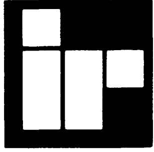

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DOUBLE TAXATION CONVENTION WITH THE FRENCH REPUBLIC

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WITH THE FRENCH REPUBLIC

PART I – INTRODUCTION

A double taxation convention has been concluded between the French Republic and New Zealand. The text of the convention has been published as a schedule to an Order-in-Council (S.R. 1981/20) and is available from Government Bookshops. The convention entered into force on 30 March 1981 with effect in New Zealand from any income year beginning on or after 1 April 1982. In France it takes effect from the assessment year which commences on 1 January 1982.

PART II – NOTES ON THE CONVENTION ARTICLE BY ARTICLE

Article 1 – Personal Scope

The convention applies to persons who are **residents** of one or both of the Contracting States.

Article 2 – Taxes Covered

The convention covers income tax and corporation tax imposed by the French Republic. With regard to New Zealand, the convention covers income tax and excess retention tax but not bonus issue tax.

Article 3 – General Definition

(1) **"National" : Paragraph 1 (f)**

The term "national" is used in paragraph 2 (c) and (d) of Article 4 in determining resident status. It is also used in Article 19 Government Service.

In New Zealand the term covers a citizen of New Zealand and any legal person, partnership and association under the law in force in New Zealand.

In the French Republic the term covers any individual possessing French nationality, any legal person, partnership and association under the law in force in the French Republic.

(2) **Undefined Terms : Paragraph 3**

This is a standard provision. Where a term is not defined it has the meaning applicable under the domestic law of the country applying the convention.

Article 4 – Resident

(1) Paragraph 1 defines the meaning of the term "resident of a state" (i.e., for the purposes of Article 1). In effect the defined term is a reference to the domestic law of each country. Whenever the term is used in the convention, the residence of the taxpayer must first be determined in accordance with this Article.

(2) Paragraph 2 sets out the tests to be applied to solve the problem of a dual resident individual. Dual residence arises when a taxpayer is resident in both countries by virtue of the domestic law of each country. For example, an individual may have his permanent home in State A, where his wife and children live, and consequently, he is deemed to be resident in that State under its domestic law. However, he has spent six months of the year in State B and for that reason he is deemed to be resident in that State under its domestic law. This conflict is solved by the tests set out in paragraph 2 giving preference to the claim of State A.

(3) Paragraph 3 sets out the rule to determine the case of a company or other legal person which is resident in both countries. Residence will be decided on where the place of effective management of the enterprise is situated. In this respect New Zealand views the term "effective management" as meaning the practical day to day management, irrespective of where the overriding control is exercised.

(4) In applying the tests to dual residents it should be remembered that these tests apply only for the purposes of the tax convention. If the person **resident in New Zealand** (domestic law test) becomes for the purposes of the convention a "resident of France" after the tests have been applied, this does **not** mean that he is a non-resident for all purposes of New Zealand tax law. For example he can never be subject to non-resident withholding tax, the reason being that although he is treated as a non-resident for certain purposes of the convention, he is still a resident under the New Zealand Income Tax Act. What it does mean is that he is entitled to any benefits granted by the convention to a "resident of France". Thus, although not subject to withholding tax on, for example, New Zealand royalty income, he would still qualify for the 10 percent limitation in the convention.

Article 5 – Permanent Establishment

This Article defines the term "permanent establishment". This concept is the criteria used to determine the right of a Contracting State to tax the profits of an "enterprise of the other state". Due to the inclusion of the words "includes especially" in paragraph 2, the example cited as constituting a permanent establishment are by no means exhaustive.

The definition of "permanent establishment" is fairly standard but the following points should be noted:

Paragraph 3 — A building site or construction or installation project constitutes a permanent establishment if it lasts for more than 12 months.

Paragraph 5 (a) — An enterprise shall be deemed to have a permanent establishment if it carries on supervisory activities for more than 12 months in connection with a construction, installation or assembly project.

Paragraph 5 (b) — Includes the use or installation of substantial equipment or machinery for more than 12 months.

