

No. 8127

**BELGIUM
and
FRANCE**

Convention for the avoidance of double taxation and the establishment of rules of reciprocal administrative and legal assistance with respect to taxes on income (with Final Protocol and exchange of letters). Signed at Brussels, on 10 March 1964

Official text: French.

Registered by Belgium on 23 February 1966.

**BELGIQUE
et
FRANCE**

Convention tendant à éviter les doubles impositions et à établir des règles d'assistance administrative et juridique réciproque en matière d'impôts sur les revenus (avec Protocole final et échange de lettres). Signée à Bruxelles, le 10 mars 1964

Texte officiel français.

Enregistrée par la Belgique le 23 février 1966.

[TRANSLATION — TRADUCTION]

No. 8127. CONVENTION¹ BETWEEN BELGIUM AND FRANCE
FOR THE AVOIDANCE OF DOUBLE TAXATION AND
THE ESTABLISHMENT OF RULES OF RECIPROCAL
ADMINISTRATIVE AND LEGAL ASSISTANCE WITH
RESPECT TO TAXES ON INCOME. SIGNED AT BRUS-
SELS, ON 10 MARCH 1964

His Majesty the King of the Belgians and the President of the French Republic,

Desiring to revise and supplement, with due regard for the experience acquired, the changes made in the taxation laws of the two States and the requirements of an equitable distribution of tax burdens, the Convention between Belgium and France for the prevention of double taxation and the settlement of various other questions connected with fiscal matters, signed on 16 May 1931,²

Have accordingly decided to conclude a new convention to replace the earlier one and have for that purpose appointed as their plenipotentiaries :

His Majesty the King of the Belgians :

His Excellency Mr. P.-H. Spaak, Minister for Foreign Affairs;

The President of the French Republic :

His Excellency Mr. Henry Spitzmuller, French Ambassador Extraordinary and Plenipotentiary at Brussels,

who, having exchanged their full powers, found in good and due form, have agreed on the following provisions :

Article 1

1. The purpose of this Convention is to protect residents of each of the Contracting States against double taxation which might result from the simultaneous application of the taxation laws of the said States.

2. An individual shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him.

(a) If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest, i.e., the Contracting State in which he has the centre of his vital interests.

¹ Came into force on 17 June 1965, through the exchange of the instruments of ratification in Paris, in accordance with article 26.

² League of Nations, *Treaty Series*, Vol. CXLI, p. 333.

- (b) If the Contracting State in which he has the centre of his vital interests cannot be determined, he shall be deemed to be a resident of the Contracting State in which he habitually resides.
- (c) If he habitually resides in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national.
- (d) If he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by agreement.

3. Individuals whose permanent home is on board a ship operated in international traffic shall be deemed to be residents of the Contracting State in which the place of actual management of the enterprise is situated. The same shall apply to individuals whose permanent home is on board a boat engaged in inland waterways transport in the territory of both Contracting States.

If the place of actual management of a shipping or inland waterways transport enterprise is on board a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home port is situated or, in the absence of a home port, in the Contracting State of which the operator is a national.

4. A body corporate shall be deemed to be a resident of the Contracting State in which its place of actual management is situated.

The same shall apply to partnerships (*Sociétés de personnes*) and associations which, under the national laws to which they are subject, do not possess corporate personality.

Article 2

1. This Convention shall apply to taxes on income levied on behalf of the State, of provinces and of local government authorities, irrespective of the manner in which they are levied.

2. The expression « taxes on income » shall be deemed to mean taxes levied on total income, on elements of income or on profits derived from the alienation of movable or immovable property.

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

A. *In the case of Belgium:*

- (1) The tax on individuals (*l'impôt des personnes physiques*);
- (2) The tax on companies (*l'impôt des sociétés*);
- (3) The tax on bodies corporate (*l'impôt des personnes morales*);
- (4) The tax on non-residents (*l'impôt des non-résidents*), including such portion thereof as is collected by means of deductions (*précomptes*) or supplementary deductions (*compléments de précomptes*);

(5) Local surtaxes and related taxes (*les centimes additionnels et taxes annexes*) assessed on the base or the amount of the aforementioned taxes.

B. *In the case of France:*

- (1) The tax on the income of individuals (*l'impôt sur le revenu des personnes physiques*);
- (2) The complementary tax (*la taxe complémentaire*);
- (3) The tax on the profits of companies and other bodies corporate (*l'impôt sur les bénéfices des sociétés et autres personnes morales*);
- (4) The real estate tax (land tax or buildings tax) (*la contribution foncière des propriétés bâties et des propriétés non bâties*) and taxes related thereto.

4. The Convention shall also apply to any identical or similar taxes, including local surtaxes and related taxes assessed on the base or the amount of such taxes, which are subsequently imposed in addition to, or in place of, the existing taxes. At the end of each year, the competent authorities of the Contracting States shall notify each other of any changes which have been made in their taxation laws.

