

## **AGREEMENT**

### AGREEMENT BETWEEN THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM AND THE GOVERNMENT OF THE FRENCH REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF TAX EVASION AND TAX FRAUD WITH RESPECT TO TAXES ON PROPERTIES AND INCOME

The Government of the Socialist Republic of Vietnam and the Government of French Republic.

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of tax evasion and contraband with respect to taxes on properties and income,

Have agreed as follows:

#### **Article 1. Personal scope**

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

#### **Article 2. Taxes covered in the Agreement**

1. This Agreement shall apply to taxes on income and properties imposed in a Contracting State or local government of such State irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and properties all taxes imposed on total income and properties, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages and salaries paid by enterprises as well as taxes on capital appreciation.
3. The existing taxes to which the Agreement shall apply are in particular:

a) In Vietnam:

- (i) the personal income tax;
- (ii) the profit tax;
- (iii) the profit remittance tax;
- (iv) the foreign contractor tax (tax imposed on profits);
- (v) the foreign petroleum sub-contractor tax;
- (vi) the charges with tax character imposed on property;  
(hereinafter referred to as "Vietnamese tax");

b) In France:

- (i) the income tax;
  - (ii) the corporate tax;
  - (iii) the tax imposed on property;
- (hereinafter referred to as "French tax").
4. This Agreement shall also apply to any identical or substantially similar taxes, which are imposed after the date of signature of this Agreement in addition to, or in place of existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

### **Article 3. General definitions**

- 1. For the purposes of this Agreement, unless the context otherwise requires:
  - a) The term "Vietnam" means the Socialist Republic of Vietnam and when used in a geographical sense includes:
    - (i) any area beyond the territorial seas of Vietnam which, in accordance with international law and the laws of Vietnam, is an area within which Vietnam exercises sovereign rights with respect to the seabed and subsoil and their natural resources;
    - (ii) the seas and airspace above every area referred to in subparagraph (i) in respect of any activity carried on in connection with the exploration for and exploitation of natural resources referred to therein;
  - b) the term "France" means the provinces in Europe and oversea territories of the French Republic, includes its territorial waters and beyond its territorial waters where according to the international law, the French Republic exercises sovereign rights in exploration for and exploitation of natural resources with respect to the seabed and subsoil and above waters.
  - c) the terms "a Contracting State" and "the other Contracting State" mean Vietnam or France as the context requires;
  - d) the term "person" includes an individual, a company and any other organization;
  - e) the term "company" means any organization or any entity which is treated as an organization for tax purposes;
  - f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

g) the term "international traffic" means any transport by a ship or aircraft operated by a resident of a Contracting State, except when the transport is operated solely between places in the other Contracting State.

h) the term "competent authorities" means:

(i) in the case of Vietnam, the Minister of Finance or his authorised representative;

(ii) in the case of France - the Minister of Finance or his authorised representative;

2. As regards the application of this Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State relating to the taxes to which the Agreement applies.

#### **Article 4. Resident**

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. However, this term does not include the residents who are liable to tax in that State only in respect of income from sources in that State or properties situated in that State.

2. Where by reason of the provisions of the Clause 1, an individual is a resident of both Contracting States, then his status shall be determined as follows:

a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

b) if the Contracting State in which he has his center of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

d) if each Contracting State considers him to be its national or if he is a national of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of the Clause 1, a person other than an individual is a resident of both Contracting States, then it 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 Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include especially:

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, quarry or other place of extraction of natural resources;

3. a building site, construction, installation or assembly project is only considered a permanent establishment if its operation time exceeds 183 days.