Article 6 – Income from Real Property

This Article recognises the internationally accepted practice in relation to income from land and the exploitation of land or landed property. The Article also applies to such items as rents, natural resource royalties, farming profits, etc. The principle of the Article is that income from "real property" may be taxed in the country where the property is situated. "Real property" is not defined in our general law but the Article provides extensive definition. Ships and aircraft are specifically excluded from the term "real property".

In paragraph 2 of the Protocol, France retains the possibility of applying its domestic laws relative to the taxation of income from shares or rights which are treated therein as income from real property.

The Article involves no change in current practice in relation to the income covered.

Article 7 – Business Profits

(1) This Article is in many respects a continuation of, and a corollary to, Article 5 on the definition of the concept of permanent establishment. Under Article 7 a Contracting State cannot tax the profits of an enterprise of the other Contracting State unless it carries on its business through a permanent establishment situated therein. If a permanent establishment exists the Article goes on to lay down a set of rules of reference for calculating the profits on which that permanent establishment should pay tax.

(2) Before dealing with the salient features of the Article some comment is warranted on the importance of paragraph 7. This is because reference to this Article and Article 5 will not always be necessary to determine the liability of the specific types of income. In effect paragraph 7 gives first preference to the other Articles in the convention. It follows that this Article will only be applicable to business profits which do not belong to the categories of income covered by the special Articles, and in addition, to dividends, royalties and interest which specifically come within the circumstances detailed in paragraph 5 of Article 10, paragraph 4 of Article 12, paragraph 5 of Article 11 and consequently fall within Article 7.

(3) Paragraph 1 expresses the general rule that profits are taxable only in the country of residence unless the enterprise is engaged in business in the other country through a permanent establishment, in which case the other country may tax the profits of the permanent establishment.

It is important to note that only income attributable directly to the permanent establishment's operations can form part of the establishment's operations. This does not mean that income which is not directly attributable to the establishment's operations escapes liability for tax (see paragraph 2 above). For example, the restriction on the rate of tax imposed by paragraph 2 of Articles 10, 11 and 12, which concern dividend, interest and royalty payments respectively, would apply if such income did not arise from the permanent establishment's operations.

(4) Paragraph 2 contains the normal provision enabling arm's-length profits to be attributed to the permanent establishment if necessary.

(5) Paragraph 3 merely expresses the taxpayer's right to deduct from the profits of the permanent establishment the expenses incurred for the purposes of the permanent establishment even if those expenses are incurred outside the country where the permanent establishment is situated.

(6) Paragraph 4 provides that where the profits to be attributed to a permanent establishment are determined, not on the basis of separate accounts or by making an estimate of arm's-length profit, but simply by apportioning the total profits of the enterprise by reference to various formulae then such a method may continue to be employed provided it has been customary to adopt such a practice. Such a method differs from those envisaged in paragraph 2 of Article 7, since it contemplates not an attribution of profits on a separate enterprise footing, but an apportionment of total profits.

However, in general the profits to be attributed to a permanent establishment should be determined by reference to the establishment's accounts if these reflect the real facts. A method of allocation which is based on apportioning total profits is generally not as appropriate as a method which has regard only to the activities of the permanent establishment and should be used only where it has, as a matter of history, been customary in the past and is accepted by the Department and taxpayer as being satisfactory.

(7) Paragraph 5 precludes the attribution of profits to a permanent establishment by reason of merely purchasing activities carried on by the permanent establishment for the enterprise.

(8) Paragraph 6 provides that unless there are good and sufficient reasons to the contrary the profits attributed to a permanent establishment must be determined by the same method each year.

(9) Paragraph 7: refer paragraph 2 above.

Article 7 – Business Profits Continued

(10) The Protocol contains certain provisions which relate to this Article:

- Firstly, both situations cited in paragraph 3 (a) were inserted at the request of the French Republic. They are of no consequence as far as New Zealand is concerned, since New Zealand abides by the arm's-length principle and associated rules contained in Article 7.
- Secondly, in terms of paragraph 3 (b) income from the business of any form of insurance is not subject to the provisions of this Article. Such income may be taxed in accordance with the domestic law of each country.

