

# **U.S.-FRANCE ESTATE TAX TREATY**

**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 estates, inheritances, and gifts signed at Washington on November 24, 1978, amended by the Protocol signed at Washington on December 8, 2004.**

The President of the United States of America and the President of the French Republic, desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on estates, inheritances, and gifts, have appointed for that purpose as their respective plenipotentiaries:

The President of the United States of America: The Honorable George S. Vest, Assistant Secretary of State for European Affairs,

The President of the French Republic: His Excellency Francois de Laboulaye, Ambassador of France,

who having communicated to each other their full powers, found in good and due form, have agreed upon the following provisions.

## **Article 1 Estates and Gifts Covered**

(1) This Convention shall apply to estates of decedents whose domicile at death was in France and to estates of decedents which are subject to the taxing jurisdiction of the United States by reason of the decedent's domicile therein or citizenship thereof at death.

(2) This Convention shall also apply to gifts of donors whose domicile at the time of making a gift was in France, and to gifts which are subject to the taxing jurisdiction of the United States by reason of the donor's domicile therein or citizenship thereof at the time of making of a gift.

(3) A person who at the time of death or the making of a gift was a resident of a possession of the United States and who acquired United States citizenship solely by reason of (a) his being a citizen of such possession, or (b) his birth or residence within such possession, shall be considered as having been neither domiciled in nor a citizen of the United States for purposes of this Convention.

(4) (a) Notwithstanding any other provision of the Convention, the provisions of this Convention shall not preclude the United States from taxing in accordance with its law the estate of a decedent or the gift of a donor who, at his death or at the making of the gift was

i) a citizen of the United States,

- ii) domiciled (within the meaning of Article 4) in the United States, or
- iii) a former citizen or long-term resident whose loss of such status had as one of its principal purposes the avoidance of tax (as defined under the laws of the United States), but only for a period of ten years following such loss.

(b) Subparagraph (a) of this paragraph 4 shall not, however, affect the obligation undertaken by the United States under:

(i) Article 10; paragraph 2 of Article 11; paragraphs 2 or 8 of Article 12; Article 13 or Article 14;

(ii) paragraph 3 of Article 11 as applied to the estates of persons other than former citizens or long-term residents referred to in subparagraph (a) of this paragraph 4; or

(iii) the benefits conferred by the United States under Article 17, as applied to transfers by individuals who are neither citizens of, nor have immigrant status in, the United States.

## **Article 2 Taxes Covered**

(1) This Convention shall apply to:

(a) In the case of the United States: the Federal gift tax and the Federal estate tax, including the tax on generation-skipping transfers; and

(b) In the case of France: the duty on gifts and the duty levied on succession.

(2) This Convention shall also apply to any identical or substantially similar taxes on estates, inheritances, and gifts which are subsequently imposed by a Contracting State in addition to, or in place of, the existing taxes.

(3) The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective laws relating to taxes on estates, inheritances, and gifts.

## **Article 3 General Definitions**

(1) In this Convention:

(a) The term "Contracting State" and "other Contracting State" mean the United States or France, as the context requires.

(b) The term "United States" means the United States of America and, when used in a geographical sense, means the state thereof and the District of Columbia.

Such term also includes any area outside the States and the District of Columbia which is, in accordance with international law, an area within which the United States may exercise rights with respect to the natural resources of the seabed and sub-soil.

(c) The term "France" means the French Republic and, when used in a geographical sense, means the European and Overseas departments of the French Republic. Such term also includes any area outside those departments which is, in accordance with international law, an area within which France may exercise rights with respect to the natural resources of the seabed and sub-soil.

(d) The term "enterprise" means a commercial or industrial enterprise carried on by an individual domiciled in a Contracting State.

(e) Except where expressly stated to the contrary, the term "tax" means the tax or taxes referred to in Article 2 which are imposed by the Contracting State (or Contracting States) as indicated by the context of the term's usage.

(f) The term "competent authority" means:

(i) In the case of the United States, the Secretary of the Treasury or his delegate, and

(ii) In the case of France, the Minister of Budget or his delegate.

(2) As regards the application of the Convention at any time by a Contracting State any term not defined therein shall, unless the context otherwise requires, or the competent authorities agree to a common meaning pursuant to the provisions of Article 14 (Mutual Agreement Procedure), have the meaning which it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

#### **Article 4 Fiscal Domicile**

(1) For the purpose of this Convention, the question whether an individual was domiciled in one of the Contracting States shall be determined according to the law of that State.

