

**PROTOCOL
AMENDING THE CONVENTION
BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE FRENCH REPUBLIC
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**

ARTICLE XIV

Article 30 (Limitation on Benefits of the Convention) of the Convention shall be deleted and replaced by the following:

“Article 30

Limitation on Benefits of the Convention

1. A resident of a Contracting State shall be entitled to benefits otherwise accorded to residents of a Contracting State by this Convention only to the extent provided in this Article.

2. A resident of a Contracting State shall be entitled to all the benefits of this Convention if the resident is:

a) an individual;

b) a Contracting State, a political subdivision (in the case of the United States) or local authority thereof, or an agency or instrumentality of that State, subdivision, or authority;

c) a company, if:

(i) its principal class of shares (and any disproportionate class of shares) is regularly traded on one or more recognized stock exchanges, and either

aa) its principal class of shares is primarily traded on a recognized stock exchange located in the Contracting State of which the company is a resident (or, in the case of a company resident in France, on a recognized stock exchange located within the European Union or, in the case of a company resident in the United States, on a recognized stock exchange located in another state that is a party to the North American Free Trade Agreement); or

bb) the company's primary place of management and control is in the Contracting State of which it is a resident; or

(ii) at least 50 percent of the aggregate voting power and value of the shares (and at least 50 percent of any disproportionate class of shares) in the company are owned directly or indirectly by five or fewer companies entitled to benefits under clause (i) of this subparagraph or by persons described in subparagraph b), provided that, in the case of indirect ownership, each intermediate owner is a resident of either Contracting State;

d) a person described in clause (ii) of subparagraph (b) of paragraph 2 of Article 4 (Resident) of this Convention, provided that

(i) in the case of a pension trust and any other organization established in a State and maintained exclusively to administer or provide retirement benefits that is established or sponsored by a person that is a resident of that State under the provisions of Article 4, more than 50 percent of the person's beneficiaries, members or participants are individuals resident in either Contracting State; or

(ii) the organization sponsoring such person is entitled to the benefits of this Convention pursuant to this Article, or

e) a person other than an individual, if:

(i) on at least half the days of the taxable year at least 50 percent of the aggregate voting power and value of its shares (and at least 50 percent of any disproportionate class of shares) or other beneficial interests in the person is owned, directly or indirectly, by residents of the Contracting State of which that person is a resident that are entitled to the benefits of this Convention under subparagraph (a), subparagraph (b), clause (i) of subparagraph (c), or subparagraph (d) of this paragraph, provided that, in the case of indirect ownership, each intermediate owner is a resident of that Contracting State; and

(ii) less than 50 percent of the person's gross income for the taxable year, as determined in the person's State of residence, is paid or accrued, directly or indirectly, to persons who are not residents of either Contracting State entitled to the benefits of this Convention under subparagraph a), subparagraph b), clause (i) of subparagraph c), or subparagraph d) of this paragraph in the form of payments that are deductible for purposes of the taxes covered by this Convention in the person's State of residence (but not including arm's length payments in the ordinary course of business for services or tangible property and payments in respect of financial obligations to a bank that is not related to the payor).

f) An investment entity referred to in clause (iii) of subparagraph (b) of paragraph 2 of Article 4 (Resident) provided that more than half of the shares, rights, or interests in such entity are owned directly or indirectly by:

(i) persons that are resident of the Contracting State of which the investment entity is a resident and that qualify for benefits under subparagraph a), subparagraph b), clause (i) of subparagraph c), or subparagraph d) of this paragraph, and

(ii) citizens of the United States in the case of an investment entity that is a resident of the United States,

provided that, in the case of indirect ownership, each intermediate owner is a resident of the Contracting State of which the investment entity is a resident.

3. A company that is a resident of a Contracting State shall also be entitled to the benefits of the Convention if:

a) at least 95 percent of the aggregate voting power and value of its shares (and at least 50 percent of any disproportionate class of shares) is owned, directly or indirectly by seven or fewer persons that are equivalent beneficiaries; and

b) less than 50 percent of the company's gross income, as determined in the company's State of residence, for the taxable year is paid or accrued, directly or indirectly, to persons who are not equivalent beneficiaries, in the form of payments (but not including arm's length payments in the ordinary course of business for services or tangible property and payments in respect of financial obligations to a bank that is not related to the payor), that are deductible for the purposes of the taxes covered by this Convention in the company's State of residence.