5. If it is deemed advisable to modify certain of the rules governing the application of the Convention, either in the event of an extension of the latter's scope in accordance with the preceding paragraph or by reason of changes in the taxation laws of either Contracting State which do not affect the general principles of those laws as they were taken into consideration in the preparation of this Convention, the necessary adjustments shall be made in supplementary agreements concluded in the spirit of the Convention by way of an exchange of diplomatic notes.

Article 3

1. Income from immovable property, including property accessory thereto and livestock and equipment of agricultural and forestry enterprises, shall be taxable only in the Contracting State in which the property is situated.

2. The term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated.

3. For the purposes of this article, rights to which the provisions of private law concerning real property apply, rights of usufruct in immovable property and rights to variable or fixed payments as consideration for the working of mineral deposits, springs and other natural resources shall be deemed to constitute immovable property.

4. The provisions of paragraphs 1 to 3 shall apply to income derived from the direct use or the letting or leasing of immovable property or from the use in any other form of such property, including income from agricultural or forestry enterprises. They shall also apply to profits derived from the alienation of immovable property.

5. The provisions of paragraphs 1 to 4 shall also apply to income from the immovable property of enterprises other than agricultural and forestry enterprises and to income from immovable property used in the exercise of a profession.

Article 4

1. Industrial and commercial profits shall be taxable only in the Contracting State in which the permanent establishment from which they are derived is situated.

The term " industrial and commercial profits " shall not include the income referred to in articles 3, 7, 8, 9, 11, 15 and 16. The said income shall, subject to the provisions of this Convention, be taxed separately or together with industrial and commercial profits in accordance with the laws of each Contracting State.

2. Shares of the commercial profits of an enterprise operated as a civil or other partnership accruing to a partner therein and shares of the commercial profits of companies and associations having no legal status shall be taxable only in the Contracting State in which the enterprise has a permanent establishment and to the extent of the partner's share of the profits of the permanent establishment; the same shall apply to shares of the profits of a *commandite* partnership accruing to an active partner therein.

3. The term " permanent establishment " means a fixed place of business in which the business of an enterprise is wholly or partly carried on.

4. The following shall, in particular, be deemed to be permanent establishments :

- (a) A place of management;
- (b) A branch;
- (c) An office;
- (d) A factory;
- (e) A workshop;
- (f) A mine, a quarry or any other place of extraction of natural resources;
- (g) A building site or construction or assembly project which exists for more than six months;
- (h) Facilities available in either State to the organizers or producers of theatrical presentations, entertainment or games of any kind or to circus or fairground personnel, itinerant vendors, artisans or other persons carrying on an activity which falls within the scope of this article, provided that such facilities are available to them in that State for a total of at least thirty days in the course of a given calendar year.

5. The following shall not be deemed to constitute a permanent establishment :

- (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 purchase of goods or merchandise or for procuring information for the enterprise;
- (e) The maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities of a preparatory or auxiliary character on behalf of the enterprise.

Where it is found that more than one of the cases enumerated in subparagraphs (a) to (e) is applicable to the same enterprise, the competent authorities of the Contracting States shall consult with a view to determining whether the situation is such that the enterprise may be deemed to have a permanent establishment.

6. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State—other than an agent of independent status within the meaning of paragraph 8—shall be deemed to constitute a permanent establishment in the first-mentioned State if he has and habitually exercises in that State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

An agent who habitually draws goods or merchandise, for sale and delivery to customers, from a stock belonging to the enterprise shall also be deemed to be exercising such an authority.

7. An insurance enterprise of one of the Contracting States shall be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that State or insures risks situated in that territory through a representative who is not an agent within the meaning of paragraph 8.

8. 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 the other State through a broker, a general commission agent or any other agent of independent status, where such persons are acting in the ordinary course of their business.

9. The fact that a company resident in one of the Contracting States controls or is controlled by a company which is resident in the other Contracting State

or which carries on business in the other State, whether through a permanent establishment or otherwise, shall not of itself constitute either company a permanent establishment of the other.

Article 5

1. The industrial or commercial profits of a permanent establishment shall be deemed to be those deriving from all business carried on by the establishment or from the alienation, in whole or in part, of its assets.

2. Where the actual profits of a permanent establishment cannot be precisely determined by reference to regular accounts or other evidence, the competent authorities of the two Contracting States shall, if necessary, determine by agreement the portion of the profits of the whole enterprise which may equitably be attributed to the establishment.

3. The profits of a permanent establishment, as defined in paragraph 1, shall be deemed to include all profits and advantages which, in accordance with normal business practice, would not have been granted to third parties and which are assigned or granted by the permanent establishment, in any manner whatsoever, directly or indirectly, either to the enterprise itself or other establishments thereof or to its managers, shareholders, partners or other participants or to persons having common interests with them.