(2) Where by reason of the provisions of paragraph (1) an individual was domiciled in both Contracting States, then this case shall be determined in accordance with the following rules:

(a) He shall be deemed to have been domiciled in the Contracting State in which he maintained his permanent home;

(b) If he had a permanent home in both Contracting States or in neither of the Contracting States, his domicile shall be deemed to be in the Contracting State with which his personal relations were closest (center of vital interests);

(c) If the Contracting State in which he had his center of vital interests cannot be determined, his domicile shall be deemed to be in the Contracting State in which he had an habitual abode;

(d) If he had an habitual abode in both Contracting States or in neither of the Contracting States, his domicile shall be deemed to be in the Contracting State of which he was a citizen; or

(e) If he was a citizen of both Contracting States or of neither of them, the competent authorities of the Contracting States shall determine the Contracting State of his domicile by mutual agreement.

(3)

(a) Notwithstanding the provisions of paragraph (2), an individual who at the time of his death or the making of a gift was a citizen of one of other Contracting States without being a citizen of the other Contracting State, and who would be considered under paragraph (1) as having been domiciled in both Contracting States, shall be deemed to have been domiciled only in the Contracting State of which he was a citizen, if he had a clear intention to retain his domicile in that Contracting State and if he was domiciled in the other Contracting State in the aggregate less than 5 years during the 7-year period ending with the year of his death or the making of a gift.

(b) Notwithstanding the provisions of paragraph (2) or of subparagraph (a) of this paragraph, an individual who at the time of his death or the making of a gift was a citizen of one of the Contracting States without being a citizen of the other Contracting State, and who would be considered under paragraph (1) as having been domiciled in both Contracting States, shall be deemed to have been domiciled only in the Contracting State of which he was a citizen if:

(i) He was domiciled in the other Contracting State in the aggregate less than 5 years during the 7-year period ending with the year of his death or the making of a gift, provided that he was in that other Contracting State by reason of an assignment of employment or as the spouse or other dependent (personne a charge) of a person present in that other Contracting State for such a purpose; or

(ii) He was domiciled in the other Contracting State in the aggregate less than 7 years during the 10-year period ending with the year of his death or the making of a gift, provided that he was in that other Contracting State by reason of a renewal of an assignment of employment or as the spouse

or other dependent (personne a charge) of a person present in that other Contracting State for such a purpose.

## **Article 5**

### **Immovable (Real) Property**

(1) Real property may be taxed by a Contracting State if such property is situated in that State.

(2) The term "real property" shall have the meaning which it has under the law of the Contracting State in which such property in question is situated, being understood, however, that . mortgages or other debt-claims secured by real property shall not be regarded as real property. The term shall in any case include property accessory to real property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of real property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as real property.

(3) The term "real property" shall also include shares, participations and other rights in a company or legal person the assets of which consist, directly or through one or more other companies or legal entities, at least 50 percent of real property situated in one of the Contracting States or of rights pertaining to such property. These shares, participations and other rights shall be deemed to be situated in the Contracting State in which the real property is situated.

(4) The provisions of paragraph 1 shall also apply to real property of an enterprise and to real property used for the performance of independent personal services.

## **Article 6**

### **Business Property of a Permanent Establishment and Assets Pertaining to a Fixed Base Used for the Performance of Professional Services**

(1) Except as provided in Article 5, assets (other than ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft) used in or held for use in the conduct of the business of a permanent establishment may be taxed by a Contracting State if the permanent establishment is situated therein.

(2) For purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on. If an individual is a member of a partnership or similar pass-through entity which is engaged in trade or business through a fixed place of business, he shall be deemed to have been so engaged to the extent of his interest therein.

(3) The term "permanent establishment" shall include especially:

- (a) A seat of management;
- (b) A branch;
- (c) An office;
- (d) A factory;
- (e) A workshop;
- (f) A warehouse;
- (g) A mine, quarry, or other place of extraction of natural resources; and
- (h) A building site or a construction or assembly project which exists for more than 12 months.