Article 8 – Shipping and Aircraft

(1) Under this Article profits from operating ships or aircraft in "international traffic" – defined in Article 3 (1) (e) – are to be taxed only in the country in which the place of effective management of the enterprise is situated.

International shipping and aircraft profits include income from:

(a) carriage of passengers and cargo;

(b) sale of passenger tickets on behalf of other enterprises;

(c) commercial advertising;

(d) charter fees (but refer paragraph 3 below).

(2) Due to the definition of "international traffic" exemption does not extend to profits derived from coastal traffic. Further, investment income of shipping and air transport enterprises is subject to the treatment ordinarily applied to that class of income, e.g., dividends derived would be subject to Article 10.

(3) Profits obtained from leasing a ship or aircraft on charter fully equipped, manned and supplied, whether or not the enterprise providing the ship or aircraft actually owns them, would be treated as profits from the operation of a ship or aircraft. However, the Article does not extend to profits from leasing a ship or aircraft on a bare boat charter basis **except** when it is an occasional source of income for an enterprise engaged in the international operation of ships or aircraft. Apart from this one exception, bare bc charter fees would normally be classified as business profits and consequently dealt with under Article 7.

(4) Protocol paragraph 1 includes in the definition of "international affic" any transport by a container where such transport is incidental to transport in "international traffic"

Article 9 – Associated Enterprises

This is a standard Article enabling an arm's-length profit to be attribut to associated enterprises.

Article 10 – Dividends

(1) Paragraph 1 of the Article simply states that dividends may be taxed in the State of the recipient's residence.

(2) Paragraph 2 provides that the Contracting State from which the dividends are paid also has the right to tax, but the maximum rate of tax that can be imposed is not to exceed 15 percent of the gross amount of the dividends. New Zealand's domestic law is not therefore restricted, as our withholding tax rate is 15 percent of the gross dividend. However, the 1980 Income Tax Amendment Act contains an amendment to the New Zealand domestic law by increasing the withholding tax rate to 30 percent of the gross dividend as from 1 April 1982. Therefore, in terms of the agreement New Zealand's taxing rights will be restricted to 15 percent of the gross dividend even though the rate under domestic law, as proposed, will be 30 percent.

Article 10 – Dividends Continued

(3) Dividends received by residents in France from French Corporations entitle the recipient to a tax credit ("avoir fiscal") equal to 50 percent of the dividend where the company pays corporation tax. However, the resident must include the tax credit in his taxable income (i.e., gross the dividends to 150 percent).

Paragraph 3 provides that where a New Zealand resident individual receives a dividend which qualifies for the tax credit ("avoir fiscal") the French Treasury will refund the tax credit ("avoir fiscal") subject to paragraph 2 provided that the New Zealand resident is liable to tax on the payment. The subject to tax test means that New Zealand companies cannot obtain the refund as they are not liable to tax in New Zealand on the dividends, e.g.:

Dividends distributed to New Zealand resident individual	$100.00
Tax Credit ("avoir fiscal")	$ 50.00
Aggregate income liable to tax in New Zealand	$150.00
French tax calculated at 15% on $150.00	$ 22.50

District offices will certify for taxpayers that they are resident in New Zealand and liable to tax in New Zealand on dividends received from French Corporations to enable them to obtain refunds from the French Treasury.

(4) Paragraph 4 defines "dividends" for the purposes of the Article. The effect is that "dividends" has the meaning given to it by section 4 of the Income Tax Act 1976.

(5) Paragraph 5 concerns shares which are effectively connected with a permanent establishment. The paragraph merely provides that in the State of source, the dividends are taxable as part of the profits of the permanent establishment there owned by the recipient which is a resident of the other State, **provided** they are paid in respect of holdings forming part of the assets of the permanent establishment or otherwise effectively connected with that establishment. In effect this relieves the State of source of the dividends from any limitations under the Article.

At present this qualification has no effect on the New Zealand tax position because our domestic law provides for a 15 percent final withholding tax in all cases on the gross payment and no agreement can extend the taxing rights under domestic law. However, in view of the change in the New Zealand domestic law from 1 April 1982 the New Zealand tax on dividends paid in respect of shares effectively connected with a permanent establishment will be increased to a maximum rate of 30 percent.