4. Where an enterprise operated by a resident of either Contracting State is a subsidiary of or controls an enterprise operated by a resident of the other Contracting State or the two enterprises are controlled by the same person or group and one of the enterprises accords to or imposes upon the other enterprise conditions which differ from those which would normally be made in respect of genuinely independent enterprises, all profits which would normally have appeared in the accounts of one of the enterprises but were in that manner transferred, directly or indirectly, to the other enterprise may be included in the taxable profits of the first-mentioned enterprise. In that case, double taxation of the profits thus transferred shall be avoided in keeping with the spirit of the Convention and the competent authorities of the Contracting States shall, if necessary, determine by agreement the amount of the transferred profits.

5. In the determination of the income of a permanent establishment maintained by an enterprise of either Contracting State in the other Contracting State, account shall be taken :

—firstly, of the actual costs directly and specifically incurred by the enterprise, in the Contracting State in which the permanent establishment is situated, in acquiring and maintaining the income;

—secondly, of the portion normally attributable to the permanent establishment of such other costs, including the normal costs of general management and administration, as may be incurred on behalf of the entire enterprise at its place of actual management.

Article 6

Notwithstanding the provisions of article 4 :

1. Profits derived from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of actual management of the enterprise is situated;
2. Profits derived from the operation of boats for purposes of inland waterways transport shall be taxable only in the Contracting State in which the place of actual management of the enterprise is situated.

Article 7

1. Income or profits derived by a resident of one of the Contracting States from the exercise of a profession or from other personal activities and not specifically regulated by the provisions of this Convention shall not be taxable in the other Contracting State unless the said resident has a fixed base available to him there and makes regular use of such base for the purpose of performing his activities. In that case, the income or profits derived from the activities performed in the latter State shall be taxable only in that State.

2. Paragraph 1 shall apply, *inter alia*, to the activities of physicians, lawyers, architects and consulting engineers and to scientific, artistic, literary, educational or pedagogic activities; it shall also apply to the activities of public entertainers, professional athletes, musicians and other persons who make public appearances at events organized by them or on their behalf.

Article 8

1. Royalties and other payments received in respect of the licensing or sale of incorporeal movable property such as patents, models, secret formulae and processes, trade marks and similar rights and in respect of copyrights and rights of reproduction and income derived from the renting of cinematographic films shall be taxable only in the Contracting State of which the recipient is a resident.

Where, however, the recipient of the royalties or payments has in the other Contracting State a permanent establishment or fixed base which plays some part in the transactions from which the income in question derives, the income shall be taxable only in that State.

These provisions shall also apply to payments and royalties received in respect of the use or sale of corporeal movable property.

2. Notwithstanding the provisions of paragraph 1, the royalties and payments referred to shall also be taxable in the Contracting State in whose territory the enterprise bearing the cost thereof is situated :

- (a) Where and in so far as, in conformity with the practice of that State, the royalties and payments exceed a reasonable consideration, having regard to normal commercial practice, the intrinsic value of the property referred to in the said paragraph and the total return on the use of the property;
- (b) Where and in so far as the royalties and payments exceed the portion attributable to the paying enterprise of the actual costs—plus a fair profit—incurred by the recipient enterprise, during the taxable period, for the acquisition, the improvement or amortization and the maintenance of the rights licensed or sold and where one of the enterprises is in fact a subsidiary of or controlled by the other or the two enterprises are in fact subsidiaries of or controlled by a third enterprise or are subsidiaries of or controlled by enterprises which are subsidiaries of the same group;
- (c) In the case of payments or royalties received by companies or associations, where and in so far as the rights in question were made available or licensed to them, directly or indirectly, by the enterprise paying the royalties or by its managers, shareholders, partners or other participants or by persons having common interests with them.

3. In particular cases where the provisions of paragraph 2 appear to be applicable, the competent authorities of the two Contracting States shall reach agreement on the portion of the royalties and payments which may be regarded as reasonable and on the avoidance, in conformity with the spirit of the Convention, of double taxation of the portion of the said income which was taxed in the Contracting State other than that of the recipient's residence.

Article 9

1. Fixed or variable remuneration of whatsoever kind paid, in consideration of the performance of their duties, to directors, auditors, liquidators, managing partners or other similar officers of joint-stock companies, *commandite* partnerships with shares and co-operative societies and of French and Belgian private limited companies (*sociétés françaises à responsabilité limitée* and *sociétés belges de personnes à responsabilité limitée*) shall be taxable only in the Contracting State of which the company, partnership or society is a resident.

2. However, ordinary remuneration received by the persons concerned in any other capacity shall be taxable, depending on the case, under the conditions specified in article 7 or in article 11, paragraph 1, of this Convention.

Article 10

1. Remuneration paid in the form of salaries, wages, military or naval pay, and pensions by one of the Contracting States or by a public corporation of that State not engaged in industrial or commercial activity shall be taxable exclusively in the said State.

2. The application of this provision may be extended by agreement, on the basis of reciprocity, to remuneration received by the personnel of public agencies or establishments or of legally independent establishments constituted or controlled by one of the Contracting States or by the provincial and local government authorities of that State, even if such agencies or establishments engage in industrial or commercial activity.