(4) Notwithstanding the provisions of paragraphs (2) and (3), the term "permanent establishment" shall not be deemed to include:

- (a) The use of facilities solely for the purpose of storage, display, or delivery of goods, or merchandise belonging to the enterprise;
- (b) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display, or delivery;
- (c) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another person;
- (d) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or the collection of information, for the enterprise;
- (e) The maintenance of a fixed place of business solely for the purpose of advertising, supplying information, conducting scientific research, or similar activities which have a preparatory or auxiliary character, for the enterprise; or
- (f) The maintenance of a fixed place of business solely for investment purposes (and not for purposes of engaging in industrial or commercial activity) of an individual, whether by the individual or his employees or through a broker or other agent.

(5) A person who was acting in a Contracting State on behalf on an enterprise -- other than an agent to whom paragraph (4)(f) or (6) applies -- shall be deemed to have been a permanent establishment of the enterprise in that State if such person had, and habitually exercised in that State, an authority to conclude contracts in the name of the enterprise,

unless the exercise of such authority was limited to the purchase of goods or merchandise for the enterprise.

(6) An enterprise shall not be deemed to have had a permanent establishment in a Contracting State merely because the enterprise engaged in industrial or commercial activity in that State through a broker, general commission agent, or any other agent of an independent status acting in the ordinary course of his business.

(7) The fact that an enterprise controlled a corporation which engaged in industrial or commercial activity in a Contracting State (whether through a permanent establishment or otherwise) shall not be taken into account in determining whether the enterprise had a permanent establishment in that State.

(8) Except as provided in Article 5, assets pertaining to a fixed base used for the performance of professional services or other independent activities of a similar character may be taxed by a Contracting State if the fixed base is situated in that State.

### **Article 7 Tangible Movable Property**

(1) Tangible movable property other than currency may be taxed by a Contracting State if such property is situated in that State and is not taxable by the other Contracting State pursuant to Article 6. For this purpose, tangible movable property which is in transit shall be considered situated at the place of destination.

(2) Notwithstanding the provisions of paragraph (1), tangible movable property owned by an individual referred to in paragraph (3) of Article 4 and used for his normal personal use or that of his family may be taxed only by the Contracting State in which the individual was domiciled.

(3) Notwithstanding the provisions of paragraph (1), ships and aircraft operated in international traffic, and movable property pertaining to the operations of such ships and aircraft, may be taxed by a Contracting State if such ships and aircraft are registered in that Contracting State. Other ships and aircraft may be taxed by a Contracting State if the harbors and airports most frequently used by such ships and aircraft are situated in that State.

### **Article 8 Taxation Other Than Pursuant to Articles 5, 6, and 7**

Except as provided in Articles 5, 6, and 7, property, including shares or stock in a corporation, debt obligations (whether or not there is written evidence thereof), other intangible property, and currency may be taxed by a Contracting State only if the decedent or donor was a citizen of or was domiciled in that State at the time of death or the making of a gift, and if taxable by that State under its laws.

**Article 9**  
**Deduction of Debts**

(1) Debts, to the extent they would be deductible according to the internal law of a Contracting State, shall be deducted from the gross value of the property which may be taxed by that State in the proportion that such gross value bears to the gross value of the entire property wherever situated.

(2) Notwithstanding the provisions of paragraph (1), for purposes of determining the French tax:

(a) Debts pertaining to a permanent establishment or to a fixed base used for the performance of professional services or the independent activities of a similar character shall be deducted from the value of assets referred to in Article 6.

(b) Debts pertaining to ships and aircraft operated in international traffic and to movable property related to the operation of such ships and aircraft shall be deducted from the value of these assets.

**Article 10**  
**Charitable Exemptions and Deductions**

(1) A transfer to a legal entity created or organized in a Contracting State shall be exempt from tax, or fully deductible from the gross value liable to tax, in the other Contracting State with respect to its taxes referred to in Article 2, provided the transfer would be eligible for such exemption or deduction if the legal entity had been created or organized in that other Contracting State.

(2) The provisions of paragraph (1) shall apply only if the legal entity:

(a) Has a tax-exempt status in the first Contracting State by reason of which transfers to such legal entity are exempt or fully deductible;

(b) Is organized and operated exclusively for religious, charitable, scientific, literary, educational or cultural purposes; and

(c) Receives a substantial part of its support from contributions from the public or governmental funds.

(3) This Article shall not apply to transfers to a Contracting State or a political or administrative subdivision thereof unless specifically limited to a purpose described in paragraph (2)(b).

**Article 11**  
**Community Property and Marital Deduction**



(1) Property (other than community property) which was acquired during marriage for consideration by an individual who at the time of death or the making of a gift was domiciled in, or a citizen of, the United States and which passes to the spouse of such individual shall, for the purposes of determining the French tax, be treated as if it were community property, unless the spouses expressly elected to have a treatment other than community property treatment provided by a French civil law.

