

2002 Income and Capital Tax Convention and Final Protocol (English Translation)

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CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF FRANCE AND THE GOVERNMENT OF THE REPUBLIC OF ALBANIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION AND FRAUD WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL (WITH PROTOCOL)

[TRANSLATION]

The Government of the Republic of France and the Government of the Republic of Albania, desiring to enter into a new convention for the avoidance of double taxation and the prevention of fraud and fiscal evasion with respect to taxes on income and capital, have agreed as follows:

Article 1 Personal Scope

This Convention shall apply to persons who are residents of a Contracting State or of both Contracting States.

Article 2 Taxes Covered

1. This Convention shall apply to taxes on income and capital imposed on behalf of a Contracting State or one of its political subdivisions or local entities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and capital all taxes imposed on total income, total capital, or on elements of income or capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises as well as taxes on capital appreciation.
3. The existing taxes to which this Convention shall apply are in particular:
 - a) Insofar as France is concerned the:
 - i) income tax (L'impôt sur le revenu)
 - ii) income tax for companies (L'impôt sur les sociétés)
 - iii) tax on salaries (La taxe sur les salaires)
 - iv) tax on capital (L'impôt de solidarité sur la fortune)
 - v) social security contributions (Les contributions sociales généralisées)
 - vi) contributions to repay corporate debt (Les contributions pour le remboursement de la dette sociale)
 - vii) contribution to company tax (La contribution sur l'impôt sur les sociétés)including any tax withholdings, additional charges for said taxes and tax withholdings as well as additional taxes for individual income tax (hereinafter referred to as "French taxes");
 - b) Insofar as Albania is concerned:
 - i) income tax (including both taxes on company profits, and individual income taxes) (L'impôt sur le revenu (comprenant l'impôt sur les bénéfices des sociétés et l'impôt sur le revenu des personnes physiques));
 - ii) taxes on small enterprises (L'impôt sur les petites entreprises);
 - iii) taxes on land ownership (L'impôt foncier);(hereinafter referred to as "Albanian taxes").
4. This Convention shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of significant changes which have been made in their respective taxation laws.

Article 3 General Definitions

1. For the purposes of this Convention, unless the context requires a different interpretation:
 - a) The term "Contracting State" and "other Contracting State" refer to, depending on the case, either France or Albania;

- b) The term "France" refers to the European and foreign territories of the Republic of France, including the areas beyond its territorial waters over which, in accordance with international law, the Republic of France exercises its sovereign rights on the sea floor, the subsea floor, and their natural resources.
 - c) The term "Albania" refers to the Republic of Albania; when used in a geographical sense, it refers to the territory of the Republic of Albania, including the areas beyond its territorial waters over which, in accordance with international law, the Republic of Albania exercises its sovereign rights on the sea floor, the subsea floor, and their natural resources.
 - d) The term "person" " refers to any individual, company or group of people.
 - e) The term "company" refers to any body corporate or any entity which is treated as a body corporate for tax purposes.
 - f) The terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" refer, respectively, to an enterprise carried on by a resident of a Contracting State and to an enterprise carried on by a resident of the other Contracting State.
 - g) The term "international traffic" refers to any transport by ship or aircraft, operated by an enterprise, which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State.
 - h) The expression "competent authority" refers to:
 - i) insofar as France is concerned, the Minister of the Finance or his or her authorized representative;
 - ii) insofar as Albania is concerned, the General Manager of Taxes.
 - i) The term "national" refers to:
 - i) Any natural person having the nationality of a Contracting State;
 - ii) Any legal person, partnership or association established in accordance with the laws in force in a Contracting State.
2. As regards the application of this Convention at any given time by a Contracting State, any term or expression not defined herein shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that State concerning the taxes to which this Convention applies, wherein the meaning attributed to this term or expressed by the tax laws of such State shall prevail over the meaning attributed to it by other fields of law of such State.

Article 4 Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" refers to any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a substantially similar nature and also applies to that State and its political subdivisions or local entities. This term does not include any person who is liable to tax in that State in respect only of income from sources situated in that State.
2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his or her status shall be determined as follows:
 - a) This person shall be deemed to be a resident only of the State in which he or she has a permanent home available to him or her; if he or she has a permanent home available to him or her in both States, he or she shall be deemed to be a resident of the State with which his or her personal and economic relations are closer (center of vital interests)
 - b) If the State in which such person has his or her center of vital interests cannot be determined, or if he or she has not a permanent home available to him or her in either State, he or she shall be deemed to be a resident only of the State in which he or she has an habitual abode.
 - c) If such person has an habitual abode in both States or in neither of them, he or she shall be deemed to be a resident only of the Contracting State of which he or she is a national.
 - d) If he or she is a national of both or neither of the Contracting States, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, then such person shall be deemed to be a resident of the State in which its place of effective management is situated.