3. However, the foregoing provisions shall not apply where the remuneration is paid to residents of the other State who are nationals of that State.

Article 11

1. Subject to the provisions of articles 9, 10 and 13 of this Convention, salaries, wages and other similar remuneration shall be taxable only in the Contracting State in whose territory the personal services from which such income derives are performed.

2. Notwithstanding the provisions of paragraph 1 :

- (a) Salaries, wages and other remuneration shall be taxable only in the Contracting State of which the employed person is a resident if the three following conditions are fulfilled :
- (1) The recipient is temporarily present in the other Contracting State for a period or periods not exceeding 183 days in the calendar year concerned ;
 - (2) His remuneration for the services performed during that time is paid by an employer established in the first-mentioned State ;
 - (3) His services are not chargeable to a permanent establishment or fixed base maintained by the employer in the other State ;
- (b) Remuneration for services performed on board a ship or aircraft in international traffic or on board a boat engaged in inland waterways transport in the territory of both Contracting States shall be taxable only in the Contracting State in which the place of actual management of the enterprise is situated ; if that State does not tax such remuneration, it shall be taxable in the Contracting State of which the recipient is a resident.

Remuneration received by persons performing services on other means of transport operated in the territory of both Contracting States shall be

- taxable only in the Contracting State in which the permanent establishment to which such services are chargeable is situated or, if no such establishment exists, in the Contracting State of which the persons concerned are residents;
- (c) Frontier workers who are able to show proof of their identity as such by production of the frontier card provided for in the special conventions concluded between the Contracting States shall be liable to taxation only in the Contracting State of which they are residents in respect of such salaries, wages and other remuneration as they receive for their work.

3. The provisions of paragraph 2 shall not apply to the remuneration referred to in article 9 of this Convention.

Article 12

Pensions other than those referred to in article 10 of this Convention and life annuities shall be taxable only in the Contracting State of which the recipient is a resident.

Article 13

Professors and teachers of one Contracting State who visit the other Contracting State solely for the purpose of teaching at a university, secondary or primary school, or other educational establishment in that State for a period not exceeding two years shall be exempt in the latter State from taxation in respect of the remuneration received by them for teaching during the said period.

Article 14

Students and apprentices of one Contracting State who are present in the other Contracting State solely for the purpose of their education or training shall be exempt from taxation in the latter State in respect of remittances received by them from abroad.

Article 15

1. Income from shares, founders' shares, partnership shares and *commandite* interests in joint-stock companies, *commandite* partnerships with shares, simple *commandite* partnerships, co-operative societies, private limited companies under French law and private limited companies under Belgian law shall be taxable in the Contracting State of which the recipient is a resident.

2. Paragraph 1 shall not apply where the recipient of the income has a permanent establishment in the other Contracting State and the shares or interests from which the income derives form part of the assets of that establishment; in that case, the said income shall be taxable only in the other State.

3. The Contracting State in which the income arises shall have the right to charge the said income with a tax deducted at the source, the rate of which may not exceed 18 per cent of the amount of the dividends; in that case, the tax thus levied shall be credited, under the conditions specified in article 19, against the tax payable in the other Contracting State.

The competent authorities of the two States shall determine by agreement the mode of application of this limitation.

4. The income referred to in paragraph 1 shall be deemed to arise in the Contracting State of which the payer is a resident.

5. Shares distributed free of payment, in whatsoever manner, by a company resident in one Contracting State against reserves incorporated into its capital shall not be regarded in the other Contracting State as dividends or other income from shares of any kind distributed by the company in question.

6. In the case of a merger of companies resident in only one Contracting State, the free distribution of shares of the surviving or new company shall not, if the said company is a resident of the same State, be regarded in the other Contracting State as constituting a distribution of income.

Article 16

1. Interest and other income from bonds or other negotiable evidences of indebtedness, commercial notes, loans, deposits and all other debt-claims shall be taxable in the Contracting State of which the recipient is a resident.

2. Paragraph 1 shall not apply where the recipient of the interest or other income has a permanent establishment in the other Contracting State and the debt-claim or deposit forms part of the assets of that establishment. In that case, the said interest or other income shall be taxable only in the other State.

3. The Contracting State in which the interest or other income arises shall have the right to charge the said interest or other income with a tax deducted at the source, the rate of which may not exceed 15 per cent. In that case, the tax thus levied shall be credited, under the conditions specified in article 19, against the tax payable in the other Contracting State.

The 15-per-cent limitation on the rate of the tax levied at the source shall not apply to such part of the interest as exceeds a fair and reasonable rate, having regard to the debt-claim for which it is paid. In such case, the competent authorities of the two Contracting States shall determine by agreement the portion of the interest which may be regarded as reasonable.

4. The interest and other income referred to in paragraph 1 shall be deemed to arise in the Contracting State of which the payer is a resident. However,

interest and other income from bonds and loans of any kind issued or contracted by a resident of one Contracting State in the other Contracting State for the requirements of permanent establishments maintained by him in the other State shall be deemed to arise in the latter State.

