No. 26935

FRANCE
and
CONGO

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, taxes on inheritance and registration and stamp duties (with protocol). Signed at Brazzaville on 27 November 1987

Authentic text: French.

Registered by France on 28 November 1989.

FRANCE
et
CONGO

Convention en vue d'éviter les doubles impositions et de prévenir l'évasion fiscale en matière d'impôts sur le revenu, d'impôts sur les successions, de droits d'enregistrement et de droits de timbre (avec protocole). Signée à Brazzaville le 27 novembre 1987

Texte authentique : français.

Enregistrée par la France le 28 novembre 1989.

[TRANSLATION — TRADUCTION]

CONVENTION[1] BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF THE CONGO FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, TAXES ON INHERITANCE AND REGISTRATION AND STAMP DUTIES

The Government of the French Republic and

The Government of the People's Republic of the Congo,

Desiring to conclude a convention with a view to avoiding double taxation and preventing tax evasion with respect to taxes on income, taxes on inheritance and registration and stamp duties,

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 income taxes, taxes on inheritance, and registration and stamp duties imposed on behalf of a State or its local authorities, irrespective of the manner in which they are levied.

2. (*a*) 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;

(*b*) There shall be regarded as taxes on inheritance all taxes levied at death, whether they take the form of taxes on the whole estate or on individual shares thereof, transfer taxes or taxes on gifts *mortis causa*.

3. The taxes to which the Convention now applies are:

(*a*) In the case of France:

— The income tax;

— The corporation tax;

— The inheritance tax;

— Registration and stamp duties;

[1] Came into force on 1 September 1989, i.e., the first day of the second month following the date of receipt of the last of the notifications (of 30 January and 7 July 1989) by which the Parties had informed each other of the completion of the required procedures, in accordance with article 32 (1).

— The tax on wages

including any deductions at source, withholding tax and prepayment with respect to the above taxes

(hereinafter referred to as "French taxes");

(*b*) In the case of the Congo:

— The tax on wages;

— Individuals' income tax;

— The complementary tax;

— The corporation tax;

— The special corporation tax;

— The tax on income from securities;

— The tax on rentals;

— The special tax on cash vouchers;

— Registration and stamp duties

including any deductions at source, withholding tax and prepayment with respect to the above taxes

(hereinafter referred to as "Congolese taxes").

4. The Convention shall apply also to any taxes identical or substantially similar to those listed in 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 States shall notify each other of substantial changes which have been made in their respective tax laws.

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" refer, as the case may be, to the French Republic and to the People's Republic of the Congo.

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

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

(*d*) The terms "enterprise of a State" and "enterprise of the other State" mean respectively an enterprise carried on by a resident of 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.

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

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

(ii) In the case of the People's Republic of the Congo, the Minister of Finance and the Budget 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, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

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 with which his personal and economic relations are closer (centre of vital interests);

(*b*) If the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

(*c*) If he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

(*d*) If he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

Article 5

PERMANENT ESTABLISHMENT

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

2. The term "permanent establishment" includes especially:

(*a*) A place of management;

(*b*) A branch;

(*c*) An office;

(*d*) A factory;

(*e*) A workshop;

(*f*) A shop;

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

3. A building site, a construction or assembly project and supervisory activities in connection therewith shall only constitute a permanent establishment if they continue for a period of more than six months.

4. Notwithstanding the preceding provisions of this article, the term "permanent establishment" shall be deemed not to include:

(*a*) The use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(*b*) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(*c*) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(*d*) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

(*e*) The maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(*f*) The maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (*a*) to (*e*), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person — other than an agent of an independent status to whom paragraph 6 applies — is acting on behalf of an enterprise and has, and habitually exercises, in a State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a business establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a 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, where the agent whose services are used has available to him, on trust, a stock of duty-paid goods from which the sales and deliveries are made, and works exclusively or almost exclusively for an enterprise, such stock shall be deemed to imply the existence of a permanent establishment of the enterprise.

7. The fact that a company which is a resident of a State controls or is controlled by a company which is a resident of the other State, or which carries on business in that other State (whether through a permanent establishment or other-