Article 5 Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" refers to a fixed place of business through which the business of an enterprise is wholly or partly carried on:
2. The term "permanent establishment" includes in particular the following:
 - a) a place of management;
 - b) a branch;
 - c) an office;
 - d) a factory;

e) a workshop;

f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. a) A construction or assembly site only shall be deemed a permanent establishment as long as its duration exceeds twelve months.

b) However, a construction, or assembly site that was set up during the ten-year period of time immediately following the effective date of implementation of this Convention, constitutes a permanent establishment when the duration of operations exceeds nine months. At the conclusion of this ten-year period, the provisions of subparagraph a) are the only applicable provisions.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include the following:

a) the use of facilities solely for the purposes 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 purposes of storage, display or delivery;

c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

d) the maintenance of a fixed place of business solely for the purposes of purchasing goods or merchandise or of collecting information, for the enterprise;

e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) through e), provided that the overall activity of the fixed place of business resulting from this combination remains of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to enter into contracts on behalf of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, as long as such persons are acting in the ordinary course of their business. However, when the activities of said agents are exercised exclusively, or almost exclusively, on behalf of said enterprise, said agent is not deemed an independent agent in the intended sense of the paragraph herein.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6 Income From Immovable Property

1. Income derived by a person being a resident of one of the Contracting States from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in the other Contracting State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agricultural and forestry operations, rights to which the provisions of general law respecting landed property apply, usufruct of immovable 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, boats, and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, leasing or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

5. When ownership of shares, or other corporate rights in an enterprise, a trust, or any other comparable institution, confers rights to enjoyment of immovable property located in a Contracting

State and owned by said business, trust or other comparable institution, the income arising from direct use, rental or any other use of the right to enjoyment, shall be taxable in said Contracting State, notwithstanding the provisions of Article 7 to 14.

Article 7 Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct enterprise engaged in the same or substantially similar activities under the same or substantially similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions any expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which this permanent establishment is situated or elsewhere.
4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, no provision contained in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted, however, shall be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of merchandise on behalf of the enterprise.
6. For the purposes of the preceding paragraphs of this Article, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to proceed otherwise.
7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8 Shipping or Air Transport

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. When the management headquarters of a sea transport business are located on board a ship, these headquarters are considered located in the Contracting State where the ship is registered, and in the absence of a port of registry, in the Contracting State where the ship operator is a resident.
3. The provisions of paragraph 1 of the Article herein shall also apply to the profits arising from participation in a pool, joint business, or an international operating agency.

Article 9 Associated Enterprises

1. Where:
 - a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
 - b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, andin either case, conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.
2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall proceed to make an appropriate adjustment to the amount of the tax charged therein on those profits as long as it believes that such adjustment is justified. In determining such adjustment, due regard shall be had to

the other provisions of this Convention, and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10 Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and in accordance with the laws of that State, but if the beneficial owner of such dividends is a resident of the other Contracting State, the tax so charged shall not exceed the following:

a) 5 per cent of the gross amount of dividends when the beneficial owner is a company that holds, directly or indirectly, at least 25 per cent of the capital of the company paying dividends;

b) 15 per cent of the gross amount of dividends in all cases.

The provisions of this present paragraph shall not affect the taxation of the company in respect of the profits which are used to pay dividends.

3. A resident of Albania receiving dividends disbursed by a company which is a resident of France may obtain reimbursement of the deduction to the extent that said resident was in effect paid dividends by said company. The gross amount of the reimbursed deduction shall be considered a dividend for the purposes of applying this Convention herein. The provisions of paragraph 2 shall be applicable in this case.

4. The term "dividends" refers to income from shares, and other rights to profits, not being debt-claims, as well as income submitted to distribution, pursuant to the fiscal legislation of the Contracting State, of which the distributing company is a resident. It is understood that the term "dividends" does not include the income subject of the provisions of Article 16.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, either an industrial or commercial activity through a permanent establishment situated therein, or independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected therewith. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even in case the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

7. Notwithstanding the provisions of paragraph 6 of Article 25, when a company, which is a resident of a Contracting State, operates in the other Contracting State, an industrial or commercial activity through a permanent establishment located therein, the profits of said permanent establishment may, after subjection to the tax on companies, be charged, pursuant to the laws of that other State, a tax in an amount which may not exceed five per cent.