Article 17

1. Companies resident in Belgium which maintain a permanent establishment in France shall be liable, by reason of the said establishment and in respect of profits distributed by them, to deduction at the source of the tax on the income of individuals in the manner prescribed by article 109-2 of the General Tax Code.

The fraction of the distributed profits actually liable to such deduction may not, however, exceed one-quarter of the income taxable under article 109-2 aforesaid, which income may not itself exceed the amount of the industrial and commercial profits realized by the permanent establishment in France as determined for the assessment of the tax on such profits in accordance with the provisions of this Convention.

Where a company is able to show proof, in a manner acceptable to the competent authorities of the two Contracting States, that more than three-quarters of its shares or founders' shares is owned by residents of Belgium, the fraction of its distributed profits taxable in France under the terms of the preceding paragraph shall be reduced accordingly.

2. A company resident in Belgium shall not be liable in France to deduction of tax in accordance with paragraph 1 by reason of its participation in the management or in the capital of a company resident in France or because of any other relationship with that company; nevertheless, the profits distributed by the latter company which are liable to such deduction shall be increased, for the assessment of the tax to be deducted, by the profits or advantages, if any, which the Belgian company has indirectly derived from the French company in the manner referred to in article 5, paragraph 4, double taxation of those profits and advantages being avoided in accordance with the provisions of article 19.

3. Companies resident in France which maintain a permanent establishment in Belgium shall be accorded the same treatment in the latter State, in respect of profits realized by them there, as foreign companies of a like nature.

However, the tax imposed on such profits under Belgian law may not exceed the total amount of the various taxes, calculated at the normal rate, which would be payable by a company of like nature resident in Belgium on its profits and on income distributed to its shareholders or partners, where the profits in question are allocated in the same manner as those of the company resident in France.

For the purpose of the application of this provision, the tax on the distributed profits of a company of like nature resident in Belgium shall be calculated on a fraction of the profits of the Belgian permanent establishment of the company resident in France corresponding to the ratio between the profits distributed by the latter company and its total profits, such fraction not to exceed one-quarter of the profits realized by the Belgian permanent establishment as determined for the assessment of the tax on companies in accordance with the provisions of this Convention.

Article 18

Save as otherwise provided by the preceding articles of this Convention, the income of residents of one of the Contracting States shall be taxable only in that State.

Article 19

Double taxation shall be avoided in the following manner :

A. *In the case of Belgium:*

1. Income from movable capital subject to the provisions of article 15, paragraph 1, which has actually been charged in France with tax deducted at the source and is received by companies resident in Belgium and therefore liable to the tax on companies shall, subject to levying of the movable capital tax (*le précompte mobilier*) at the normal rate in respect of such income less the amount of the French tax, be exempt from the tax on companies and the tax on distributions (*l'impôt de distribution*) under the conditions laid down by Belgian domestic law.

In the case of income of the kind referred to in the preceding paragraph which is received by other residents of Belgium and in the case of income from movable capital subject to the provisions of article 16, paragraph 1, where such income has actually been charged in France with tax deducted at the source, the tax payable in Belgium on the said income less the amount of the French tax shall be reduced, firstly, by the amount of the movable capital tax levied at the normal rate and, secondly, by the amount of the fixed proportion of foreign tax deductible under the conditions laid down by Belgian law, provided that such proportion shall be not less than 15 per cent of the amount of the income less the amount of the French tax.

2. Income other than that referred to in paragraph 1 shall, if it is liable to taxation only in France, be exempt from the Belgian taxes referred to in article 2, paragraph 3 A, of this Convention.

3. By way of exception to paragraph 2, Belgian tax may be imposed on income liable to taxation in France where such income has not been taxed in

France because it has been offset there by losses which have also been deducted, in respect of any fiscal year, from income taxable in Belgium.

4. Notwithstanding the preceding provisions, the Belgian taxes referred to in this Convention may be charged to income taxable in Belgium under the Convention at a rate corresponding to the total income taxable under Belgian law.

B. In the case of France:

1. (a) Income from movable capital subject to the provisions of article 15, paragraph 1, of this Convention and interest and other income from bonds or other negotiable evidences of indebtedness the taxation of which is governed by the provisions of article 16, paragraph 1, shall, if it arises in Belgium and accrues to residents of France, be liable in France, in respect of its gross amount, to deduction at the source of the tax on the income of individuals; however, the rate of such deduction, which shall be made under the provisions of ordinary law, shall be reduced, to allow for the tax actually levied against the same income in Belgium, by eighteen points in the case of the income referred to in article 15, paragraph 1, and by fifteen points in the case of the interest and other income referred to in article 16, paragraph 1.

(b) Income arising in Belgium and accruing to residents of France from debt-claims subject to the provisions of article 16, paragraph 1, shall be liable in France, in respect of its gross amount, to the tax on the income of individuals and to the complementary tax or the tax on companies, as the case may be; however, the amount of such tax shall be reduced by fifteen points to allow for the tax actually levied against the same income in Belgium.

