

No. 33537. France and United States of America

CONVENTION BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL. PARIS, 31 AUGUST 1994 [*United Nations, Treaty Series, vol. 1963, I-33537.*]

PROTOCOL AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL, SIGNED AT PARIS ON 31 AUGUST 1994, AS AMENDED BY THE PROTOCOL SIGNED ON 8 DECEMBER 2004 (WITH MEMORANDUM OF UNDERSTANDING). PARIS, 13 JANUARY 2009

Entry into force: 23 December 2009 by notification, in accordance with article XVI

Authentic texts: English and French

Registration with the Secretariat of the United Nations: France, 30 March 2010

N° 33537. France et États-Unis d'Amérique

CONVENTION ENTRE LE GOUVERNEMENT DE LA RÉPUBLIQUE FRANÇAISE ET LE GOUVERNEMENT DES ÉTATS-UNIS D'AMÉRIQUE EN VUE D'ÉVITER LES DOUBLES IMPOSITIONS ET DE PRÉVENIR L'ÉVASION ET LA FRAUDE FISCALES EN MATIÈRE D'IMPÔTS SUR LE REVENU ET SUR LA FORTUNE. PARIS, 31 AOÛT 1994 [*Nations Unies, Recueil des Traités, vol. 1963, I-33537.*]

AVENANT À LA CONVENTION ENTRE LE GOUVERNEMENT DE LA RÉPUBLIQUE FRANÇAISE ET LE GOUVERNEMENT DES ÉTATS-UNIS D'AMÉRIQUE EN VUE D'ÉVITER LES DOUBLES IMPOSITIONS ET DE PRÉVENIR L'ÉVASION ET LA FRAUDE FISCALES EN MATIÈRE D'IMPÔTS SUR LE REVENU ET SUR LA FORTUNE, SIGNÉE À PARIS LE 31 AOÛT 1994, ET MODIFIÉE PAR L'AVENANT DU 8 DÉCEMBRE 2004 (AVEC PROTOCOLE D'ACCORD). PARIS, 13 JANVIER 2009

Entrée en vigueur : 23 décembre 2009 par notification, conformément à l'article XVI

Textes authentiques : anglais et français

Enregistrement auprès du Secrétariat des Nations Unies : France, 30 mars 2010

**PROTOCOL
AMENDING THE CONVENTION
BETWEEN
THE GOVERNMENT OF THE FRENCH REPUBLIC
AND
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME AND CAPITAL,
SIGNED AT PARIS ON AUGUST 31, 1994,
AS AMENDED BY THE PROTOCOL SIGNED ON DECEMBER 8, 2004**

THE GOVERNMENT OF THE FRENCH REPUBLIC

AND

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

DESIRING to amend the Convention Between the Government of the French Republic and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, signed at Paris on August 31, 1994, as amended by the Protocol signed at Washington on December 8, 2004 ("the Convention"), have agreed as follows:

ARTICLE I

1. Subparagraph b) (iii) of paragraph 2 of Article 4 (Resident) of the Convention shall be deleted and replaced by the following:

“(iii) in the case of the United States, a regulated investment company, a real estate investment trust, and a real estate mortgage investment conduit; in the case of France, a “société d’investissement à capital variable” (SICAV), a “société d’investissement immobilier cotée” (SIIC), a “société de placement à prépondérance immobilière à capital variable” (SPPICAV); and any similar investment entities agreed upon by the competent authorities of both Contracting States.”

2. Subparagraphs b) (iv), b) (v), and b) (vi) of paragraph 2 of Article 4 (Resident) of the Convention shall be deleted.

3. New subparagraph c) of paragraph 2 of Article 4 (Resident) of the Convention shall be added as follows:

“c) An item of income paid from the United States to a French qualified partnership shall be considered derived by a resident of France only to the extent that such income is included currently in the taxable income of a shareholder, associate or other member that is otherwise treated as a resident of France under the provisions of this Convention. A French qualified partnership means a partnership:

- (i) that has its place of effective management in France,
- (ii) that has not elected to be taxed in France as a corporation,
- (iii) the tax base of which is computed at the partnership level for French tax purposes, and
- (iv) all of the shareholders, associates or other members of which, pursuant to the tax laws of France, are liable to tax therein in respect of their share of the profits of that partnership.”

4. New paragraph 3 of Article 4 (Resident) of the Convention shall be added as follows:

“3. For purposes of applying this Convention, an item of income, profit or gain derived through an entity that is fiscally transparent under the laws of either Contracting State, and that is formed or organized:

- a) in either Contracting State, or;
- b) in a state that has concluded an agreement containing a provision for the exchange of information with a view to the prevention of tax evasion with the Contracting State from which the income, profit, or gain is derived,

shall be considered to be derived by a resident of a Contracting State to the extent that the item is treated for purposes of the taxation law of such Contracting State as the income, profit or gain of a resident.”

5. Paragraphs 3 and 4 of Article 4 (Resident) of the Convention shall be renumbered as paragraphs 4 and 5.

ARTICLE II

Article 10 (Dividends) of the Convention shall be deleted and replaced by the following:

“Article 10

Dividends

1. Dividends paid by a company that is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other 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 State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

a) 5 percent of the gross amount of the dividends if the beneficial owner is a company that owns:

(i) directly at least 10 percent of the voting stock of the company paying the dividends, if such company is a resident of the United States; or

(ii) directly or indirectly at least 10 percent of the capital of the company paying the dividends, if such company is a resident of France;

b) 15 percent of the gross amount of the dividends in all other cases.