8. The provisions of this Convention herein are applicable contingent upon the beneficial owner of dividends, resident of a Contracting State, establishing, when required by the fiscal administration of the other State, that participation generating dividends is not primarily intended, or primarily intended among other purposes, to take advantage of the provisions of the Article herein.

Article 11 Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and in accordance with the laws of that State, but if the beneficial owner is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of interest.

3. The provisions of paragraph 2 notwithstanding, the interest mentioned in paragraph 1 shall be taxable exclusively in the Contracting State of which the person receiving interest is a resident, when this person is the beneficial owner, and when one of the following conditions applies:

a) This person is a Contracting State, one of the local agencies or one of the public institutions, including the central bank of said state, or when said interest is paid by a Contracting State, one of the territorial agencies or one of the public institutions;

b) Said interest is paid as debt-claims or as loans guaranteed, insured or supported by a Contracting State or by an individual in the capacity of a Contracting State.

4. The term "interest" refers to income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits and, in particular, income from government securities and income from bonds or debentures, including premiums and prizes attached to said securities, as well as any other income which the laws of the State in which the interest arises treat similar to amounts loaned. Surcharges for late payments shall not be considered interest for the purposes of this Article. The term "interest" does not include those items of income that are considered dividends pursuant to the provisions of Article 10.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on an industrial or commercial activity in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected therewith. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or such fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is located.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some third parties, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of a similar relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable in accordance with the laws of each Contracting State, due regard being had to the other provisions of this Convention.

8. The provisions of this Convention herein shall not apply when the debt-claim generating interest was created, or essentially construed, in view of taking advantage of the provisions of the Article herein.

Article 12 Royalties

1. a) Royalties arising in a Contracting State and paid to a resident in the other Contracting State shall be taxable in that other State.

b) These royalties, however, shall also be taxable in the Contracting State in which they arise and in accordance with the laws of this State, although, in case the person receiving the royalties is their beneficial owner, the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.

2. The term "royalties" refers to payments of any kind received for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films, patents, trade or industrial marks, designs or models, plans, secret formulas or processes, as well as for the use of, or the right to use, any industrial, commercial, or scientific equipment, or for information related with experience acquired in the field of industry, commerce, or science ("know-how").

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on an industrial or commercial activity in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected therewith. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

4. Royalties are deemed to arise in a Contracting State when the payer is a resident of that State. In case the payer of the royalties, whether a resident of a Contracting State or not, however, has a permanent establishment or fixed base in a Contracting State for which the contract giving rise to the payment of the royalties has been entered and which as such incurs the charge thereof, such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

5. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some third parties, the amount of the royalties, having regard to the service for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of similar relationships, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable

pursuant to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

6. The provisions of this Convention herein shall not apply when the rights or property generating royalties was created, or essentially construed, in view of taking advantage of the provisions of the Article herein.

Article 13 Capital Gains

1. a) Gains derived from the alienation of immovable property shall be taxable in the Contracting State where the immovable property is located.

b) Gains derived from the alienation of shares or other rights in a company, a trust or a comparable institution, the value of the assets or property of which is made up of more than 50 per cent, or derived as more than 50 per cent, whether directly or indirectly, through interposition of one or several companies, trusts or comparable institutions, from immovable property located in a Contracting State, or from rights on such property, shall be taxable in that State. For the purposes of applying this provision, immovable property designated for the industrial, commercial or agricultural activity of such a company, as well as for the exercise of an independent personal service, shall be excluded.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains arising from the alienation of property, which is part of the assets of an enterprise, and which consists in ships and aircrafts operated for international traffic, or personal property designated for the operation of such ships and aircrafts, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, and 3 shall be taxable only in the Contracting State in which the seller resides.

Article 14 Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State, except for the following cases where income shall also be taxable in the other State:

a) Where the individual has a fixed base in the other Contracting State used for exercising the activity, in this case only the fraction of income related to the fixed base shall be taxable in this other Contracting State, or

b) Where the individual's stay in the other Contracting State extends over a period of time that is equal to, or greater than, 183 days per any 12-month period, commencing or ending during the calendar year under consideration, in this case, only the fraction of income derived from activity carried out in the other Contracting State is taxable in the other State.

2. The term "professional services" includes, in particular, independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists, and accountants.