2. Income other than that referred to in paragraph 1 shall, if it is liable to taxation only in Belgium, be exempt from the French taxes referred to in article 2, paragraph 3, B, of this Convention.

3. Notwithstanding the preceding provisions, the French taxes referred to in this Convention may be charged to income taxable in France under the Convention at a rate corresponding to the total income taxable under French law.

Article 20

1. The competent authorities of the two Contracting States shall, subject to reciprocity, exchange such information as is obtainable under their respective taxation laws for the purpose of determining the taxable income of the taxpayers referred to in article 1 of this Convention and as may be necessary, in respect of the taxes to which the Convention applies, for the purpose of applying the

latter's provisions or of ensuring the proper collection of the said taxes or applying the statutory provisions for the prevention of tax evasion.

2. Information obtained pursuant to paragraph 1 shall be kept secret; it shall be disclosed to no persons, apart from the taxpayer or his agent, other than those concerned with the assessment and collection of the taxes to which this Convention applies and with claims and appeals relating to such taxes, and it may not be used directly or indirectly for any purpose other than the assessment and collection of the said taxes.

3. The competent authorities of one Contracting State shall not provide the competent authorities of the other Contracting State with any information which might disclose a commercial or industrial secret; they may refuse any information which for reasons of public policy cannot, in their opinion, be provided or whose nature is such that it cannot be obtained in the other Contracting State under the taxation laws of that State. Furthermore, they may refuse to provide, with regard to their own nationals or to companies and other bodies corporate established under their own laws, any information other than that which is necessary for the purpose of apportioning the income of the taxpayers concerned in accordance with articles 4 and 5 and verifying their entitlement to the tax exemptions and reductions provided for by this Convention.

4. Subject to agreement concerning reciprocity, the assistance defined in this article may be expanded, within the limits and under the conditions specified in paragraphs 1-3, to cover information required for the assessment or collection of such other direct taxes, whether annual or special, as have already been or may hereafter be imposed by either Contracting State.

Article 21

1. The Contracting States undertake to afford each other, on the basis of reciprocity, support and assistance in the collection, in accordance with the rules laid down in their own laws, of taxes dealt with by this Convention which are finally due and of supplementary payments, surcharges, interest and costs relating to such taxes.

2. Legal proceedings and enforcement measures shall be instituted on production of an official copy of the writ of execution together with the text of any final decision.

3. Tax debts to be recovered shall not be regarded as privileged debts in the requested Contracting State, and the latter shall not be bound to apply any enforcement measure not provided for by the laws of the requesting Contracting State.

4. Where a tax debt is still subject to appeal, the requesting Contracting State may call upon the requested Contracting State to take interim measures, to which the foregoing provisions shall apply *mutatis mutandis*.

5. The provisions of article 20, paragraph 2, shall also apply to any information communicated to the competent authorities of the requested Contracting State in application of this article.

Article 22

Any term not specifically defined in this Convention shall, unless the context requires some other interpretation, have the meaning which it has under the laws which, in the respective Contracting States, govern the taxes to which the Convention applies.

Article 23

1. The term “ France ”, for the purposes of this Convention, means metropolitan France and the overseas *départements* (Guadeloupe, Guiana, Martinique and Réunion).

The term “ Belgium ”, for the purposes of this Convention, means the territory of the Kingdom of Belgium.

2. This Convention may be extended, either in its present form or with any necessary modifications, to the overseas territories of the French Republic or to one or more of those territories, provided that the territories in question levy taxes similar in character to those to which the Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions (including conditions as to termination) as may be agreed upon between the Contracting States by way of an exchange of diplomatic notes.

3. Save as otherwise agreed by the Contracting States, the denunciation of this Convention under article 28 by either of them shall terminate the application of its provisions to any territory to which it has been extended under this article.

Article 24

1. The competent authorities of the two Contracting States shall consult together concerning the administrative measures required in order to apply the provisions of this Convention and, in particular, concerning the proofs to be furnished by residents of one State in order to be accorded in the other State the tax exemptions and reductions provided for in this Convention.

2. Where difficulties or doubts arise in connexion with the application of any of the provisions of this Convention, the competent authorities of the two

Contracting States shall consult together with a view to applying the said provisions in the spirit of the Convention. In special cases, they may by agreement apply the rules laid down in this Convention to individuals or bodies corporate not resident in either of the Contracting States but maintaining in one of the said States a permanent establishment part of whose income arises in the other State.

3. Where a resident of one of the Contracting States considers that taxes which have been or are to be assessed against him have resulted or will result in double taxation inconsistent with the provisions of the Convention, he may, without prejudice to the exercise of his rights of complaint and appeal under the domestic laws of either State, submit to the competent authorities of the State in which he is resident a written application, with a statement of grounds, for review of the said taxes. Such application must be submitted within six months of the date of notification or collection at source of the second tax. If the application is upheld by the authorities to which it is submitted, the said authorities shall come to an agreement with the competent authorities of the other Contracting State with a view to the avoidance of double taxation.

