

EXPLANATORY MEMORANDUM TO
THE DRAFT DOUBLE TAXATION RELIEF AND INTERNATIONAL TAX
ENFORCEMENT (TAXES ON INCOME AND CAPITAL) (FRANCE) ORDER 2008

2008 No. [XXXX]

1. This explanatory memorandum has been prepared by HM Revenue & Customs and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. **Description**

The draft Order brings into effect those arrangements specified in the Double Taxation Relief and International Tax Enforcement Convention (“the Convention”) set out in the Schedule to the draft Order.

3. **Matters of special interest to the Select Committee on Statutory Instruments**

- 3.1 Type of resolution

The draft Order is subject to the affirmative resolution procedure.

- 3.2 Details of the Convention

Further details of the Convention scheduled to the draft Order are annexed to this memorandum.

4. **Legislative Background**

- 4.1 General

The Order is made under section 788(1) of the Income and Corporation Taxes Act (“ICTA”) 1988 (c. 1) and section 173(1) of the Finance Act (“FA”) 2006 (c. 25). Section 788 was amended by section 88(1) of the Finance Act 2002 (c. 23) and extended by section 277 of the Taxation of Chargeable Gains Act 1992 (c. 12).

Section 788 of ICTA 1988 provides the mechanism by which arrangements made with overseas territories for the purpose of affording relief from double taxation in relation to income tax, corporation tax and capital gains tax and taxes of a similar character in the other territory are given effect in the United Kingdom.

Section 173 of FA 2006 provides the mechanism by which such arrangements may also include provisions about, among other things, the exchange of information foreseeably relevant to the administration, enforcement or recovery of any tax or duty.

The Convention is scheduled to the Order. It is thus given domestic legislative effect.

In accordance with section 788(10) of ICTA 1988 and section 173(7) of FA 2006, a draft of this Order is required to be laid before and approved by a resolution of the

House of Commons prior to submission to Her Majesty in Council. Section 788(10) ICTA was substituted by section 176 of FA 2006.

4.2 EU legislation

This instrument does not implement EU legislation.

5. Extent

The instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Financial Secretary to the Treasury (Stephen Timms) has made the following statement regarding Human Rights:

In my view the provisions of the draft Double Taxation Relief and International Tax Enforcement (Taxes on Income and Capital) (France) Order 2008 are compatible with the Convention rights.

7. Policy background

Double Taxation Conventions aim to eliminate the double taxation of income or gains arising in one country and paid to residents of another country. They do this by dividing the taxing rights that each treaty partner has under its domestic law over the same income and gains. They provide additional protection for taxpayers by specific measures combating discrimination in tax treatment. More generally, Conventions benefit the taxpayer by ensuring certainty of treatment and, as far as possible, by reducing compliance burdens. Conventions also serve an Exchequer protection role by including provisions to combat avoidance and evasion – not least by measures providing for the exchange of information between revenue authorities. They also encourage and maintain international consensus on the appropriate tax treatment of cross-border economic activity and thus promote international trade and investment.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no regulatory impact on business, charities or voluntary bodies. Taxpayers may have to make a claim to HM Revenue & Customs or the other country's fiscal authority in order to benefit from the Convention. However, taxpayers will benefit from reduced compliance burdens and, in many cases, from having to deal with just one fiscal authority.

8.2 Under a Double Taxation Convention, one or both of the countries gives up all or part of their taxing rights so that a given source of income is taxed only once. Measured against a baseline of single taxation only, Conventions do not therefore generally have an exchequer cost; rather, by encouraging cross-border economic activity, they can lead to an increase in tax revenue. But where double taxation is unrelieved, the economic activity in question, and hence the higher tax revenue attributable to it, will often be only temporary.

9. Contact

Douglas Rankin at HM Revenue & Customs (tel: 020 7147 2696 / Email: Douglas.Rankin@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.

GENERAL

All the United Kingdom's recent Double Taxation Conventions largely follow the approach adopted in the OECD's *Model Tax Convention on Income and on Capital*. This Convention continues that approach. In addition, it reflects changes in policy and legislation in the United Kingdom and France since the entry into force of the existing Convention between the two countries, which this new Convention replaces.

NOTES ON DETAILS

ARTICLE 1 – PERSONAL SCOPE

This Article sets out the general scope of the Convention.

The Convention is to apply to persons who are residents of one or both of the Contracting States (the United Kingdom and France).