(2) Property (other than community property) which passes to a spouse who is not a citizen of the United States from a decedent or donor who was domiciled in France, and which may be taxed by the United States solely in accordance with Article 5, 6 or 7, shall, for the purpose of determining United States tax, be included in the taxable base only to the extent its value (after taking into account any applicable deductions) exceeds 50 percent of the value of all property included in the taxable base which may be taxed by the United States. The provisions of this paragraph shall not apply to a citizen of the United States domiciled in France or a former citizen or long-term resident of the United States referred to in subparagraph 4 (a) (iii) of Article 1 (Estates and Gifts Covered) of the Convention.

(3) In determining the estate tax imposed by the United States on a decedent's estate with respect to property that (within the meaning of the law of the United States) passes to the decedent's surviving spouse and that would qualify for the estate tax marital deduction under the law of the United States if the surviving spouse were a citizen of the United States and all applicable elections were properly made (the "qualifying property"), the decedent's estate shall be entitled to a marital deduction provided that:

(a) At the time of the decedent's death (i) the decedent was domiciled in either France or the United States or was a citizen of the United States; (ii) the decedent's surviving spouse was domiciled in either the United States or France; and (iii) if both the decedent and the decedent's surviving spouse were domiciled in the United States at the time of the decedent's death, one or both was a citizen of France; and

(b) The executor of the decedent's estate elects the benefits of this paragraph and irrevocably waives the benefits of any estate tax marital deduction that would be allowed under the law of the United States on a United States federal estate tax return filed for the decedent's estate by the date on which a qualified domestic trust election could be made under the law of the United States.

The marital deduction allowed under this paragraph 3 shall be equal to the lesser of the value of the qualifying property or the applicable exclusion amount (within the meaning of the law of the United States of America as of the date of death of the decedent) determined without regard to any gift previously made by the decedent.

(4) In the event the laws of either Contracting State are changed substantially to reduce the tax benefits of the marital deduction or community property, the competent authorities of the Contracting States shall consult to determine whether this Article shall be modified or shall cease to have effect.

## **Article 12**

### **Exemptions and Credits**

(1) Except as otherwise provided in this Convention, each Contracting State shall impose its tax, and shall allow exemptions, deductions, credits, and other allowances, in accordance with its laws.

(2) Double taxation shall be avoided in the following manner:

(a) In determining the French tax, where the decedent or the donor was domiciled in France at the time of the transfer:

(i) France shall tax the entire property comprising the estate or the gift, including any property which may be taxed by the United States in accordance with the provisions of this Convention, and shall allow as a deduction from that tax an amount equal to the United States tax paid upon the transfer of any property, which, in relation to the same event, may be taxed in the United States.

(ii) The deduction referred to in subparagraph (i) shall not, however, exceed that part of the French tax, as computed before any deduction is made, which is attributable to the property in respect of which the deduction is to be allowed. For purposes of this subparagraph (ii), "that part of the French tax means:

(A) Where the tax on the property concerned is computed by applying a proportional rate, the amount of the taxable net value of such property multiplied by the rate which actually applies to that property; and

(B) Where the tax on the property concerned is computed by applying a progressive scale, the amount of the taxable net value of such property multiplied by the rate resulting from the ratio of the French tax actually payable on the total property taxable in accordance with French law to the net value of that total property.

(iii) For purposes of subparagraph (i), the United States tax

(A) shall include any United States tax referred to in Article 2 but shall not include any tax that is permitted to be imposed by the United States under this Convention solely by reason of paragraph 4 of Article 1, and

(B) Shall be considered, in the case of property which may be taxed by the United States pursuant to article 5, 6, or 7, to be equal to that part of the French tax, as defined in subparagraph (ii), which is attributable to such property, but only if the decedent at his death or the donor at the time of the gift was a citizen of the United States and if it is established that the United States tax obligations with respect to the death or gift have been complied with.

(b) In determining the United States tax:

(i) Where both Contracting States impose tax with respect to property which is taxable by France in accordance with Article 5, 6 or 7, the United States shall allow a credit equal to the amount of the tax imposed by France with respect to such property.