4. If it appears that agreement would be facilitated by negotiations, the case shall be referred to a mixed commission whose members shall be appointed by the competent authorities of the two Contracting States.

Article 25

1. Nationals of one 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 that to which nationals of the latter State in the same circumstances are subjected.

2. The term "nationals" means in the case of each Contracting State :

- (a) All individuals possessing the nationality of that State;
- (b) All bodies corporate, partnerships and associations established under the laws of the said State.

3. In particular, nationals of one Contracting State who are liable to tax in the territory of the other Contracting State shall be entitled, under the same conditions as nationals of the latter State, to any tax exemptions, allowances, rebates and reductions granted in respect of family responsibilities.

Article 26

1. This Convention shall be ratified, and the instruments of ratification shall be exchanged at Paris as soon as possible.

2. The Convention shall enter into force upon the exchange of the instruments of ratification, and its provisions shall apply for the first time :

- (1) As regards the income referred to in article 8, to taxes resulting from operations effected :
 - (a) On or after 1 January 1960 where the said taxes have actually been deducted from the recipient's income, it being understood that, in such cases, the Convention shall also apply, notwithstanding the provisions of article 2, paragraph 3, A, to the movable capital tax (*la taxe mobilière*) payable in Belgium under the laws in force prior to the Act of 20 November 1962;
 - (b) In all other cases, after the expiry of a period of three months following the exchange of the instruments of ratification;
- (2) As regards the income referred to in articles 15 and 16, to taxes due at source and resulting from operations effected after the expiry of a period of three months following the exchange of the instruments of ratification;
- (3) As regards other income, to taxes payable on income accruing during the year in which the said exchange takes place or during any fiscal year ending in the course of the following year.

3. Notwithstanding the provisions of paragraph 2 (1), article 8 shall also apply to taxes actually assessable against the recipients of income not paid by 31 March 1961 resulting from operations effected before 1 January 1960, even if the said taxes are no longer subject to review under the laws of either Contracting State. In such cases, the Convention shall also apply, notwithstanding the provisions of article 2, paragraph 3, A, to the movable capital tax payable in Belgium under the laws in force prior to the Act of 20 November 1962.

Article 27

1. The provisions of the Convention of 16 May 1931 between Belgium and France for the prevention of double taxation and the settlement of various other questions connected with fiscal matters, as adapted by the agreement of 31 December 1963, shall apply for the last time :

- (1) As regards the income referred to in article 9, paragraph 2, of this Convention, to taxes resulting from operations effected until the expiry of a period of three months following the exchange of the instruments of ratification of this Convention;
- (2) As regards the income referred to in articles 4, 5 and 6 of this Convention, to taxes due at source and resulting from operations effected until the expiry of a period of three months following the exchange of the instruments of ratification of this Convention;

(3) As regards other income, to taxes payable on income accruing during any fiscal year ending in the course of the year in which the exchange of the instruments of ratification takes place or during the year preceding that in which the said exchange takes place.

2. From the date on which this Convention enters into force and during such time as it remains in force, the provisions of the Convention concluded by Belgium and France on 7 October 1929¹ for the prevention of double taxation on profits accruing from the business of shipping in the two countries and of the Agreement between Belgium and France for the avoidance of double taxation on profits or income from air transport, concluded on 10 December 1955² by way of an exchange of letters, shall cease to have effect.

Article 28

This Convention shall remain in force so long as it is not terminated by one of the two States.

However, either Contracting State may, by giving six months' notice, terminate it with effect from the end of the fourth calendar year following the year of ratification or of any calendar year thereafter.

In that event, the Convention shall apply for the last time :

- (1) As regards the income referred to in articles 8, 15 and 16, to taxes due at source and resulting from operations effected not later than 31 December of the calendar year at the end of which the termination takes effect;
- (2) As regards other income, to taxes payable on income accruing during the year at the end of which the termination takes effect or during any fiscal year ending in the course of the said year.

IN WITNESS WHEREOF the plenipotentiaries of the two Contracting States have signed this Convention and have thereto affixed their seals.

DONE at Brussels on 10 March 1964 in duplicate.

For Belgium :

P.-H. SPAAK

For France :

H. SPITZMULLER

FINAL PROTOCOL

On signing the Convention concluded this day between Belgium and France for the avoidance of double taxation and the establishment of rules of reciprocal administrative and legal assistance with respect to taxes on income, the undersigned plenipotentiaries have agreed on the following provisions, which shall form an integral part of the Convention :

¹ League of Nations, *Treaty Series*, Vol. CXI, p. 43.

² United Nations, *Treaty Series*, Vol. 231, p. 101.