4. Notwithstanding the provisions of this Article, the term "permanent establishment" does not include:

a) the use of facilities solely for the purpose of storage, display delivery of goods or assets belonging to the enterprise;

b) the maintenance of a stock of goods or assets belonging to the enterprise solely for the purpose of storage, display or delivery;

c) the maintenance of a stock of goods or assets 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 purpose of purchasing goods or assets or for 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 point (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of Clauses 1 and 2, where a person - other than an agent of an independent status to whom the provisions of Clause 6 apply - is acting on behalf of an enterprise and commonly has the authority to sign the contracts in the name of that enterprise in a Contracting State, that enterprise shall be deemed to have a permanent establishment in that

Contracting State for any activity which is done by that person for the enterprise, unless the activities of such person are limited to the activities specified in Clause 4 and such activities, if done through a fixed business establishment, shall not make it become a permanent establishment in accordance with the provisions of that Clause

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, commission body or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

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 Contracting State (whether through a permanent establishment or otherwise), shall not of itself constitute either company as a permanent establishment of the other.

## **Article 6. Income from immovable property**

1. Income derived from immovable property of a resident in a Contracting State (including income from agriculture or forestry) is taxable only in the Contracting State in which such property is situated.

2. The term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated. The term "immovable property" shall in any case include the property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property, 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 and aircraft shall not be regarded as immovable property.

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

4. When ownership of shares, share capital or other interests in a company or in another entity allows rights holders to benefit the immovable property situated in a Contracting State which this company or this entity owns, then the income that the owner obtains from the direct use, letting or use in any other forms of its right to benefit shall be taxed in this State.

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

## **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 Contracting State, but only on the profits attributable to that permanent establishment.

2. Subject to the provisions of Clause 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 and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which include the executive and general administrative expenses so incurred, whether in the Contracting State in which the 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, nothing in Clause 2 shall preclude such Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, 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 goods or merchandise for the enterprise.

6. For the purposes of the preceding clauses, 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 reasons to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

## **Article 8. Shipping and air transport**

1. Income derived by a resident of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that Contracting State.

2. The provisions of Clause 1 shall also apply to income from the participation in a pool, a 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,

and in 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 have accrued to one of the enterprises, but, by the 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 been 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 make an appropriate adjustment to the amount of the tax charged therein on those profits. To determine this adjustment, the other provisions of this Agreement shall be considered and the competent authorities of the Contracting States shall consult each other when necessary.

## **Article 10. Dividends**

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

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

a) when the company paying dividends is a resident of Vietnam:

(i) 7 per cent of the gross amount of the dividends if the beneficial owner is a company which controls directly at least 50 per cent of the capital in the company paying the dividends;

(ii) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which controls directly at least 25 per cent of the capital in the company paying the dividends;

(iii) 15 per cent of the gross amount of the dividends in all other cases.

b) when the company paying dividends is a resident of Vietnam:

(i) 5 percent of the gross amount of the dividends of the recipient is a company (excluding partnerships) which owns at least 10 percent of the capital of the company paying the dividends;

(ii) 15 per cent of the gross amount of the dividends in all other cases.

This Clause shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. A resident of Vietnam who has received dividends from a company which is a resident of France may receive the deduction in case this deduction was actually paid by the company under this dividend. The total untaxed deduction to be refunded is regarded as dividend under the application of this Agreement. It shall be taxed in France in conformity with the provisions of Clause 2.

4. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident. This term does not include the incomes applicable in Article 15.

5. The provisions of Clauses 1, 2 and 3 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 through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding by virtue of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 13, 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 if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

## **Article 11. Royalties**

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

2. However, such royalties may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 percent of the gross amount of the royalty.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films, films, tapes or disc for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalty, being a resident of a Contracting State, carries on industrial or commercial activity in the other Contracting State in which the royalty arises, 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 royalty is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 13, as the case may be, shall apply.

5. Royalty shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub division, a local authority or a resident of that State. Where, however, the person paying the royalty, whether he is 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 royalty is paid was incurred, and such royalty is borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or a fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other persons, the amount of the royalties, having regard to the use, right or information 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 such 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 according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## **Article 12. Gains from the alienation of property**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains derived from the alienation of shares, part of the capital or other interests in a company or another entity which owns, directly or indirectly, the immovable property situated in a State or rights to this type of property must be taxed in this State if such gains are subject to the same tax system like the gains arising from the alienation of immovable property according to the law of this State.

3. 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 a permanent establishment (alone or together with the whole enterprise) may be taxed in that other State.

4. Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

5. Gains from the alienation of any property other than that referred to in Clauses 1, 2, 3 and 4 shall be taxable only in the Contracting State of which the alienator is a resident.

### **Article 13. 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 unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If that person has such a fixed base, his income can be taxed in that Contracting State but only on the income attributed to this fixed base.

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

### **Article 14. Dependent personal services**

1. Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an 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 derived therefrom may be taxed in that other Contracting State.

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

a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the Calendar year; and

b) the remuneration is paid by or on behalf of an employer or employer's representative who is not a resident of the other Contracting State; and

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

3. Notwithstanding the preceding provisions of this Article, the remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed only in the Contracting State.

### **Article 15. Director's fee**

Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

### **Article 16. Income of artistes and athletes**

1. Notwithstanding the provisions of Articles 13 and 14, income derived by entertainers such as a theater, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such, may be taxed in the Contracting State in which the activities are exercised.
2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 13 and 14, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.
3. Notwithstanding the provisions of Clause 1, the incomes derived by an artiste or athlete as a resident of a Contracting State from his personal activities in that Contracting State in his capacity as such shall be taxed in the first-mentioned State if such activities in the other State are substantially supported by public funds of the first-mentioned State, by a local authority or statutory body of this Country.
4. Notwithstanding the provisions of Clause 2, when the incomes derived from activity of artiste or athlete as a resident of a Contracting State in his capacity as such in other Contracting State are not given to that artiste or athlete but to another person, such incomes, regardless of the provisions of Articles 7, 13 and 14, shall be taxed in the first-mentioned State in case that person is substantially supported by public funds of this State, by a local authority or statutory body of this Country.

### **Article 17. Pension**

Subject to the provisions of Clause 2 of Article 18, 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 18. Income from government service**

1. a) Remuneration, other than a pension, paid by the Government of a Contracting State, local authority or statutory body to an individual in respect of services rendered to that State, local authority or statutory body thereof shall be taxable only in that State.  
b) However, such income shall be taxable only in the other Contracting State if the services are rendered in that State and the individual as a resident of that State who is a national of that State or not being a national of the first-mentioned Contracting State.
2. a) Any pension paid by a Contracting State, local authority or statutory body thereof to an individual directly or deducted from the funds they found to pay an individual in respect of services rendered to that State, local authority or statutory body thereof shall be taxable only in that State.  
b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident and a national of that Contracting State but not a national of the first-mentioned State.

3. The provisions of this Article 14, 15 and 17 shall apply to remuneration and pension in respect of services rendered in connection with any business carried on by either of the Contracting State, a political subdivision or a local authority thereof.

### **Article 19. Income of students**

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall be exempt from tax of the first-mentioned Contracting State, provided that such payments are made to him from outside that first-mentioned Contracting State.

### **Article 20. Other income**

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Contracting State.

2. The provisions of Clause 1 shall not apply to income, other than income from immovable property as defined in Clause 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 13, as the case may be, shall apply.

### **Article 21. Property**

1. Property is the immovable property set forth in Article 6 that is derived by a resident of a Contracting State and is situated in the other Contracting State will be taxed in that State. The provisions of this clause shall also apply to the property as shares, capital or other rights set forth in Clause 2 of Article 12 to be taxed in the Contracting State where the property is situated.

2. Property is the immovable property integrated into business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, or the movable property belonging to a fixed base that a resident of a Contracting State has in the other Contracting State to perform an independent profession, must be taxed only in that State.

3. The property of a resident of a Contracting State is ships and aircraft operated in international traffic as well as the movable property pertaining to the business of such ships and aircraft shall be taxed in this State.

4. Other property of a resident of a Contracting State shall be taxed only in this State.

### **Article 22. Elimination of double taxation**

1. In the case of Vietnam, double taxation shall be avoided as follows:

Where a resident in Vietnam derives income or property which shall be levied in France in accordance with the provisions of this Agreement, Vietnam shall:

- a) allow as a credit against the tax imposed on the income of that resident an amount equal to the income tax paid in France.
- b) allow as a credit against the tax imposed on the property of that resident an amount equal to the property tax paid in France.