The above comments apply equally to an individual resident in a State and who has a fixed base in the other State for the purposes of performing any of the kinds of independent personal services mentioned in Article 14.

(6) Where French Corporations have not paid corporation tax the tax credit ("avoir fiscal") is not available in respect of dividends distributed and the corporations are required to make a pre-payment (precompte) equal to half the amount of the dividend distributed.

Paragraph 6 provides that a New Zealand resident may be refunded the pre-payment (precompte) which is deemed to be a dividend subject to the conditions in paragraph 2, e.g.:

Dividends distributed to New Zealand resident	$100.00
Pre-payment (precompte)	$ 50.00
Aggregate income liable to tax in New Zealand	$150.00
French tax calculated at 15 percent on $150.00	$ 22.50

(7) Paragraph 7: The main effect of this paragraph is that it restricts the application of taxes on undistributed profits. For example, New Zealand cannot impose excess retention tax on a privately controlled company which is a "resident of France". Protocol, paragraph 4 confirms that bonus issue tax is not included in the expression "tax on the company's undistributed profits".

(8) Paragraph 8 restricts the French withholding tax on a permanent establishment which a New Zealand resident has in France.

Article 11 – Interest

(1) Paragraph 1 gives the State that the recipient of the interest is a resident of, the right to tax that income.

(2) Paragraph 2 also gives the State in which the interest arises the right to tax the payment, but the maximum rate of tax that can be imposed is not to exceed 10 percent of the gross amount of the interest. New Zealand's tax is therefore limited to 10 percent on gross interest paid to residents of France instead of the usual 15 percent.

(3) Paragraph 3 exempts from tax interest if:

(a) it is paid to the Government, a local authority or an agency wholly owned by the Government or local authority.

(b) it is paid to any person who is a resident of a State in respect of a loan made or guaranteed, or of a credit made or guaranteed, by the other State or by an agency of that other State.

(4) Paragraph 4 defines "interest" for the purposes of the Article. Penalty charges are excluded from the term as is income which would, because of a State's domestic law, be classified as a dividend. Therefore, in New Zealand, for example, interest received by debenture holders under debentures to which section 192 or 195 of the Income Tax Act 1976 applies would be dealt with under the dividend Article.

(5) Paragraph 5 provides that in the State of source, interest is taxable as part of the profits of the permanent establishment there owned by the recipient which is a resident of the other State, provided it is paid in respect of debt-claims forming part of the assets of the permanent establishment or otherwise effectively connected with that establishment. In effect this paragraph relieves the State of source of the interest from any limitation under the Article.

This qualification ties in with the New Zealand domestic law which provides that if a non-resident has a fixed establishment in New Zealand, then interest derived is not subject to non-resident withholding tax but is to be assessed on an annual basis.

The above comments apply equally to an individual resident in a State and who has a fixed base in the other State for the purposes of performing any of the kinds of independent personal services mentioned in Article 14.

(6) Paragraph 6 is a source rule and precludes argument as to the source of the interest.

The paragraph also deals with interest arising through a permanent establishment or fixed base. Where a loan was contracted for the requirements of that establishment and the interest is borne by the latter, the paragraph determines that the source of the interest is in the Contracting State in which the permanent establishment is situated, leaving aside the place of residence of the owner of that establishment or base.

(7) Paragraph 7 is an anti-avoidance provision to ensure that only a reasonable interest payment is taxed at the reduced rate specified in the convention.

Article 12 – Royalties

(1) Paragraph 1 gives the State that the recipient of the royalties is a resident of, the right to tax that income.

(2) Paragraph 2 also gives the State in which the royalty arises the right to tax the payment, but the maximum rate of tax that can be imposed is not to exceed 10 percent of the gross amount of the royalty. Again New Zealand's domestic law is restricted as our withholding tax rate is 15 percent.

