Councils

Art. 14

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

Artists and Athletes

Art. 15

1. Notwithstanding the provisions of Art.s 12 and 13, income derived by an individual who is a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television artist, or as a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised in a Contracting State by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, who is a resident of the other Contracting State, that income shall, notwithstanding the provisions of Art.s 6, 12 and 13 be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. Notwithstanding the provisions of paragraph 1, remunerations or profits, as well as wages, salaries and other similar income derived by an artist or athlete, resident of a Contracting State, from his personal activities as such, exercised in the other Contracting State, may be taxed in the first mentioned State if such activities are supported wholly or substantially from the public funds of the first State, a political subdivision or statutory body of the public law.

4. Notwithstanding the provisions of paragraph 2, where income in respect of personal activities exercised, in a Contracting States by an entertainer or an athlete in his capacity as such accrues not to the entertainer or the athlete himself, but to another person, then that income shall, notwithstanding the provisions of Art.s 6, 12 and 13, be taxed in that other Contracting State if that another person is supported wholly or substantially from the public funds of that other State, one of its local authorities, a statutory body of the public law or if this another person is a non-for-profit organisation of that other State.

Pensions

Art. 16

1. Subject to the provisions of paragraph 2 of Art. 17, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that Contracting State.

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

Government Service

Art. 17

1. (a) Remuneration, other than a pension, paid by a Contracting State, a local authority thereof or a statutory body of the public law to an individual in respect of services rendered to that Contracting State or local authority or statutory body shall be taxable only in the first-mentioned State.

(b) However, such remuneration shall be taxable only in the Other Contracting State if the services are rendered in that other State and the individual is a resident of that State who:

(i) is a national of that other State; or

(ii) did not become a resident of that other State solely for the purpose of rendering the services.

2. Pensions paid directly by, or out of funds created by a Contracting State, a local authority thereof or by one of its statutory bodies of the public law to an individual in respect of services rendered to that State or authority, or to that statutory body of the public law, may be taxed in that State.

3. Notwithstanding the provisions of paragraph 1 and 2 of this Art., Art.s 13, 14 and 16 shall apply to remuneration in respect to services rendered in connection with a business carried on by a Contracting State, a local authority thereof or by one of its statutory bodies of the public law.

4. The provisions of paragraph 1 shall likewise apply for a period not exceeding four calendar years with respect to remunerations derived by a resident of a Contracting State for services rendered to an agency or representation which does not constitute a permanent establishment or a fixed base, to a cultural institution or as a press, radio or television correspondent, provided that the beneficial is present in the other Contracting State with the sole purpose of rendering the services and that the remuneration is directly of charge of the first State.

Students

Art. 18

1. Payments which a student or business apprentice who is a resident of a Contracting State and who is present in the other Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall be exempt from tax of that other State, provided that such payments are made to him from outside that other State.

2. Notwithstanding the provisions of Art.s 12 and 13 and of paragraph 1 of this Art. payments which a student or a business apprentice who is a resident of a Contracting State and who is present in the other Contracting State solely for the purpose of his education or training, receives in respect of services rendered in that other State, shall be exempted from tax therein provided that such services are connected with his education or training or that the

payments in respect of such services are necessary to complete the resources for his maintenance.

Other Income

Art. 19

Income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Art.s of this Convention shall be taxable only in that Contracting State.

Provisions for Elimination of Double Taxation

Art. 20

The double taxation will be avoided in the following manner:

1. As far as Bulgaria is concerned:

(a) where a resident of Bulgaria derives income which in accordance with the provisions of this Convention may be taxed in France, Bulgaria shall, in accordance with the provisions of sub-paragraphs (b) and (c), exempt such income from tax;

(b) where a resident of Bulgaria derives income which, in conformity with the provisions of Art.s 8 or 10 of this Convention, may be taxed in France, Bulgaria shall allow as a deduction from the amount of tax computed on such a base an amount equal to the tax paid in France. Such deduction shall not, however, exceed that part of the tax, computed before the deduction is given, which is appropriate to the elements of income derived in France.

(c) Where, in accordance with any provision of this Convention income derived by a Bulgarian resident is exempted from tax in Bulgaria, Bulgaria may nevertheless, in calculating the tax on the remaining income of that resident, take into consideration the exempted income.

2. As far as France is concerned:

Incomes from Bulgarian sources which are taxed therein in accordance with the provisions of this Convention, are subject to tax if they are derived by a French resident. The tax paid in Bulgaria is not deductible when calculating the taxable income in France.