Article 15 Dependant Personal Services

1. Subject to the provisions of Articles 16, 18, 19 and 21, salaries, wages and other similar remuneration received by a resident of a Contracting State in respect of paid employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is received therefor may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of paid employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

a) The beneficial owner is present in the other State for a period or periods not exceeding a total of 183 days, per period of 12 consecutive months, commencing or ending during the fiscal year in question, and

b) The remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

c) The remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, any remuneration derived in respect of paid employment exercised aboard a ship, or an aircraft, operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16 Directors' Fees

Directors' fees and other similar payments received by a resident of a Contracting State in his or her capacity as a member of the board of directors of an enterprise, which is a resident of the other Contracting State, may be taxed in that other State.

Article 17 Artists and Sportsmen

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his or her personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman him or herself but to another person, whether this person is a resident of the Contracting State or not, that income may, notwithstanding the provisions of Articles 7, 14, and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. The provisions of paragraph 1 notwithstanding, income of a resident of a Contracting State, derived from personal activities exercised in the other Contracting State, in the capacity of entertainment artist or sportsman, shall be taxable only in the Contracting State, when such activities in the other Contracting State are mainly financed using public funds of the Contracting State, or local agencies, or public institutions thereof.

4. The provisions of paragraph 2 notwithstanding, income of a resident of a Contracting State, derived from personal activities exercised in the other Contracting State, in his or her capacity of entertainment artist or sportsman, as such accrues, not to the entertainer or sportsman himself or herself, but to another person, whether this person is a resident of the Contracting State or not, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxable only in the Contracting State, when this person is primarily receiving public funding from the Contracting State, or local agencies or public institutions thereof.

Article 18 Pensions

Subject to the provisions of paragraph 2 of Article 19, any pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

Article 19 Public Service

1. a) Salaries, wages or other similar remuneration, other than pensions, paid by a Contracting State or one of its or local entities to an individual for services rendered to that State, agency or public institution, shall be taxable only in that State.

b) However, such salaries, wages or other similar remuneration shall be taxable only in the other Contracting State when services are rendered to that State, and when the individual is a resident of that State and is a national of that State, without concurrently being a national of the Contracting State.

2. a) Pensions paid by a Contracting State, or by local agencies, or public institutions thereof, whether directly or by drawing on funds specifically created for that purpose, to an individual in respect of services rendered to that State or a political subdivision, or local entity thereof, shall be taxable only in that State.

b) However, such pensions shall only be taxable in the other Contracting State, when the individual is a resident of that State, and is a national of that State, without concurrently being a national of the Contracting State.

3. The provisions of Article 15, 16 and 18 shall apply to salaries, wages and other similar compensation, as well as to pensions paid in respect of services rendered in connection with industrial or commercial activities, exercised by a Contracting State, or local agency, or public institution thereof.

Article 20 Students

1. Where a student or intern, who is, or who was immediately prior to departing to a Contracting State, a resident of the other Contracting State, and who is staying in the Contracting State for the sole purposes of studying or training, receives sums to cover costs of maintenance, tuition for studies or training, such sums shall not be taxable in that State, providing that said sums come from sources located outside of that State.

2. In regards to scholarships and remuneration for employment to which paragraph 1 does not apply, a student or intern, in the sense of paragraph 1, shall otherwise be entitled, for the duration of his or her studies or training, to benefit from the same tax exemptions or deductions effective for the residents of the State in which she or he is staying.

Article 21 Professors and Researchers

1. An individual who was a resident of a Contracting State immediately prior to departing for the other Contracting State, and who is temporarily staying in the other State for the sole purposes of teaching or research at a university, high school, school or any other teaching or scientific research establishment, shall be subject to taxes only in the Contracting State for income earned for this teaching or research, during a period of time not exceeding two years, beginning with the date of arrival in the other State.

2. The provisions of paragraph 1 shall not apply to income from research work in case such research is not conducted in the public interest, but mainly to obtain a particular advantage benefiting one or several specific persons.

Article 22 Other Income

1. a) Items of income of a resident of a Contracting State, regardless of where they arise, of which said resident is the beneficial owner, and which are not covered by the provisions of the preceding Articles of this Convention herein, shall be taxable only in that State, when such resident is subjected to income taxes in that State. When this condition is not fulfilled, such items of income shall remain taxable in the other Contracting State pursuant to the legislation thereof.

b) Conditions of taxation specified in subparagraph a) shall not apply, when the beneficial owner of the items of income in question is a Contracting State, or one of the local agencies thereof.