(ii) If the decedent or donor was a citizen of the United States at the time of death or the making of a gift and would be considered under Article 4 as having been domiciled in France at such time, the United States shall allow a credit equal to the amount of the tax imposed by France (after allowing for the deduction from tax, if any, allowed under paragraph 2 (a) of this Article). If the decedent was a former citizen or long-term resident of the United States described in subparagraph 4 (a) (iii) of Article 1 (Estates and Gifts Covered), the United States shall allow a credit equal to the amount of the tax imposed by France in respect of all property which is included in the United States gross estate solely by reason of such status.

(iii) Notwithstanding the provisions of subparagraphs (i) and (ii), the total amount of all credits allowed by the United States pursuant to this Article or pursuant to its laws or other conventions with respect to all property in respect of which a credit is allowable under subparagraphs (i) and (ii) shall not exceed that part of the tax of the United States which is attributable to such property.

(3) In determining the estate tax imposed by the United States, the estate of a decedent (other than a citizen of the United States) who was domiciled in France at the time of his death shall be allowed a unified credit equal to the greater of:

(a) The amount that bears the same ratio to the credit allowed under the law of the United States to the estate of a citizen of the United States as the value of the part of the decedent's gross estate that at the time of the decedent's death is situated in the United States bears to the value of the decedent's entire gross estate wherever situated; or

(b) The unified credit allowed under the law of the United States to the estate of a nonresident not a citizen of the United States.

The amount of any unified credit otherwise allowable under this paragraph shall be reduced by the amount of any credit previously allowed with respect to any gift made by the decedent. For purposes of subparagraph (a), the part of the decedent's gross estate that is situated in the United States shall not exceed the part of the decedent's gross estate that may be taxed by the United States in accordance with this Convention. A credit otherwise allowable under subparagraph (a) shall be allowed only if all information necessary for the verification and computation of the credit is provided.

(4) In determining the gift or inheritance tax imposed by France with respect to transfers by reason of death or by gift by an individual, who at the time of the death or the making of the gift was a citizen of the United States or was domiciled in the United States, there shall be allowed the same deductions and credits as if the individual was domiciled in France. In determining the gift or inheritance tax imposed by France with respect to transfers by reason of death or by gift by an individual, who at the time of death or the making of the gift was domiciled in France, to an individual who is a citizen of the United States or is domiciled in the United States, there shall be allowed the same deductions and credits as if the recipient were domiciled in France.

(5) Any credits or deductions for tax imposed by a Contracting State allowable under this Article are in lieu of, and not in addition to, any such credits or deductions allowed by the laws of the other Contracting State and shall be computed in accordance with the provisions and subject to the limitations of the law of the other Contracting State, as it may be amended from time to time without changing the general principle thereof.

(6) If under this Convention any property would be taxable only in one Contracting State and tax, though chargeable, is not paid (otherwise than as a result of a specific exemption, deduction, exclusion, credit, or allowance) in that State, tax may be imposed by reference to that property in the other Contracting State notwithstanding any other provision to the contrary.

(8) The provisions of this Convention shall not result in an increase in the amount of the tax imposed by either Contracting State under its domestic laws. A reduction in the credit or deduction allowed against a Contracting State's tax for the tax paid to the other Contracting State which results from the application of this Convention shall not be construed as an increase in tax.

### **Article 13** **Time Limitations on Claims for Credit or Refund**

(1) Any claim for credit or for refund of tax founded on the provisions of this Convention shall be made before the expiration of the latest of:

(a) The time for the making of a claim for refund of tax under the laws of the Contracting State to which the claim for credit or refund is made;

(b) Five years from the date of death of the decedent, or from the making of a gift with respect to which the claim is made; or

(c) One year after final determination (administrative or judicial) and payment of tax for which any credit under Article 12 is claimed, provided that the determination and payment are made within 10 years of the date of death of the decedent or of the making of a gift.

(2) Any refund based on the provisions of this Convention shall be made without payment of interest on the amount so refunded.

#### **Article 14** **Mutual Agreement Procedure**

(1) Any person who considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention may, notwithstanding the remedies provided by the laws of those States, present his case to the competent authority of either Contracting State. Such presentation must be made within the period of time prescribed for the filing of a claim for credit or refund under Article 13. Should the person's claim be considered to have merit by the competent authority of the Contracting State to which the claim is made, it shall seek agreement with the competent authority of the other Contracting State with a view to the avoidance of taxation contrary to the provisions of this Convention.

(2) The competent authorities of the Contracting States shall resolve by mutual agreement any difficulties or doubts arising as to the application of this Convention.