ARTICLE 2 – TAXES COVERED

This Article lists the taxes to which the Convention is to apply.

The existing United Kingdom taxes to which the Convention applies are the income tax, the corporation tax and the capital gains tax.

The existing French taxes to which the Convention applies are the personal income tax, the corporation tax, the social contribution on corporation tax, the tax on salaries, the “contributions sociales généralisées” and the “contributions pour le remboursement de la dette sociale”.

The Convention is to apply also to any identical or substantially similar taxes subsequently imposed by either country in addition to or in place of the taxes mentioned above. A provision on these lines is usually included in our Conventions.

ARTICLE 3 – GENERAL DEFINITIONS

This Article defines a number of terms used in the Convention and provides a rule for determining the meaning of terms not defined in the Convention.

ARTICLE 4 – RESIDENCE

This Article establishes the meaning of “resident of” the United Kingdom or France and lays down detailed rules for dealing with situations where individuals or other persons may be considered residents of both countries for tax purposes under their respective domestic law. The Article also addresses the applicability of treaty benefits to fiscally transparent entities.

ARTICLE 5 – PERMANENT ESTABLISHMENT

This Article provides the definition of a “permanent establishment”. It defines when an enterprise will or will not be deemed to have a permanent establishment in the other country. It also provides that a building site, construction or installation project is considered a permanent establishment if it lasts for more than twelve months.

Taken with Article 7, this Article describes the circumstances and manner in which businesses of one country may be taxed on their profits in the other country.

ARTICLE 6 – INCOME FROM IMMOVABLE PROPERTY

This Article generally allows the country in which the property is situated to tax income from immovable property. Paragraph 5 provides that where shares or other rights held by companies and certain other bodies give an entitlement to enjoy immovable property held by those companies and other bodies, any income from that property may be taxed in the country in which it is situated, notwithstanding any provisions in Article 7 relating to the taxation of the profits of companies or other bodies.

ARTICLE 7 – BUSINESS PROFITS

This Article provides that unless an enterprise of one country carries on business in the other through a permanent establishment situated there, its profits will be taxable only in its country of residence.

Where the enterprise has a permanent establishment in the other country, that country will be entitled to tax profits attributable to the permanent establishment.

ARTICLE 8 – INTERNATIONAL TRANSPORT

Paragraph (1) provides that profits of an enterprise of one country from the operation of ships, aircraft or railway vehicles in international traffic will be taxable only in that country.

Paragraph (2) clarifies that paragraph 1 also applies to profits from participation in a pool, a joint business or an international operating agency.

Paragraph (3) provides that profits from the operation of ships, aircraft or railway vehicles include profits from the rental of ships, aircraft, railway vehicles or the use of containers. In each case the rental or use must be incidental to the operations in international traffic.

ARTICLE 9 – CHANNEL TUNNEL

Paragraph (1) defines a number of terms used in this Article.

Paragraph (2) provides that the Article will apply for the taxation by both countries of income from immovable property forming part of the Channel tunnel and profits from

the construction and operation of the tunnel notwithstanding anything to the contrary in Articles 6, 7 or 8 of this Convention, so long as:

- (a) one of the Concessionaires is an enterprise of one country and the other Concessionaire is an enterprise of the other country; and
- (b) the Concession provides for the equal sharing of costs and revenues between the two Concessionaires; and
- (c) the Concessionaires effectively share such costs and revenues equally during the construction and operation of the Fixed Link.

Paragraph (3) provides that each country will tax the income or profits of the tunnel Concessionaires separately, regardless of whether they have a partnership between them, and apportion the costs and revenues of the Concessionaires equally.

Paragraph (4) provides that the income or profits of a Concessionaire shall, subject to certain conditions, be taxable only in the country of which it is an enterprise.

Paragraph (5) explains how the profits of the Concessionaires will be taxed if the conditions of paragraph 4 are not met.

Paragraph (6) provides for the tax treatment of salaries, wages, etc. of employees of the Concessionaires or associated companies employed in connection with the tunnel.

ARTICLE 10 – ASSOCIATED ENTERPRISES

This Article provides that appropriate adjustments may be made in determining the profits of an enterprise of one country where conditions made or imposed between the enterprise and an associated enterprise of the other country differ from those that would be made between independent enterprises.