4. a) A resident of a Contracting State shall be entitled to benefits of the Convention with respect to an item of income derived from the other Contracting State, regardless of whether the resident is entitled to benefits under paragraph 2 or 3 of this Article, if the resident is engaged in the active conduct of a trade or business in the first-mentioned State (other than the business of making or managing investments for the resident's own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance company or registered securities dealer), and the income derived from the other Contracting State is derived in connection with, or is incidental to, that trade or business.

b) If a resident of a Contracting State derives an item of income from a trade or business activity in the other Contracting State, or derives an item of income arising in the other Contracting State from an associated enterprise, subparagraph a) of this paragraph shall apply to such item only if the trade or business activity in the first-mentioned State is substantial in relation to the trade or business activity in the other State. Whether a trade or business activity is substantial for purposes of this paragraph shall be determined based on all the facts and circumstances.

c) In determining whether a person is “engaged in the active conduct of a trade or business” in a Contracting State under subparagraph a) of this paragraph, activities conducted by persons connected to such person shall be deemed to be conducted by such person. A person shall be connected to another person if one possesses at least 50 percent of the beneficial interest in the other (or, in the case of a company, at least 50 percent of the aggregate vote and at least 50 percent of the aggregate value of the shares in the company or of the beneficial equity interest in the company) or another person possesses, directly or indirectly, at least 50 percent of the beneficial interest (or, in the case of a company, at least 50 percent of the aggregate vote and at least 50 percent of the aggregate value of the shares in the company or of the beneficial equity interest in the company) in each person. In any case, a person shall be considered to be connected to another person if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same person or persons.

5. Notwithstanding the preceding provisions of this Article, where an enterprise of a Contracting State derives income from the other Contracting State, and that income is attributable to a permanent establishment which that enterprise has in a third jurisdiction, the tax benefits that would otherwise apply under the other provisions of the Convention shall not apply to that income if the combined tax that is actually paid with respect to such income in the first-mentioned Contracting State and in the third jurisdiction is less than 60 percent of the tax that would have been payable in the first-mentioned State if the income were earned in that Contracting State by the enterprise and were not attributable to the permanent establishment in the third jurisdiction. Any dividends, interest or royalties to which the provisions of this paragraph apply shall be subject to tax in the other Contracting State at a rate that shall not exceed 15 percent of the gross amount thereof. Any other income to which the provisions of this paragraph apply shall be subject to tax under the provisions of the domestic law of the other Contracting State, notwithstanding any other provision of the Convention. The provisions of this paragraph shall not apply if:

a) in the case of royalties, the royalties are received as compensation for the use of, or the right to use, intangible property produced or developed by the permanent establishment itself; or

b) in the case of any other income, the income derived from the other Contracting State is derived in connection with, or is incidental to, the active conduct of a trade or business carried on by the permanent establishment in the third jurisdiction (other than the business of making, managing or simply holding investments for the enterprise's own account, unless these activities are banking or securities activities carried on by a bank or registered securities dealer).

6. A resident of a Contracting State that is not entitled to benefits pursuant to the preceding paragraphs of this Article shall, nevertheless, be granted benefits of the Convention if the competent authority of the other Contracting State determines that the establishment, acquisition or maintenance of such person and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under the Convention. The competent authority of the other Contracting State shall consult with the competent authority of the first-mentioned State before denying the benefits of the Convention under this paragraph.