2. The provisions of paragraph 1 shall not apply to income other than income from immovable property as defined in paragraph 2 of Article 6, as long as the beneficiary owner of such income, being a resident of a Contracting State, carries on an industrial or commercial activity in the other Contracting State through a permanent establishment situated therein, or an independent personal service with a fixed base located therein, and the right or property in respect of which the income is paid is effectively connected therewith. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

Article 23 Capital

1. a) Capital represented by immovable property referred to in Article 6 shall be taxable in the Contracting State where such immovable property is located.

b) Capital represented by shares, or other rights within a company, trust or similar institution, the value of the assets or property of which is made up of more than 50 per cent or derived as more than 50 per cent, whether directly or indirectly, through interposition of one or several companies, trusts or comparable institutions, from immovable property located in a Contracting State, or from rights on such property, shall be taxable in that State. For the purposes of applying this provision, immovable property designated for industrial, commercial or agricultural activity of such a company, as well as for the exercise of an independent personal service, shall be excluded.

2. Capital represented by movable property, which is part of the assets of the permanent establishment of a company in the Contracting State held in the other Contracting State, or part of the personal property belonging to a fixed base, which a resident of a Contracting State owns in the other Contracting State for the exercise of an independent personal service, shall be taxable in said other Contracting State.

3. Capital represented by ships and aircrafts operated in international traffic, as well as personal property designated for the operation of such ships and aircrafts, shall be taxable only in the Contracting State where the place of effective management of the enterprise is located.

4. All other items of capital of a resident of a Contracting State shall only be taxable in that State.

Article 24 Elimination of Double Taxation

1. Insofar as France is concerned, double taxation shall be avoided as follows:

a) Notwithstanding any other provisions of this Convention, income that is taxable, or that is taxable only in Albania pursuant to the provisions of this Convention, is taken into consideration for the calculation of French taxes when such taxes are not exempt from taxes on companies pursuant to the domestic French legislation. In this case, Albanian taxes may not be deducted from this income, though a resident of France has the right, without prejudice to the conditions and limitations set forth in i) and ii), to an income tax credit attributable to French taxes. The amount of this tax credit shall be equal to:

- i) For income specified in ii), to the amount of French taxes corresponding to such income on condition that the beneficiary, a resident of France, is subjected to Albanian taxes on this income;
- ii) For income subjected to taxes on companies, set forth in the provisions of Article 1, and paragraph 2 of Article 13, and for income set forth in the provisions of Article 10, 11 and 12, paragraph 1 of Article 13, paragraph 3 of Article 15, Article 16, and paragraphs 1 and 2 of Article 17, in the amount of the tax paid in Albania, pursuant to the provisions of said Articles. However, this income credit may not exceed the amount of French taxes corresponding to this income.
- b) A resident of France who owns capital that is subject to taxes in Albania, pursuant to the provisions of paragraphs 1, 2 or 3 of Article 23, shall also be subject to taxes in France on this capital. French taxes are calculated with a deduction corresponding to the tax credit, equal to the amount of taxes paid in Albania on this capital. However, this tax credit may not exceed the amount of French taxes corresponding to this capital.
- c) i) It is understood that the expression "amount of French taxes corresponding to such income" used in subparagraph a) refers to:
- where tax due for this income is calculated using a proportional tax rate, the product of the net amount of income considered, in application of said effective rate;
 - where tax due for this income is calculated using a progressive tax rate, the product of the net amount of income considered, in application of the rate resulting from the ratio between the tax effectively due on global net taxable income according to French tax law, and the amount of net global income.

This interpretation applies, by analogy, to the expression "amount of French taxes corresponding to this capital", used in subparagraph b).

ii) It is understood that the expression "amount of the tax paid in Albania" used in subparagraphs a) and b) refers to Albanian taxes effectively applied on a final basis, on the income, or the items of capital considered, pursuant to the provisions of this Convention, belonging to the resident of France, who is subject to taxes on this income or items of capital, pursuant to French legislation.

2. In regards to Albania, double taxation shall be eliminated in the following manner:

a) When a resident of Albania receives income, or owns capital, which, pursuant to the provisions of this Convention, is subject to tax in France, Albania shall grant:

i) As a deduction on Albanian income tax of this resident, a tax credit in the amount equal to the income tax paid in France;

ii) As a deduction on Albanian taxes on capital belonging to this resident, a tax credit in the amount equal to the tax paid on this capital in France.