Where such an adjustment is made to the profits of an enterprise by one country, the other country will make an appropriate adjustment to the amount of tax charged on those profits, in order to relieve the double taxation which might otherwise arise as a result of an adjustment by one country.

ARTICLE 11 – DIVIDENDS

This Article contains the rules for the taxation of dividends paid by a company which is a resident of one country to a resident of the other.

Paragraph (1)(a) provides that dividends paid by a company resident in one country to a resident of the other country may be taxed in that other country.

Paragraph (1)(b) provides that the rate of tax in the source country is not to exceed 15 per cent of the gross amount of the dividends, provided the beneficial owner is a resident of the other country.

Paragraph (1)(c) provides that dividends are exempt from tax in the source country if they are beneficially owned by a company resident in the other country which is liable to corporation tax and holds at least 10 per cent of the capital in the company paying the dividends.

Paragraph (1)(d) provides that dividends derived from France and paid to a UK pension fund may not be taxed at a rate higher than that specified in paragraph (1)(b)

Paragraph (1)(e) ensures that the provisions of paragraph (1) shall not affect the taxation of the company paying the dividends.

Paragraph (2) defines the term “dividends”.

Paragraph (3) provides that where a resident of one country receives dividends from the other country and carries on business in that other country through a permanent establishment there, with which the holding from which the dividend arises is effectively connected, the provisions of paragraph (1) shall not apply. The taxation of the dividends is then governed by Article 7 (Business Profits).

Paragraph (4) rules out the extra-territorial taxation by one country of dividends paid by a company that is a resident only of the other country. The first country may not tax the dividends unless they are paid to a resident of that country or connected with a permanent establishment in that country. There is a similar provision in respect of undistributed profits.

Paragraph (5) provides for the treatment of dividends paid by real estate investment vehicles of either country.

Paragraph (6) ensures that the provisions of the Article will not apply if the shares or other rights in respect of which the dividend is paid were created or assigned mainly to take advantage of the Article.

ARTICLE 12 – INTEREST

This Article contains the rules for the taxation of interest paid by a resident of one country to a resident of the other.

Paragraph (1) provides that interest arising in one country and paid to a resident of the other country shall be taxed in that other country.

Paragraph (2) defines the term “interest”.

Paragraph (3) provides that paragraph (1) shall not apply where a resident of one country receives interest from the other country and carries on business in that other country through a permanent establishment there, with which the debt claim in respect of which the interest is paid is effectively connected. In such circumstances, the taxation of the interest is governed by Article 7 (Business Profits).

Paragraph (4) provides that where the amount of interest paid is excessive because of a special relationship between the payer and the recipient, relief under the Article will be given only in respect of the amount that would be payable under “arm’s length” conditions.

Paragraph (5) ensures that the provisions of the Article will not apply if the debt claim on which the interest is paid was created or assigned mainly to take advantage of the Article.

ARTICLE 13 – ROYALTIES

This Article contains the rules for the taxation of royalties arising in one country and derived by a resident of the other.

Paragraph (1) provides that royalties arising in one country and paid to a resident of the other shall be taxed only in that other country.

Paragraph (2) defines the term “royalties”.

Paragraph (3) provides that where a resident of one country receives royalties from the other country and carries on business in that other country through a permanent establishment there, with which the right or property in respect of which the royalties are paid is effectively connected, the provisions of paragraph (1) shall not apply. The taxation of royalties is then governed by Article 7 (Business Profits).

Paragraph (4) provides that where the amount of royalties paid is excessive because of a special relationship between the payer and the recipient, relief under the Article will be given only in respect of the amount that would be payable under “arm’s length” conditions.

Paragraph (5) ensures that the provisions of the Article will not apply if the rights in relation to which the royalties are paid were created or assigned mainly to take advantage of the Article.

ARTICLE 14 – CAPITAL GAINS

This Article contains rules for the taxation of gains deriving from the alienation of property situated in one country by a resident of the other.

Paragraph (1) provides that gains derived from the alienation of immovable property in one country by a resident of the other may be taxed in the country where the property is situated.

Paragraph (2) provides that gains made by a resident of one country from the alienation of certain types of shares or interests in partnerships or trusts that derive their value principally from immovable property situated in the other country may be taxed in that other country.

Paragraph (3) provides that gains arising from the alienation of movable property relating to a permanent establishment maintained in the other country or the permanent establishment itself may be taxed in that other country.