But the beneficial has the right of tax credit attributable to taxes mentioned in paragraph 1 of Art. 2 of this Convention, in whose base that income is included. The tax credit is equal:

- to the amount of the tax paid in Bulgaria in accordance with the provisions of this convention with respect of income dealt with in Art.s 8 and 10. However, it cannot exceed the amount of the French tax corresponding to that income.

- to the amount of the corresponding French tax for all other incomes.

Non-Discrimination

Art. 21

1. Individuals, possessing the nationality of a Contracting State and legal persons incorporated according to the legislation of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation or any requirement connected therewith to which individuals, possessing the nationality of a Contracting State and the legal persons incorporated according to the legislation of a Contracting State in the same circumstances are or may be subjected. This provision shall likewise apply, notwithstanding the provisions of Art. 1, to persons who are not resident of one or both of the Contracting States.

2. The taxation of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on enterprise of that other State, carrying on the

same activities. This provision shall not be construed as obliging either Contracting State to grant to individuals non-residents of that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to its own residents.

3. Interest, royalties and other disbursement paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profit of such enterprise, be deductible under the same conditions, as if they have been paid to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, in which one or more residents of the other Contracting State participate, 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 that first-mentioned State are or may be subjected.

5. The provisions of this Art. shall apply, notwithstanding the provisions of Art. 2, to taxes of any kind or description.

Mutual Agreement Procedure

Art. 22

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

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

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

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

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

5. The competent authorities shall resolve by mutual agreement all modalities with respect of the application of this Convention, and especially the requirements to be fulfilled by residents of a Contracting State in order to obtain, in the other Contracting State, reductions or exemption from taxes covered by the Convention.

Exchange of Information

Art. 23

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

domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. Any information received by a Contracting State shall be treated as secret and shall be disclosed only to persons or authorities and jurisdictions involved in assessment or collection of, and the enforcement of, the taxes covered by the Convention.

2. In no case shall the provisions of paragraph 1 of this Art. be construed so as to impose on the competent authority of either Contracting State the obligation:

(a) to carry out administrative measures in variance with laws and administrative practice prevailing in either Contracting State;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of either Contracting State;

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

Members of Diplomatic Missions and Consular Posts

Art. 24

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions and members of their families, and of members of consular posts, as well as of members of permanent delegations in international organisations under the general rules of international law or under the provisions of special agreements.

Territorial Scope

Art. 25

1. This convention applies

(a) on the territory of the People's Republic of Bulgaria including its territorial sea and beyond it with respect of zones over which, in accordance with the international law, the People's Republic of Bulgaria has sovereign rights with respect to the exploration and exploitation of the natural resources and the sea-bed, its sub-soil and the adjacent waters.

(b) on the territory of the European departments and on the territory of the Overseas departments of the French Republic, including the territorial sea and beyond it with respect to the zones over which, in accordance with the international law, the French Republic has sovereign right with respect to the exploration and exploitation of the natural resources and the sea-bed, its sub-soil and the adjacent waters.

2. This Convention may be extended, either in its entirety or with any necessary modifications, to the Overseas territories of the French Republic which imposes taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date as may be specified and agreed between the Contracting States in diplomatic notes or in any other manner in accordance with their constitutional procedures. The agreement so reached may provide for necessary modifications and conditions of its application with respect to the territory to which it is extended.

3. Unless otherwise agreed by both Contracting States, the termination of the Convention by one of them under Art. 27, shall also terminate, in the manner provided for in that Art., the application of the Convention to any part of the territory of the Contracting States to which it has been extended under this Art..

Entry Into Force

Art. 26

1. Each of the Contracting States shall notify to the other the completion of the procedures required for the bringing into force of this Convention. The Convention shall enter into force on the first day of the third month after the date of the later of these notifications:

2. Its provisions shall apply for the first time:

(a) in respect to withholdings at the source, to the amounts received from the date of the entry into force of the Convention;

(b) in respect to other taxes on income, to income arising during the calendar year or the accounting period which is effective on the date of the entry into force of the Convention.

Termination

Art. 27

1. This Convention shall remain in force for an indefinite period of time. However, after the expiration of a 5 year period from the date of its entry into force, a Contracting State may terminate the Convention for the end of the calendar year, through diplomatic channels, by giving an at least six month notice of termination.