(3) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of this Article. When it seems advisable for the purpose of reaching an agreement, the competent authorities may meet together for an oral exchange of opinions.

(4) When the competent authorities reach such an agreement, taxes shall be imposed, and refund or credit of taxes shall be allowed by the Contracting States in accordance with such agreement, notwithstanding any procedural rule (including the statute of limitations) applicable under the laws of either Contracting State.

(5) The competent authority of each Contracting State may prescribe such regulations and forms as may be necessary or appropriate to give effect to and implement the provisions of this Convention.

#### **Article 15** **Filing of Returns and Exchange of Information**

(1)

(a) The provisions of Articles 5, 6, 7, or 8, which change the taxability or situs of property of the amount of tax which would have been due in the absence of this Convention, shall not change:

(i) The requirements of the respective tax laws of the Contracting States relating to information on tax returns or notices, transfer certificates or maintenance of records, and

(ii) The applicability and amount of any sanctions of such laws with respect to the requirements referred to in paragraph (i).

(b) As concerns the United States, notwithstanding the provisions of paragraph (a), the requirements or sanctions found to be unnecessary for the prevention of fraud or fiscal evasion with respect to taxes to which this Convention applies may be eliminated or modified (but not made more burdensome) by regulations prescribed pursuant to paragraphs (5) of Article 14.

(2) The competent authority of each Contracting State shall furnish the competent authority of the other Contracting State such information as is pertinent to:

(a) Carrying out the provisions of this Convention or the laws of such other Contracting State concerning its tax insofar as the taxation thereunder is in accordance with this Convention, or

(b) Preventing fraud or fiscal evasion in relation to the taxes which are the subject of this Convention (including information with respect to property exempted from the tax of the first-mentioned Contracting State by reason of Article 8).

However, this paragraph shall not require the competent authority of a Contracting State to furnish information not in the possession of that Contracting State with respect to property exempted from its tax by reason of Article 8. Any information furnished shall be treated as secret and shall not be disclosed to any persons other than those (including a court or administrative body) involved in the assessment, collection, enforcement, or prosecution in respect to the taxes which are the subject of this Convention.

(3) In no case shall the provisions of paragraph (2) be construed so as to impose on one of the Contracting States the obligation:

(a) To carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;

(b) To supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) To supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information the disclosure of which would be contrary to public policy.

(4) The furnishing of information shall be either on a routine basis or on request with reference to particular cases. The competent authorities of the Contracting States shall agree on the list of information which shall be furnished on a routine basis.

## **Article 16**

### **Assistance in Collection**

(1) The two Contracting States undertake to lend assistance and support to each other in the collection of the taxes to which this Convention relates, together with interest, costs, and additions to the taxes and fines not being of a penal character according to the laws of the State requested, in cases where the taxes are definitively due according to the laws of the State making the application.

(2) In the case of an application for enforcement of taxes, revenue claims of each of the Contracting States which have been finally determined will be accepted for enforcement by the State to which application is made and collected in that State in accordance with the laws applicable to the enforcement and collection of its own taxes.

(3) The application will be accompanied by such documents as are required by the laws of the State making the application to establish that the taxes have been finally determined.

(4) If the revenue claim has not been finally determined, the State to which application is made will take such measures of conservancy (including measures with respect to transfer of property belonging to nonresident aliens) as are authorized by its laws for the enforcement of its own taxes.

(5) The assistance provided for in this Article shall not be accorded with respect to estates of citizens of the Contracting State to which application is made.

### **Article 17** **Diplomatic and Consular Officials**

(1) Nothing in this Convention shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

(2) Insofar as such privileges prevent the imposition of tax in the receiving Contracting State, the right to tax shall be reserved to the Contracting State in whose service the persons concerned exercised their functions and, notwithstanding any other provisions of this Convention, such persons shall not be deemed to have been domiciled in the receiving Contracting State.

### **Article 18** **Territorial Extension**

(1) This Convention may be extended, either in its entirety or with necessary modifications, to all or any of the Overseas Territories of the French Republic or the territories for whose international relations the United States is responsible, if such territories impose taxes substantially similar in character to those referred to in Article 2. Any such extension shall take effect from such date and subject to such modifications and conditions as may be specified and agreed between the Contracting States in notes to be exchanged through diplomatic channels or in any other manner in accordance with their

constitutional procedure. In the case of the United States, such procedure shall be that set forth in Article II, Section 2, of the Constitution of the United States (advice and consent of the Senate).