This deduction may not however exceed the fraction of the Albanian income tax or tax on companies, as calculated prior to the corresponding deduction for either income or capital, subject to taxes in France, and depending on the case.

b) When in application of the provisions of this Convention a resident of Albania receives income or owns capital that is exempt from taxes in Albania, Albania may nevertheless, for calculation of taxes due on other items of income or capital belonging to this resident, take into consideration those items of income or capital that are exempt from taxes.

Article 25 Non-Discrimination

1. a) Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected, especially in terms of residence. The provisions of Article 1 notwithstanding, these present provisions shall also apply to persons who are not residents of one or of neither of the Contracting States.

b) In regards to application of subparagraph a), it is understood that an individual or corporate body, a partnership or an association which is a resident of a Contracting State is not in the same situation as an individual, corporate body, partnership or association which is not a resident of that State, regardless of the definition of nationality, even when such corporate bodies, partnerships and associations are considered nationals of the Contracting State of which they are residents.

2. The taxation on a permanent establishment, which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision may not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 5 of Article 12 cannot be applied, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the Contracting State. Accordingly, liabilities assumed by a company of a Contracting State with respect to a resident of the other Contracting State shall be deductible in determining the capital that is subject to tax of such company under the same conditions as if such liabilities had been assumed with respect to a resident of the Contracting State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State shall not be subjected in the Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the contracting State are or may be subjected.

5. a) When an individual is employed in a Contracting State, payments made by that individual to an established pension plan, recognized for taxation purposes in the other Contracting State, are deductible in the Contracting State, when determining the taxable income of that person, and are treated for taxation purposes, in the Contracting State, in the same manner as payments made to a pension plan recognized for taxation purposes in the Contracting State, and thus without prejudice to the same conditions and limitations, providing that the pension plan is generally accepted by the competent authority of that State, as a pension plan recognized for taxation purposes in that State.

b) In regards to application of subparagraph a):

i) The expression "pension plan" refers to a plan to which an individual participates in view of benefiting from retirement benefits for employment pursuant to the provisions of subparagraph a), and

ii) A pension plan is deemed "recognized for taxation purposes" in a Contracting State when payments to this plan supplies tax relief in that State.

6. Tax exemptions and other benefits set forth in the fiscal legislation of a Contracting State for the benefit of that State, local agencies or public institutions thereof, the activity of which is not of an industrial or commercial nature, shall apply under the same conditions, respectively to the other Contracting State, local agencies and public institutions thereof with the same or a similar type of activity. Notwithstanding the provisions of paragraph 7, the provisions of the paragraph herein shall not apply to taxes due in compensation of services rendered.

7. The provisions of the Article herein shall apply, notwithstanding the provisions of Article 2, to taxes due of all kinds, or of any designation.

8. Where a treaty or a bilateral agreement existing among the Contracting States, other than this Convention herein, contains a non-discrimination clause or a favored nation clause, it is understood that such clauses shall not apply in terms of fiscal matters.

Article 26 Mutual Agreement Procedures

1. Where a person considers that the actions taken by one or both of the Contracting States result or will result for him or her in taxation not in accordance with the provisions of this Convention, he or she may, irrespective of the remedies provided by the domestic law of those States, present his or her case to the competent authority of the Contracting State of which he or she is a resident or, if his or her case comes under paragraph 1 of Article 25, to the competent authority of the Contracting State of which he or she is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Convention.

2. The competent authority shall endeavor, if the objection appears to it to be justified and in case such competent authority is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with this Convention. Any agreement reached shall be implemented notwithstanding any time limits set forth in the domestic laws of the Contracting States.

3. The competent authorities of the Contracting States shall endeavor, by mutual agreement, to resolve any difficulties or eliminate any doubts arising as to the interpretation or application of this Convention. They may in particular consult with each other to reach an agreement on identical allocation of income for those associated enterprises referred to in the provisions of Article 9. They may also reach an agreement in an attempt to eliminate double taxation in cases not provided for in this Convention.

4. The competent authorities of the Contracting States shall communicate with each other directly, including within a joint commission consisting of the competent authorities or their representatives, for the purpose of reaching agreements in the sense of the preceding paragraphs of this Article.

Article 27 Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is not contrary to this Convention. The exchange of information shall not be restricted by Articles 1 and 2. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic Laws of that State shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes covered by this Convention. Such persons or authorities shall use said information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures which are at variance with the laws of that, or of the other Contracting State;

b) to supply information which can not be obtained under the laws of that, or of the other Contracting State;

c) to supply information which would disclose any trade, industrial, professional secret or trade process, or information, the disclosure of which would be contrary to public order.