Paragraph (4) provides that gains derived by a resident of one country from the alienation of ships, aircraft or railway vehicles operated in international traffic and of movable property pertaining to the operation of those ships, aircraft or railway vehicles shall be taxable only in the country where the taxpayer is resident.

Paragraph (5) preserves the domestic law right of each country to tax gains in cases not covered by paragraphs (1) to (4).

Paragraph (6) confirms the right of a country to tax gains from the alienation of any property by a person (including an individual, company or trustee) who is or was a resident of that country at any time during the fiscal year in which the property is alienated or at any time during the six preceding fiscal years.

ARTICLE 15 – INCOME FROM EMPLOYMENT

Paragraph (1) provides that, in general, employment income of a resident of one country can be taxed in the other country if the employment is exercised there.

Paragraph (2) provides an exception to the general rule in paragraph 1 when an employee is present in the other country for not more than 183 days in any twelve-month period, the remuneration is paid by or on behalf of an employer who is not a resident of the other country and the remuneration is not borne by a permanent establishment which the employer has in the other country. Where all three conditions are satisfied, the remuneration will be taxable only in the employee's country of residence.

Paragraph (3) provides that the remuneration of an individual working on a ship, aircraft or railway vehicle operated in international traffic may be taxed in the country where the enterprise operating the ship, aircraft or railway vehicle is resident.

Paragraph (4) provides that the term "employment" includes the exercise of management or executive functions, other than functions covered by Article 16, in a company subject to French corporation tax.

ARTICLE 16 – DIRECTORS' FEES

This Article provides that directors' fees and other similar payments paid to a resident of one country who is a member of the board of directors of a company may be taxed in the country where the company is resident.

ARTICLE 17 – ARTISTES AND SPORTSMEN

Paragraphs (1) and (2) provide that income in respect of the personal activities of entertainers and sportsmen can be taxed in the country in which those activities are exercised, whether the income is paid directly to the entertainer or sportsman or to some other person.

Paragraphs (3) and (4) provide that income from activities performed in one country by an entertainer or sportsman who is a resident of the other country shall be taxed only in the other country, if the visit is wholly or substantially supported by public funds of the resident country, local authorities of that country or statutory bodies of that country or of a local authority of that country, whether the income is paid directly to the entertainer or sportsman or to some other person.

ARTICLE 18 – PENSIONS

This Article provides that pensions (other than government service pensions) and other similar remuneration paid in consideration of past employment shall be taxable only in the country of which the pensioner is a resident.

ARTICLE 19 – GOVERNMENT SERVICE

Paragraph (1) provides that remuneration paid to an individual in respect of services rendered to a country, or to one of its local authorities or statutory bodies, will be taxable only in that country.

However, the other country will have the sole taxing right if the services are carried out in the other country by one of that country's own nationals who is resident there.

Paragraph (2) provides that in general, a pension paid to an individual in respect of services rendered to a country, or to one of its local authorities, or, in France, one of its statutory bodies, will be taxable only in that country. If however the individual is a resident and national of the other country then that other country will have the sole taxing right.

Paragraph (3) provides an exception to the rules in paragraph (1). In the case of remuneration or pensions arising in connection with a business carried on by a country or one of its local authorities or statutory bodies the provisions of Article 15, 16, 17 and 18 will apply, as appropriate.

Paragraph (4) specifies other pensions which are to be exempt from income tax.

ARTICLE 20 – TEACHERS AND RESEARCHERS

This Article provides that, subject to certain conditions, the remuneration of a visiting teacher or researcher at a recognised educational institution will not be taxed in the country visited for a period not exceeding two years provided the remuneration is taxed in the other country. It also confirms the type of income from research that is covered by this Article.

ARTICLE 21 – STUDENTS

This Article provides that certain payments for the maintenance, education or training of a visiting student or business apprentice will not be taxed in the country visited, provided the payments are made from sources outside that country.

ARTICLE 22 – OFFSHORE ACTIVITIES

Paragraph (1) sets out when the provisions of the Article will apply.

Paragraph (2) provides that, subject to paragraphs 3 and 4 of this Article and with the exception of paragraph 2 of Article 15 (Income from employment), an enterprise of a country carrying on offshore activities in connection with the exploration or exploitation of natural resources of the sea-bed and sub-soil of the other country shall be considered to be carrying on a business through a permanent establishment in the other country.