Article 12 – Royalties Continued

(3) Paragraph 3 defines "royalties" for the purposes of the Article. The term includes lump sum payments and certain rents. However, variable or fixed payments for the working of mineral deposits or other natural resources do not fall within the defined term as they are governed by Article 6. Although all royalties and know-how payments (whether lump sum or not) are covered, the following should be noted:

- Payments for the use of industrial, commercial or scientific **equipment** are royalties as defined. However, due to paragraph 5 of the Protocol such payments are treated as royalties only if they are "dependent upon production, sales, performance, results or any similar basis related to the use of that equipment".

  Where this is not the case, the payment is deemed to be profits of an enterprise to which the provisions of Article 7 apply.

- Likewise payments for information concerning industrial, commercial or scientific **experience** come within the definition of royalties. However, paragraph 6 of the Protocol negates the application of Article 12 if the payments received are for technical, consultant or supervisory **services.** In such cases the provisions of Article 7 or Article 14 apply.

- If a payment is made in the form of rent rather than on a royalty basis and the payment comes within the term "royalties" then the 10 percent maximum rate on gross applies. However, rental payments do not constitute royalties under our domestic law and there is, therefore, no non-resident withholding tax applicable. Payments of this nature will be subject to an annual assessment on the net amount after expenses and if the tax so levied exceeds 10 percent of the gross rental, a rebate will be given by virtue of the convention to bring the tax down to 10 percent of gross.

(4) Paragraph 4: The comments relating to paragraph 5 of the Dividend Article apply equally here, except that New Zealand's domestic law in relation to royalties provides for a withholding tax rate of 15 percent final on cultural royalties or where the aggregate annual royalty payment does not exceed $1,000, and minimum final in all other cases.

(5) Paragraphs 5 and 6: The comments in paragraphs 6 and 7 respectively of the Interest Article apply equally here.

Article 13 – Income from Alienation of Property

(1) Paragraph 1 concerns income or gains derived from the alienation of **real** property. Income from such alienation may be taxed in the State where the property is situated. For example, if a resident of France sells at a profit a real property situated in New Zealand the profit can be taxed in New Zealand if the New Zealand domestic law permits that taxation.

(2) Paragraph 2 deals with income or gains derived from the alienation of **personal** property forming part of the business property of a permanent establishment or pertaining to a fixed base used for the performing of independent personal services. This may be taxed in the State where the permanent establishment or fixed base is situated.

(3) Paragraph 3 provides that income or gains from the alienation of ships or aircraft operated in international traffic are taxable only in the State where the effective management of the enterprise is situated.

(4) Paragraph 4 provides that income or gains from the alienation of shares, the property of which consists principally of real property situated in a State, may be taxed in the other State. In paragraph 7 of the Protocol, France retains the possibility of applying the provisions in its laws relative to the taxation of gains from the alienation of shares or rights which are part of a substantial participation in a company which is a resident of France, or of shares or rights of companies the assets of which consist mainly of real property situated in France.

(5) Paragraph 5 stipulates that any income or gains from any property not covered by the Articles is to be taxable only in the State in which the alienator is a resident.

Article 14 – Independent Personal Services

(1) This Article concerns income from professional personal services (i.e., independent personal services) as distinct from income from dependent personal services (e.g., remuneration such as salary or wages) which is dealt with separately under Article 15. Income from independent personal services is to be treated in much the same way as "business profits", that is, taxable only in the country of residence unless attributable to a fixed base regularly available to the taxpayer in the other State. The term "fixed base" is intended to cover a centre of activity of a fixed or permanent character, for instance, a doctor's consulting room or the office of an architect or lawyer.

(2) The Article does not apply to artistes and athletes which are dealt with under Article 17.

Article 15 – Dependent Personal Services

(1) Paragraph 1 states the general rule that personal services performed by a resident of one of the Contracting States may be taxed in that other Contracting State, only if the services are performed in that other Contracting State.

(2) Paragraph 2 states the case where exemption will be given by the State visited. The main requirements are that the visit does not exceed 183 days in the aggregate in the income year, that the remuneration is paid by an employer not resident in that State, and is not borne by a permanent establishment or fixed base which the employer has in that State. Initially New Zealand PAYE tax will be required to be deducted from the remuneration paid but will be refunded at the time of departure provided the requirements of the Article are fully met. In this respect a certificate must be obtained, by the person seeking exemption, from the French tax authorities which certifies that that person is a resident of France for the purposes of French tax.