3. The provisions of the Article herein shall apply, notwithstanding the provisions of Article 1, to taxes of all kinds and of all designations, collected by the Contracting States.

Article 28 Collection Assistance

1. At the request of the competent authority of a Contracting State (hereafter referred to as "the Petitioner State"), the competent authority of the other Contracting State (hereafter referred to as "Petitioned State") shall proceed, without prejudice to the provisions of paragraphs 7 and 9, with collection of fiscal liabilities of the Contracting State as if these liabilities were its own liabilities. It is understood that the expression "fiscal liabilities" refers to any amount of taxes, including interest, fines or fiscal sanctions and the related costs of collection, which are due and remain outstanding.

2. The provisions of paragraph 1 shall apply only to the fiscal liabilities for which there is an order of execution for collection in the Petitioning State, and which remain without contest, unless the competent authorities have agreed otherwise.

3. The obligation to assist in view of collecting fiscal liabilities concerning a deceased person, or that person's estate, shall be limited to the value of the estate or to the property received by each of the beneficiaries of the estate, depending on whether the liabilities are to be collected from the estate, or from the beneficiaries thereof.

4. Upon request of the competent authority of a Petitioning State, the competent authority of the Petitioned State shall take all required conservatory measures in view of collecting a tax amount, even if there is an objection to the liability, or if the order of enforcement has not yet been issued.

5. The request for administrative assistance shall include:

a) A declaration specifying the nature of the fiscal liability, and in regards to collection, a statement certifying that the conditions set forth in paragraph 2 have been fulfilled;

b) A certified copy of the order of execution in the Petitioning State, and

c) Any other document required for collecting the liability or for taking conservatory measures.

6. The order of execution in the Petitioning State shall be, whenever applicable and pursuant to the provisions in effect in the Petitioned State, admitted, certified, recognized or replaced by an order of execution in the Petitioned State, as soon as possible following the date of receipt of the request for assistance.

7. Questions concerning the delay period beyond which a fiscal liability may no longer be collected are contingent upon provisions of the domestic legislation of the Petitioning State. The request for assistance shall include information concerning this delay period.

8. Collection procedures undertaken by the Petitioned State following a request for assistance, and which, pursuant to the domestic legislation of that State, would result in suspension or interruption of the delay period mentioned in paragraph 7, shall bear the same effect in the domestic legislation of the Petitioning State. The Petitioned State shall notify the Petitioning State of the procedures underway.

9. In any event, the Petitioned State shall not be required to follow through on a request for assistance that is submitted after a period of fifteen days beginning with the date of the initial order of execution.

10. When domestic legislation or administrative practices make allowances in similar circumstances, the Petitioned State may consent to delays in payment or to payment in installments, but in this case, the Petitioning State shall be notified in advance.

11. The provisions of the Article herein shall apply, notwithstanding the dispositions of Article 2, to taxes of all kinds and of all designations, collected by the Contracting States.

Article 29 Members of Diplomatic Service or Consular Posts

1. No provision of this Convention shall affect the fiscal privileges of members of diplomatic missions, consular posts or permanent delegations of international organizations under the general rules of international Law, or under the provisions of special agreements.

2. Notwithstanding the provisions of Article 4, any individual who is a member of diplomatic mission, consular post or permanent delegation of a Contracting State, located in the other Contracting State or a third party State, shall be considered for the purposes of this Convention, as a resident of the accrediting State, providing that such a person is subject, in the accrediting State, to the same obligations in regards to taxation of income and capital, as the other residents of that State.

3. This Convention shall not apply to international organizations, their officers or representatives, nor to persons who are members of a diplomatic mission, a consular post or a permanent delegation of a third-party State, as long as they are present on the territory of a Contracting State and are not subject in a Contracting State to the same obligations regarding taxes on income and capital as the residents of such State.

Article 30 Entry Into Force

1. Either of the Contracting States shall notify the other Contracting State once the procedures required under its laws for the purposes of implementing this Convention have been completed. This Convention shall become effective on the first day of the second month following receipt of the last notice.

2. The provisions of this Convention shall apply:

a) to income taxes withheld at the source, to the amounts subject to tax after the calendar year during which this Convention became effective;

b) to income taxes that are not withheld at the source, to the related earnings, depending on the case, for all of the calendar year or any financial year beginning after the calendar year during which this Convention became effective;

c) to other kinds of taxes, to income, the generating factor of which arises after the calendar year during which this Convention became effective.