Paragraph 3 provides that paragraph 2 will not apply if the activities are not carried out for more than 30 days in any 12 month period, unless the enterprise carrying out the activities is associated with another enterprise carrying out similar activities in the same country. An associated enterprise shall be regarded as one that is controlled by the other enterprise or by a third person or persons who controls both the enterprises.

Paragraph 4 provides that profits of a resident of a country derived from transportation of supplies or personnel to locations in one of the countries where offshore activities are taking place, or from the operation of tugboats and other vessels in connection with such activities, shall be taxable only in his country of residence.

ARTICLE 23 – OTHER INCOME

Paragraph (1) provides that any item of income not specifically covered elsewhere in the Convention, other than income from trusts or the estates of deceased persons, will be taxable by the country of which the beneficial owner is a resident.

Paragraph (2) provides that the provisions of paragraph (1) will not apply, other than to income from immovable property, if the right or property in respect of which the income is paid is effectively connected with a permanent establishment maintained in the country of source. In that case, the income will be taxable in accordance with Article 7 (Business profits).

Paragraph (3) provides that where, because of a special relationship between the payer and the recipient, the amount of income paid is excessive, the relief under the Article will apply only to the income that would be payable at “arm’s length”.

Paragraph (4) ensures that the provisions of the Article will not apply if the rights in relation to which the income is paid were created or assigned mainly to take advantage of the Article.

ARTICLE 24 – ELIMINATION OF DOUBLE TAXATION

This Article sets out the methods by which double taxation is to be eliminated.

Paragraph (1) sets out how the United Kingdom will relieve double taxation.

Sub-paragraph (a) provides that French tax on profits, income or chargeable gains from sources within France is to be allowed as a credit against any UK tax computed by reference to the same income, profits or chargeable gains.

Sub-paragraph (b) provides that, in the case of a dividend paid by a company resident in France to a company resident in the UK which controls at least 10 per cent of the voting power in the paying company, the credit will take into account French tax payable by the company in respect of the profits out of which the dividend is paid.

Paragraph (2) says that for the purposes of paragraph 1,

Sub-paragraph (a) provides that profits, income and capital gains owned by a resident of the UK which may be taxed in France under the terms of the Convention, will be deemed to arise from sources in France.

Sub-paragraph (b) provides that capital gains from sources neither in France nor the UK which may be taxed under paragraph 6 of Article 14 will be deemed to arise from sources in France.

Sub-paragraph (c) provides that the French taxes mentioned in clauses (i) to (iv) of of paragraph 1(b) of Article 2, and any identical or substantially similar taxes imposed after the signature of the Convention, shall be considered to be French taxes.

Paragraph 3 sets out how France will avoid double taxation.

Sub-paragraph (a) says that for the computation of French tax, France will take into account income which, under the Convention, may be or shall be taxed only in the UK if that income is not exempt from French corporation tax. A resident of France will be entitled to a tax credit against French tax for any UK tax paid. Apart from when the income is one of the categories of income set out in sub-paragraph (ii), when the credit will be equal to the UK tax, the credit will be given if the resident of France is subject to UK tax on the income. The credit will be equal to or not exceed the French tax attributable to such income.

Sub-paragraph (b) explains the meaning of the term “amount of French tax attributable to such income” for the purposes of sub-paragraph (a).

Sub-paragraph (c) explains the meaning of the term “amount of tax paid in the United Kingdom” for the purposes of sub-paragraph (a).

Paragraph (4) sets out which country should eliminate double taxation in the case of gains covered by paragraph 6 of Article 14.

Paragraph (5) explains the meaning of “income” in paragraph 3.

ARTICLE 25 – NON-DISCRIMINATION

Subject to certain conditions, this Article provides that neither country shall impose discriminatory taxes (or requirements) on the nationals, permanent establishments and enterprises of the other. The Article only applies to the taxes that are the subject of the Convention.

Paragraph (5) explains that the Article does not oblige either country to grant to non-residents the personal allowances, reliefs and reductions which resident individuals receive.

Paragraphs (6), (7) and (8) provide for the treatment of contributions to a pension scheme in one country when the individual is employed in the other country.

ARTICLE 26 – MUTUAL AGREEMENT PROCEDURE

This Article authorises the competent authorities of the two countries to endeavour to resolve, by mutual agreement, cases of taxation not in accordance with the Convention and to settle points of doubt or difficulty in the application or interpretation of the Convention.