(3) Paragraph 3 provides that remuneration derived from employment aboard a ship or aircraft operating in international traffic may be taxed in the State in which the place of effective management of the shipping or airline enterprise is situated. This means that if the place of effective management of the enterprise is in France then France has the right to tax the remuneration derived by the employee. New Zealand would allow credit for any French tax on such remuneration if derived by a New Zealand resident.

Article 16 – Directors' Fees

This Article allows the State in which the company paying the fees or other similar payments is resident to have the first right to tax such income.

Article 17 – Artistes and Athletes

(1) Paragraph 1 enables the State in which the entertainer or athlete is performing the services to tax the income derived from these personal activities.

(2) Paragraph 2 deals with the situation where income for the performance of an entertainer or athlete is not paid or paid in full to the entertainer or athlete himself but to another person. The paragraph permits the State in which the performance is given to impose a tax on the profits diverted from the income of the entertainer or athlete to the enterprise where for instance the entertainer or athlete has control over or rights to the income thus diverted or has obtained or will obtain some benefit directly or indirectly from that income. Without this paragraph the State where the services are being performed would in such cases, be unable to tax:

(a) because it would not be personal service income to the entertainer, and

(b) in the absence of a permanent establishment the payments could not be taxed as business profits in the hands of the other person.

Article 17 – Artistes and Athletes Continued

(3) Paragraph 3 gives the sole right of taxation to the country of residence if the entertainer or athlete is supported substantially by public funds, political subdivisions, local authorities or a statutory body.

(4) Paragraph 4 covers the same circumstances as paragraph 3 but extends it to cover cases where the income accrues to a person other than the athlete and is supported substantially by public funds, political subdivisions, local authorities or a statutory body.

Article 18 – Pensions

(1) Paragraph 1 gives the state of **residence** exclusive rights to tax pensions where they are paid in consideration of past employment. However, this rule is subject to Article 19 2 wherein Government pensions paid in respect of services rendered are taxed exclusively in the State of source **but** if the recipient **and** a national of the other State the pensions are taxable on a residence basis. (See definition of "national" in Article 3.) This means that a French Government pension paid to a resident of New Zealand is taxed only in France and exempt in New Zealand unless the recipient is also a national of New Zealand in which case the pension is taxed only in New Zealand and exempt in France.

(2) Paragraph 2 states that social security pensions are taxable only in the State paying the pensions, i.e., State of source.

(3) In paragraph 3 payments made by both countries in respect of war pensions are exempt in the country of residence as long as they remain exempt in the country of source.

Article 19 – Government Service

(1) This Article deals with remuneration paid to an individual in respect of services rendered to a State or political subdivision or local authority thereof.

(2) Paragraph 1 provides for two situations:

- Remuneration paid by a State in respect of services rendered to it by an individual shall be taxable only by that State.
- However, such remuneration shall be taxed exclusively in the other State if the services are rendered in that State by an individual who is a resident of that State, **and** who is also a national of that State or did not become a resident of that State solely for the purposes of rendering those services.

The second situation can be illustrated as follows.

Remuneration paid by the French Government for services rendered in New Zealand by an individual who is a resident and national of New Zealand shall be taxed exclusively in New Zealand. This is still the position even though the individual, although a national of New Zealand, did become a resident of New Zealand for the purposes of rendering those services for the French Government.

(3) Paragraph 2 deals with Government pensions. (See explanation to Article 18 in this supplement.)

(4) Paragraphs 1 and 2 do not apply if the services are performed in connection with business carried on by the State, or one of its political subdivisions or local authorities, paying the remuneration. Under paragraph 3 the ordinary rules apply: Article 15 for wages and salaries, Article 16 for directors' fees and Article 18 for pensions. Article 17 is not mentioned because paragraphs 1 and 2 of Article 19 are to apply to remuneration paid to artistes employed by the State irrespective of whether such artistes could be said to be rendering services in connection with business carried on by the State.