Article 31 Termination

1. This Convention shall remain in force and effect indefinitely. However, five years after the date of entry into force of this Convention, either Contracting State may terminate this Convention by providing a written notice of termination through diplomatic channels, at least six months prior to the end of each calendar year.

2. In this case, this Convention shall cease to apply:

a) to income tax withheld at the source, to the amounts subject to tax after the calendar year during which this Convention was terminated;

b) to income taxes that are not withheld at the source, to the related earnings, depending on the case, for all of the calendar year or any financial year beginning after the calendar year during which this Convention became effective;

c) to other kinds of taxes, to income, the generating factor of which arises after the calendar year during which this Convention was terminated.

In witness whereof the undersigned, duly authorized to that effect, have signed this Convention.

Done at Tirana on December 24, 2002, in two original copies, in the French and Albanian language, each version being equally authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF FRANCE:

Michel Menachenoff

Ambassador of France

FOR THE GOVERNMENT OF ALBANIA:

Kastriot Islami

Minister of Finances

PROTOCOL

At the time of signing of this Convention between the Republic of France and the Republic of Albania concerning avoidance of double taxation and prevention of fiscal evasion and fraud with respect to taxes on income and capital, the undersigned have agreed to the following provisions, which shall be an integral part of this Convention:

1. In regards to subparagraph a) of paragraph 3 of Article 2, taxes on salary shall be regulated by the provisions of this Convention, applicable, depending on the case, to business profits, or to income derived from independent personal services.
 2. In regards to Article 1, it is understood that the expression "resident of a Contracting State" includes, when this State is France, partnerships and associations, the managing headquarters of which are located in France, and whose shareholders, associates or other members, are personally subject to taxes for their quota-share in the profit of these enterprises or partnerships, pursuant to the provisions of domestic French legislation.
 3. In regards to subparagraphs a) and b) of paragraph 4 of Article 5, it is understood that delivery using an inventory of merchandise located in a Contracting State constitutes a permanent establishment in that State, when operations other than storage, display, transport and all other preparatory or auxiliary activities are performed in that State, using that storage location.
 4. It is understood that the expression "immovable property" defined in paragraph 2 of Article 6, includes options, agreements to sell, and other similar rights related to this property.
 5. In regards to Article 7:
 - a) When an enterprise of the a Contracting State sells merchandise or exercises an activity in the other Contracting State through a permanent establishment located thereof, profits of this permanent establishment shall not be calculated based on total earnings of the business, but only on those earnings attributable to the actual activity of the permanent establishment, as related to these sales, or for such activity.
 - b) In the case of contracts, in particular for design studies, supply, installation or the construction of equipment, or for industrial, commercial or scientific establishments, or for public works, when the business has a permanent establishment, the profits of this permanent establishment shall not be determined based on the total amount of the contract, but only on the portion of the contract that is effectively performed by the permanent establishment in the Contracting State where it is located. Profits related to the portion of the contract that is executed in the Contracting State, where management headquarters of the business are located, shall be taxable only in that State.
 6. In regards to Article 12, the remuneration for technical services, including surveys, or analyses of a scientific, geological or technical nature for engineering work, including related plans, or for consultation or monitoring services, shall not be considered remuneration for information related to experience acquired in the industrial, commercial or scientific domains.
 7. The provisions of Article 16 shall apply to income, stipulated in Article 62 of the General Code for French taxation, earned by an individual who is a resident of Albania, in the capacity of associate or director of a company, resident of France and subject to corporate taxes.
 8. The provisions of this Convention shall not in any way prevent France from applying the provisions of Article 212 of the General Code for taxation, or other similar provisions, which would amend or replace those of this Article.
 9. Each of the Contracting States shall retain the right, pursuant to their own domestic law, to tax the income of residents, the taxation of which is attributed to the other Contracting State, but not included in the tax of that State, in case this double exemption results in a divergent qualification of the concerned revenues.
 10. a) The competent authorities of the Contracting States may jointly, or separately, decide on the modalities of application of this Convention.
b) In particular, to benefit in a contracting State from the advantages set forth in Articles 10, 11 and 12, residents of the other Contracting State must, unless the competent authorities have decided otherwise, present a certificate of residency form, indicating in particular the nature as well as the amount or the value of the revenues in question, and bearing authentication delivered by the fiscal service of this other State.
- Done at Tirana on December 24, 2002, in two original copies, in the French and Albanian language, each version being equally authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF FRANCE:

Michel Menachenoff
Ambassador of France

FOR THE GOVERNMENT OF ALBANIA:

Kastriot Islami
Minister of Finances