Paragraph 1 provides that, where a person considers that the actions of one or both countries will result in taxation not in accordance with the Convention, he may present his case to the

competent authority of the country of which he is a resident or national. This right applies irrespective of any remedies provided by domestic law. The paragraph also sets out time limits for the presentation of a case: a case must be presented within three years of the first notification of the action resulting in taxation not in accordance with the Convention or within six years from the end of the taxable year or chargeable period in respect of which that taxation is imposed or proposed.

Paragraph 2 requires the competent authority to which the case is presented to endeavour, if it considers the objection justified and if it is unable to deal with the matter unilaterally, to resolve the case by mutual agreement with the competent authority of the other country. The paragraph also provides that any agreement reached between the competent authorities shall be implemented notwithstanding any time limits in the domestic law of the countries.

Paragraph 3 provides that the competent authorities shall endeavour to resolve by mutual agreement any difficulties or doubts arising over the interpretation or application of the Convention. It also provides they may consult on cases not provided for in this Convention, for the purposes of eliminating double taxation.

Paragraph 4 permits the competent authorities to communicate directly with one another for the purposes of reaching agreement under the Article.

Paragraph 5 provides that, in the cases where the competent authorities are unable to reach an agreement under paragraph 2 within two years, the unresolved issues will, at the request of the person who presented the case, be solved through an arbitration process, unless a decision on the unresolved issues has already been given by a court or administrative tribunal of either country, or the case has been presented to either competent authority under the European convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises of 23 July 1990. It also provides that, unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, the decision of the arbitration panel will be binding on both countries and must be implemented regardless of any time limits in the domestic laws of both countries. The competent authorities are obliged to settle by mutual agreement the way in which this paragraph is to be applied.

ARTICLE 27 – EXCHANGE OF INFORMATION

This Article contains rules governing the exchange of information between the countries.

Paragraph 1 requires the competent authorities to exchange such information as is foreseeably relevant for carrying out the provisions of the Convention or of their domestic laws. The exchange of information is not restricted by Articles 1 and 2, which means that information concerning persons not resident in either country and information relevant to all taxes, not just those covered by the Convention, may be exchanged.

Paragraph 2 provides that information exchanged in accordance with paragraph 1 shall be treated as secret, although it may be disclosed to certain specified persons or authorities. Such information may be disclosed in public court proceedings or in judicial decisions.

Paragraph 3 imposes certain limitations on the exchange of information. Paragraphs 1 and 2 cannot impose an obligation on a country to carry out administrative measures at variance with the laws and administrative practices of either country, to supply information which is

not obtainable under the laws or in the normal course of the administration of either country or to supply information that would disclose any trade, business, industrial, commercial or professional secret or trade process, or information whose disclosure would be contrary to public policy.

Paragraph 4 provides that the country from which information is requested shall use its information gathering powers to obtain the requested information even though that country may have no domestic tax interest in that information. The obligation is subject to the limitations of paragraph 3 but a country cannot decline to supply information solely because it has no domestic tax interest in that information.

Paragraph 5 makes clear that paragraph 3 cannot be applied to permit a country to decline to supply information requested solely because the information is held by certain financial institutions. However a country may decline to supply information which is covered by professional privilege provisions in domestic law.

ARTICLE 28 –DIPLOMATIC AND CONSULAR OFFICIALS

Paragraph (1) confirms that the provisions of the Convention do not disturb the tax privileges that diplomatic and consular officials, and members of permanent missions to international organisations, are entitled to under international law or under the provisions of special agreements.

Paragraph (2) provides that the Convention will not apply to international organisations or their organs or officials, or to diplomatic or consular officials or the permanent delegation of a third country, who are present in one of this Convention's countries and are not liable in either Convention country to the same obligations of tax on total income and capital gains as are residents of the Convention countries.

ARTICLE 29 – MISCELLANEOUS RULES

Paragraph (1) provides that, apart from business income covered by Article 7 and dividends in Article 11, when any income is relieved by the Convention from tax in one country, but a person in the other country is subject to tax in respect of the amount of that income remitted to or received in the other country, rather than the full amount, then the relief in the first country will only apply to the amount of the income which is taxed in the other country.

Paragraph (2) provides that when under Article 14 any gains may be taxed only in one country and a person in that country is subject to tax in respect only of the amount of gains remitted to or received there and not the full amount, then the relief to be allowed under Article 14 in the other country will only apply to the amount of the gains which is taxed in the other country.