(2) At any time after the expiration of a period of one year from the effective date of an extension made by virtue of paragraph (1) either of the Contracting States may, by a written notice of termination given to the other Contracting State through diplomatic channels, terminate the application of the provisions in respect of any territory to which this Convention has been extended, in which case the provisions of the Convention shall cease to be applicable to such territory on and after the first day of January following the date of such notice.

(3) Unless otherwise agreed by both Contracting States, the termination of the Convention by one of the Contracting States under Article 20 shall also terminate the application of the Convention to any territory to which it has been extended under this Article.

### **Article 19 Entry Into Force**

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

(2) This Convention shall enter into force the first day of the second month following the month in which the exchange of the instruments of ratification takes place. Its provisions shall apply to estates of persons dying and to gifts made on or after that date.

(3) The Convention of October 18, 1946, as modified by the Protocol of May 17, 1948, and the Convention of June 22, 1956, shall be terminated on, and shall cease to have effect from, the date on which the present Convention enters into force according to paragraph (2).

### **Article 20 Termination**

(1) This Convention shall remain in force until terminated by one of the Contracting States. However, not earlier than the fifth year following the year in which this Convention entered into force, either Contracting State may, between the first of January and the thirtieth of June, give written notice of termination through diplomatic channels, with effect from the end of the calendar year in which such notice is given. In such an event, its provisions shall not apply to estates of persons dying or to gifts made after the end of the calendar year with respect to the end of which this Convention has been terminated.

(2) Notwithstanding the provisions of paragraph (1), if the effects of this Convention are substantially altered as a result of changes made in the tax law of either Contracting State,



either Contracting State may, through diplomatic channels, give a written notice of termination with effect not earlier than 6 months after such notice is given. In such an event, its provisions shall not apply to estates of persons dying or to gifts made on or after the effective date of the termination.

In witness whereof, the plenipotentiaries of the two Contracting States have signed this Convention and affixed thereto their seals.

Done at Washington, in duplicate, in the English and French languages, each text being equally authentic, this 24th day of November 1978.

FOR THE PRESIDENT OF THE UNITED STATES OF AMERICA:

*George S. Vest*

FOR THE PRESIDENT OF THE FRENCH REPUBLIC:

*Francois de Laboulaye*

*Embassy of France in the US - April 15, 2005*

**Article IX of the December 8, 2004 protocol, not included in the above Convention:**

1. This Protocol shall be subject to ratification in accordance with the applicable procedures in the French Republic and the United States of America and instruments of ratification shall be exchanged as soon as possible.
2. This Protocol shall enter into force upon the exchange of instruments of ratification and shall have effect with respect to gifts made and deaths occurring after that date.
3. Notwithstanding paragraph 2, paragraph 3 of Article 11 (Community Property and Marital Deduction) of the Convention and paragraph 3 of Article 12 (Exemptions and Credits) of the Convention, in each case as amended by this Protocol shall, notwithstanding any limitation imposed under the law of a Contracting State on the assessment or refund with respect to a person's or estate's return, have effect with respect to gifts made or deaths occurring after November 10, 1988, provided that (i) any claim for refund by reason of this Article VIII is filed before the date that is one year after the first day of the second month following the date on which this Protocol enters into force or within the otherwise applicable period for filing such claims under domestic law, and (ii) the provisions of paragraph 4 of Article 1 (Estates and Gifts Covered) shall apply with respect to such claim for refund. In the case of an estate that, prior to the date on which this Protocol enters into force, was allowed a marital deduction by reason of a transfer to

a qualified domestic trust, such estate may, within the time limit for filing a claim for refund referred to in the preceding sentence, elect to treat the qualified domestic trust as if it had not been established in order to claim the benefits of paragraph 3 of Article 11 (Community Property and Marital Deduction) or paragraph 3 of Article 12 (Exemptions and Credits) of the Convention. Is such an election is made, the property shall be treated as having been transferred to the surviving spouse at the time of the decedent's death for all purposes of this Convention.

IN WITNESS WHEREOF, the representatives of the governments, being duly authorized thereto, have signed this Protocol.

Done at Washington, this 8th day of December, 2004, in duplicate, in the English and French languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE FRENCH REPUBLIC

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

Jean-David LEVITTE

Samuel W. BODMAN

Ambassador of France to the United States

Deputy Secretary to the Treasury