7. For the purposes of this Article,

a) the term “principal class of shares” means the ordinary or common shares of the company, provided that such class of shares represents the majority of the voting power and value of the company. If no single class of ordinary or common shares represents the majority of the aggregate voting power and value of the company, the “principal class of shares” is that class or those classes that in the aggregate represent a majority of the aggregate voting power and value of the company.

b) the term “disproportionate class of shares” means any class of shares of a company resident in one of the States that entitles the shareholder to disproportionately higher participation, through dividends, redemption payments or otherwise, in the earnings generated in the other State by particular assets or activities of the company.

c) the term “shares” shall include depository receipts thereof.

d) the term “recognized stock exchange” means:

(i) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under the U.S. Securities Exchange Act of 1934;

(ii) the French stock exchanges controlled by the “Autorité des marchés financiers”;

(iii) the stock exchanges of Amsterdam, Brussels, Frankfurt, Hamburg, London, Lisbon, Madrid, Milan, Stockholm, Sydney, Tokyo, Toronto and the Swiss stock exchange; and

(iv) any other stock exchanges agreed upon by the competent authorities of the Contracting States.

e) a company’s primary place of management and control shall be in the State of which it is a resident only if executive officers and senior management employees exercise day-to-day responsibility for more of the strategic, financial and operational policy decision making for the company (including its direct and indirect subsidiaries) in that State than in any other state, and the staffs conduct more of the day-to-day activities necessary for preparing and making those decisions in that State than in any other state.

f) the term “equivalent beneficiary” means a resident of a member state of the European Union or of a party to the North American Free Trade Agreement, but only if that resident:

- (i) aa) would be entitled to all the benefits of a comprehensive convention for the avoidance of double taxation between any member state of the European Union or any party to the North American Free Trade Agreement and the Contracting State from which the benefits of this Convention are claimed under provisions analogous to subparagraph a), subparagraph b), clause (i) of subparagraph c), or subparagraph d) of paragraph 2 of this Article, provided that if such convention does not contain a comprehensive limitation on benefits article, the person would be entitled to the benefits of this Convention by reason of subparagraph a), subparagraph b), clause (i) of subparagraph c), or subparagraph d) of paragraph 2 of this Article if such person were a resident of one of the Contracting States under Article 4 (Resident) of this Convention; and
 - bb) with respect to insurance premiums and to income referred to in Articles 10 (Dividends), 11 (Interest) or 12 (Royalties) of this Convention, would be entitled under such convention to an exemption from excise tax on such premiums or a rate of tax with respect to the particular item of income for which benefits are being claimed under this Convention that is at least as low as the rate applicable under this Convention; or
- (ii) is a resident of a Contracting State that is entitled to the benefits of this Convention by reason of subparagraph a), subparagraph b), clause (i) of subparagraph c), or subparagraph d) of paragraph 2 of this Article.

For the purposes of applying paragraph 3 of Article 10 (Dividends) in order to determine whether a person owning shares, directly or indirectly, in the company claiming the benefits of this Convention is an equivalent beneficiary, such person shall be deemed to hold the same voting power in the case of a company resident of the United States, or share of the capital in the case of a company resident of France, in the company paying the dividend as the company claiming the benefits holds in such company.

g) with respect to dividends, interest, or royalties arising in France and beneficially owned by a company that is a resident of the United States, a company that is a resident of a member state of the European Union shall be treated as satisfying the requirements of subparagraph (f)(i)(bb) for purposes of determining whether such United States resident is entitled to benefits under this paragraph if a payment of dividends, interest, or royalties arising in France and paid directly to such resident of a member state of the European Union would have been exempt from tax pursuant to any directive of the European Union, notwithstanding that the income tax convention between France and that other member state of the European Union would provide for a higher rate of tax with respect to such payment than the rate of tax applicable to such United States company under Article 10 (Dividends), 11 (Interest), or 12 (Royalties) of this Convention.”

ARTICLE XV

Paragraph 1 of Article 32 (Provisions for Implementation) of the Convention shall be deleted and replaced by the following:

“1. The competent authorities of the Contracting States may prescribe rules and procedures, jointly or separately, to determine the mode of application of the provisions of this Convention.”

ARTICLE XVI

1. The Contracting States shall notify each other when their respective constitutional and statutory requirements for the entry into force of this Protocol have been satisfied. The Protocol shall enter into force on the date of receipt of the later of such notifications.

2. The provisions of this Protocol shall have effect:

a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January of the year in which this Protocol enters into force;

b) in respect of other taxes, for taxable periods beginning on or after the first day of January next following the date on which the Protocol enters into force.