Paragraph (3) provides that, regardless of sub-paragraph 1(b) of Article 2, property outside of France which an individual, who is resident in France but who is a UK national, owns on 1 January in each of the five calendar years following that in which he became resident will not be included in the assessment of the French capital tax. Also, if a resident of France becomes non-resident for at least three years, and then regains resident status, the five calendar year rule in the first part of paragraph 3 will apply.

ARTICLE 30 – IMPLEMENTATION OF THE CONVENTION

Paragraph (1) provides that the competent authorities of both countries may settle the mode of application of the Convention.

Paragraph (2) sets out what a person in one of the countries needs to present to the tax administration of that country when claiming the benefits of the Convention.

ARTICLE 31 – ENTRY INTO FORCE

Paragraph (1) provides that both countries will notify each other through diplomatic channels when they have completed their respective legislative procedures for bringing the Convention into force. The Convention will enter into force on the date of the later of these notifications.

Paragraph (2) provides that the Convention will take effect in the United Kingdom for income tax and capital gains tax for any year of assessment beginning on or after 6 April and, for corporation tax, any financial year beginning on or after 1 April in the next calendar year after entry into force.

In France, the Convention will take effect for taxes on income withheld at source, for amounts taxable after the calendar year of entry into force; for taxes on income not withheld at source, for income relating to any calendar year or accounting period beginning after the calendar year of entry into force; and for capital tax in paragraph 3 of Article 29, for taxable events after the calendar year of entry into force.

Paragraph (3) provides that, notwithstanding the provisions of the previous paragraph, the provisions of Article 9 (Channel Tunnel) shall have effect in the UK from 1 April 1994 and in France from 1 January 1994.

Paragraph (4) provides that, for the taxes covered by this Convention, the existing UK/France Double Taxation Convention, signed in 1968 and amended by four Protocols signed in 1971, 1973, 1986 and 1987, will terminate and cease to have effect from the date this Convention has effect. For tax credits on dividends paid by UK resident companies, the 1968 Convention and subsequent Protocols shall terminate and cease to be effective from the date this Convention enters into force.

ARTICLE 32 - TERMINATION

This Article provides that the Convention may be terminated by either country giving notice of termination through diplomatic channels at least six months before the end of a calendar year after the year of entry into force. The Article also details the dates from which such a termination will be effective.

PROTOCOL

The Protocol contains clarificatory material relating to the Articles above and which forms an integral part of the Convention.

Paragraph 1 clarifies that the tax on salaries in the list of French taxes in Article 2(1)(b) is governed by the provisions in the Convention applicable to business profits.

Paragraph 2 clarifies that United Kingdom, as defined in Article 3, does not include the Channel Islands, the Isle of Man, Gibraltar, the Sovereign Base Areas of Cyprus and any other overseas country or territory having special relations with the UK.

Paragraph 3 clarifies the treatment of a permanent establishment of a partnership and the treatment of any income or gains attributable to that permanent establishment in Article 5. The permanent establishment will be regarded as a permanent establishment in the country in which it is situated of each member of the partnership who is entitled to the benefits of the Convention, and the income or gains will be attributable to the permanent establishment of each partner in proportion to their share of the permanent establishment.

Paragraph 4 clarifies that in Article 6 the term “immovable property” includes options and similar rights in connection with such property.

Paragraph 5 clarifies that, in Article 7, when a resident of one country is a member of a partnership resident in the other country the Convention shall not prevent the first country from taxing that resident on his or her share of the partnership income, profits or gains, but that income, profits or gains shall be treated for the purposes of Article 24 as being from sources in the other country.

Paragraph 6 clarifies that, in Article 11, when a country exempts a permanent establishment of an entity of the other country under its domestic law on the taxation of real estate investment vehicles, the Convention will not restrict the first country from taxing income from immovable property deemed to be distributed by the permanent establishment.

Paragraph 7 clarifies that, for the purpose of Articles 11, 12 and 13, managers of investment companies and funds established in one of the countries may submit a claim for the benefits provided by those Articles. If the investment companies or funds are not resident in one of the countries, managers may submit claims and the competent authorities shall agree how to apply the Convention to those claims.

Paragraph 8 clarifies that when paragraph 5 of Article 12, paragraph 5 of Article 13 and paragraph 4 of Article 23 prevent those Articles applying to an item of income, that income may be taxed in both countries under their domestic laws.