Article 20 – Students

This Article exempts from New Zealand tax a student or business apprentice from France on maintenance, education or training payments received here from overseas. Note:

- The student or apprentice must have been a resident of France immediately before he comes to New Zealand.
- He must be in New Zealand **solely** for the purpose of his education or training.
- The exemption is restricted to the payments mentioned, i.e., for maintenance.
- The payments must be made from sources outside New Zealand.
- There is no time limit on the period spent in New Zealand.

The converse applies to a New Zealand student or apprentice going to France.

Article 21 – Teachers and Researchers

(1) Under paragraph 1 a French teacher or researcher is exempt from New Zealand tax for two years on his income from carrying out teaching or research in New Zealand irrespective of the length of the visit or whether he will be taxed in France on that income if:

- he is or was a resident of France immediately before visiting New Zealand.
- his visit is **solely** for the purpose of teaching or research.

This article is different from other conventions which require a person's visit not to exceed two years for the exemption to apply.

The same rules apply conversely to residents of New Zealand visiting France for the same purpose.

(2) Paragraph 2 sets out the condition that for paragraph 1 to apply the research must be undertaken in the public interest and not for the private benefit of a specific person or persons.

Article 22 – Other Income

(1) This Article provides a general rule relating to income not dealt with in the other Articles of the convention. The income concerned is not only income of a class not expressly dealt with but also income from sources not expressly mentioned. A secondary effect of the Article is to clarify the situation of income derived from a third country by a person who could be "resident in" both France and New Zealand under the general laws of each country. Under the convention that person can be a "resident of" only one country. In such a situation the taxing rights are allocated to the country "of" which he is a resident.

(2) The effect of this Article is that income derived by a resident of New Zealand is taxed exclusively in New Zealand unless the income is derived from sources in France. If the income is derived from sources in France it may also be taxed there and a credit for the French tax is given in New Zealand, should that income be liable for New Zealand tax. The converse will apply in the case of a resident of France. Cases of conflict between two residences are to be determined by reference to Article 4.

Article 23 – Methods of Elimination of Double Taxation

(1) This Article contains the normal rules whereby each State gives credit for the other State's tax when assessing its residents on income derived from sources in the other State. It should be noted that the credit provisions in the Article are subject to the domestic law of each country.

Article 24 – Mutual Agreement Procedure

Article 25 – Exchange of Information

ese are standard articles and require no additional comment.

Article 26 – Diplomatic and Consular Privileges

(1) The aim of this Article is to ensure that diplomatic agents or consular officers shall, under the convention, receive no less favourable treatment than that to which they are entitled under international law or under special international agreements. Paragraph 2 establishes that the sending State is to be the State of residence for members of diplomatic or consular missions provided they are regarded as residents under the domestic law of that State.

(2) Paragraph 3 ensures that international organisations, organs or officials, or members of a diplomatic mission of a third State, who are liable in one of the Contracting States in respect only of income from sources therein shall not have the benefit of the convention.

Article 27 – Territorial Scope

(1) Paragraph 1 of this Article provides the definitions of France and New Zealand which in conventions with other countries are generally found in "Article 3 – General Definitions".

The Convention applies in the case of France to its European and Overseas Departments.

The French Overseas Departments at present are Guadeloupe, Guyane, Martinique, Reunion and Saint Pierre-et-Miquelon and do not include their Overseas Territories such as Tahiti and New Caledonia.

(2) Paragraphs 2 and 3 are standard in respect to extensions of territory of either country and require no additional comments.

Article 28 – Entry into Force

This Article provides that the convention will take effect in New Zealand from any income year commencing on or after 1 April 1982 and in France from the assessment year which commences on 1 January 1982.

Article 29 – Termination

This Article sets out the procedure if either State wishes to terminate the convention. Unless notice of termination is given in accordance with the Article the convention continues indefinitely.

Protocol

The Protocol deals with those items where some further explanation is required of points not covered in the Article concerned. The main points are explained earlier in this supplement on an Article by Article basis.

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