1. So long as the supplementary tax on immovable property (*le complément de précompte immobilier*) payable in Belgium on cadastral income derived from immovable property taxable in Belgium under article 3 of the Convention is levied at a fixed rate exceeding 10 per cent :

- (a) Such amount of the said supplementary tax on immovable property payable by residents of France subject to the tax on non-residents under article 37, paragraphs 4 and 5, of the Act of 20 November 1962 as is in excess of the amount of the tax on non-residents payable by the persons concerned shall be reimbursed;
- (b) The amount of the said supplementary tax on immovable property payable by other residents of France shall, where appropriate, be limited in such a manner that the amount of the supplementary tax and the portion of the tax on immovable property (*le précompte immobilier*) to be credited against the tax on individuals do not, taken together, exceed such amount of the tax on non-residents calculated notionally on the total amount of income arising or received in Belgium as is proportional to the said cadastral income.

2. Notwithstanding the provisions of article 15, paragraph 1, France may, in accordance with the provisions of its domestic law, treat as immovable property, within the meaning of article 3 of the Convention, the rights held by partners or shareholders in partnerships or companies whose sole actual purpose is either the construction or acquisition of buildings or groups of buildings with a view to dividing them into segments for allocation to their members on the basis of ownership or for use, or the management of buildings or groups of buildings so divided. However, Belgium may, within the limits specified in article 15, paragraphs 1 and 2, and article 19, A, paragraph 1, tax the income derived by residents of Belgium from rights represented by shares in such partnerships or companies which are resident in France.

3. Article 15, paragraph 3, of this Convention shall not be deemed to prevent Belgium from levying :

- (a) The movable capital tax—calculated, in accordance with the provisions of its domestic laws, at the rate of 15 per cent—on a tax base corresponding to 85/70 of the amount of income falling under the provisions of article 15 of the Convention which is paid to residents of France by companies resident in Belgium;
- (b) The special tax (*cotisation spéciale*) payable, under article 29 of the Act of 20 November 1962 reforming the system of taxes on income, on a portion of the sums divided in the event of division of the corporate assets of companies resident in Belgium;
- (c) The special tax (*cotisation spéciale*) payable by such companies, under article 28 of the said Act, if they redeem their own shares.

4. For the purpose of the application of article 17, paragraph 3, second sub-paragraph, of the Convention, the normal rate of the tax on companies is, in so far as the principal sum due is concerned, 30 per cent under existing Belgian law.

5. Having regard to the taxation laws in force in the two Contracting States, income subject to the provisions of article 15, paragraph 1, shall be deemed for the purpose of the application of article 19, A, paragraph 1, and B, paragraph 1 (a), to have actually been charged with tax deducted at the source in the State of which the company making the payment is a resident.

6. For the purpose of the application of the Convention :

- (a) Subject to any arrangements of a more favourable nature from which they may benefit under the general rules of international law or under particular conventions, members of a diplomatic or consular mission of either State residing in the other State or in a third State and having the nationality of the accrediting State shall be deemed to be residents of the last-mentioned State if they are subject in that State to the tax normally payable on their total income;
- (b) International organizations, their organs and staff, and persons belonging to a diplomatic or consular mission of a State other than the Contracting States shall not, if they are domiciled or reside in one of the two States and are not subject in that State to the tax normally payable on their total income, be deemed to be residents of the said State.

DONE at Brussels on 10 March 1964 in duplicate.

For Belgium :
P.-H. SPAAK

For France :
H. SPITZMULLER

EXCHANGE OF LETTERS

I

Brussels, 10 March 1964

Sir,

On signing the Convention negotiated between our two States for the avoidance of double taxation and the establishment of rules of reciprocal administrative and legal assistance with respect to taxes on income, I have the honour, with reference to article 4, paragraph 7, of the Convention, to inform you that the High Contracting Party which I represent proposes that the following interpretation should be given to this provision :

It is understood that an enterprise of one of the two States having a representative approved by the authorities of the other State shall not be deemed to

have a permanent establishment in the latter State unless such representative does not confine his activities to administrative functions but engages in activities which, having regard to their nature and extent, are such that the enterprise may be deemed to be habitually carrying on normal commercial activities in the other country through the said representative.

This rule shall be applied, for the purpose of the taxation in France of Belgian insurance companies, as from the year 1960, i.e., to the taxation of such companies in respect of the year 1960 or of the fiscal year ending in the course of that year and in respect of subsequent calendar and fiscal years. At the same time, claims for any taxes payable in respect of previous years which had not been assessed by 31 March 1961 shall not be pressed.

I should be most grateful if you would signify the agreement of the High Contracting Party which you represent to the above interpretation.

Accept, Sir, the assurances of my highest consideration.

H. SPITZMULLER

His Excellency Mr. P.-H. Spaak
Minister for Foreign Affairs
Brussels

II

Brussels, 10 March 1964

Sir,

By letter of today's date, you were good enough to inform me of the following :

[*See letter I*]

I have the honour to inform you that the High Contracting Party which I represent is in agreement with the above communication.

P.-H. SPAAK

His Excellency Mr. H. Spitzmuller
Ambassador of France
at Brussels