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

(a) in respect to withholdings at the source, to taxable amounts during the calendar year for the end of which the termination has been notified;

(b) in respect to other taxes on income, to income derived during the calendar year for the end of which the termination has been notified or attributed to the accounting period, closing during this year.

In witness whereof the undersigned from both Contracting States, have signed this Convention.

Done at Sofia, on March 14, 1987 in duplicate in the Bulgarian and French languages, both texts being equally authentic.

FOR THE PRESIDENT OF THE FRENCH REPUBLIC

Michel Noir

FOR THE STATE COUNCIL OF THE PEOPLE'S REPUBLIC OF BULGARIA:

Andrei Loukanov

Protocol

At the moment of the signing of the Convention between the People's Republic of Bulgaria and the French Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed that the following provisions shall form an integral part of the Convention.

1. With respect to paragraphs 1 and 2 of Art. 6, where an enterprise of a Contracting State sells goods or performs business activities in the other Contracting State through a permanent establishment, situated therein, the profits of that permanent establishment shall not be calculated on the basis of the total amount received by the enterprise, but shall be calculated only on the basis of the remuneration attributable to the real activity of the permanent establishment with respect to such sales or such activities.

In the case of contracts for feasibility studies, for installation and construction of equipment or of industrial, commercial and scientific establishments, of public procurement, when the enterprise has a permanent establishment, the profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but on the basis of that part of the contract, which is effectively completed by that permanent establishment in the Contracting State in which that permanent establishment is situated. The

profits attributable to the part of the contract, completed by the head office of the enterprise shall be taxable only in the State, of which the enterprise is a resident.

2. With respect to paragraph 4 of Art. 10, remunerations paid for the consideration of technical services, including scientific, geological or technical analyses or studies, engineering works and plans related with, or consultancy and supervisory services, shall not be considered as remunerations paid for information concerning industrial, commercial or scientific experience.

3. This Convention shall not be construed as restricting the application of any provision of the respective legislation of both Contracting States with respect to fiscal control. In particular, Arts 9 and 10 of this Convention shall not apply with respect to that part of the interest and royalties exceeding the amounts habitually paid between enterprises. In that case, the exceeding part shall remain taxable according to the laws of each Contracting States, due regard being assigned to the other provisions of this Convention.

4. With respect to paragraph 1 of Art. 11, it is understood that the gains from alienation of shares or other rights in a company or a legal person, the capital of which consists principally of immovable property or rights with respect to such property, shall be taxable in France provided that such property is situated therein.

5. Notwithstanding the provisions of paragraph 4 of Art. 11, gains from the alienation of shares or other rights, forming part of substantial participation in the capital of a company which is resident of France shall be taxable in France in accordance with Art. 160 from the General Tax Code. As substantial participation shall be considered that of an alienator, who, alone or together with affiliated persons, holds directly or indirectly shares or rights, which in their integrity, provide a 25 per cent or more right of participation in the profits of the company.

6. With respect to paragraph 2 of Art. 20, it is understood that income which a resident of France derives from a partnership, set up in Bulgaria according to Decree 535 from 1980 of the State Council of the People's Republic of Bulgaria, shall be taxed in Bulgaria in accordance with Art. 6 of this Convention.

7. With respect to Art. 21:

a) nothing in paragraph 1 shall be construed as preventing France to grant only to persons possessing the French nationality the privilege of exemption from tax on gains from the alienation of immovable property or part of it, representing the residence in France of French nationals who are not domiciled in France, as it is provided for in Art. 150 of the General Tax Code, and

b) nothing in paragraph 3 shall be interpreted as preventing France to apply the provisions of Art. 212 of the General Tax Code with respect to interest paid by a French company to a foreign based parent company.

8. With respect to Art. 27, it is understood that the provisions of the Convention concerning the elimination of double taxation, the mutual agreement procedure and the administrative assistance will continue to be applicable after December 31 of the calendar year for the end of which the termination notice is given, with respect to determination of income covered by the Convention according to paragraph 2 of Art. 27.

9. Both Contracting States will reexamine the issues related to the international road transport, where enterprises, residents of one of the Contracting States may set up permanent establishments in a country, different from the country of their residence.

Done at Sofia, on March 14, 1987, in two copies in Bulgarian and French languages, both versions being equally authentic.

FOR THE PRESIDENT OF THE FRENCH REPUBLIC

Michel Noir

FOR THE STATE COUNCIL OF THE PEOPLE'S REPUBLIC OF BULGARIA:

Andrei Loukanov