The amount of credit in both cases, however, shall not exceed the amount of the Vietnamese tax on that income or property, before permitted tax credit, for such income or property computed in accordance with the taxation laws and regulations of Vietnam.

2. In the case of France, double taxation shall be avoided as follows:

- a) The income generated in Vietnam and taxed or only taxed in Vietnam in accordance with the provisions of this Agreement shall be deemed to be taxed according to the tax treatment of France, if the person entitled to such income is a resident of France and if such income is not entitled to exemption or reduction of corporate tax in accordance with French law. In this case, the tax paid in Vietnam is not deducted from such income, but the income beneficiary is entitled to a tax credit for tax to be paid in France. This tax credit is equal to:
  - (i) for all income other than the income set forth in point (ii) below, the French tax is corresponding to such income;
  - (ii) for the income set forth in Articles 10, 11 and Clauses 1 and 2 of Article 12, Clause 3 of Article 14, Article 15 and Clause 1 and 2 of Article 16, with the tax paid in Vietnam according to the provisions in the articles or that amounts; however, that deduction can not exceed the total number of French tax corresponding to such income.
- b) As regulated in Point a) of this Clause, when the tax credit is deducted from the tax payable in France equals the total taxes payable in Vietnam, tax credit is deemed to be equal to the tax that should have been paid in Vietnam according to the application of laws of Vietnam and limitations set forth in this Agreement if the corresponding income not entitled to the tax exemption or reduction effective from the date of signature of this Agreement such as the exemption or reduction provided for in the law foreign investment in Vietnam dated 29/12/1987. The competent authorities of both Contracting States shall adopt a general agreement within a definite period of time to extend such regulations on tax exemption or reduction that may arise after the date of signature of this Agreement for the purpose of promoting the economic development of Vietnam.
- c) With respect to the application of point a) to the income set forth in Article 11, when the total taxes paid in Vietnam under the provisions of these articles - excluding taxes which are regarded as paid under the provisions at point b - exceed the total taxes payable in France

corresponding to the income stated, then a resident of France receiving such income may lodge a complaint about his case to the French competent authorities. If the French authorities see that the result of above reality shall lead to taxation which can not be regarded as taxation of after-tax income, the authorities may, in defined conditions, may deduct the excessive tax item in the total taxes paid in Vietnam from the taxes payable in France levied on the other gains from foreign sources of this resident.

d) A French resident derives a property which must be levied in Vietnam according to the provisions in Clause 1 or 2 of Article 21 must also be levied in France. The tax payable in France shall be calculated on the property after deduction of tax credit equal to the total taxes paid in Vietnam levied on this property. This tax credit must not exceed the corresponding total tax payable in France levied on this property.

### **Article 23. Mutual agreement**

1. Where a resident of a Contracting State 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 Agreement, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident. 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 Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate 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 not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall jointly endeavour to resolve by mutual agreement any difficulties or doubts arising as to the application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding clauses.

5. The competent authorities of the two States may adjust the applicable procedures of the Agreement, especially for those procedures that the residents of a State must complete to receive the exemption from the other State the tax exemption, reduction and incentives specified in the Agreement. These procedures may include the presentation of a residence certificate form which specifies the source and the total number or value of the relevant items of income or property with the certification of the tax authorities of the first-mentioned State.

### **Article 24. 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 Agreement and of the domestic laws of the Contracting States concerning taxes covered by the Agreement in so far as the taxation thereunder is in accordance with this Agreement. The exchange of information shall not be restricted by Article 1. Any information so exchanged shall be treated as confidential in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. Such persons or authorities shall use the 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 clause 1 be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) to supply details which are not disclosed 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 or national security.

#### **Article 25. Employees of diplomatic missions and consular establishments**

Nothing in this Agreement shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

#### **Article 26. Territorial scope of extended application**

1. This Agreement may also be applied to expand to, verbatim or with the necessary additions, the overseas territories and other territorial units of the French Republic which impose taxes with similar characters as those applicable in this Agreement. The application of such expansion takes effect from the date of a general agreement set forth between the two States by way of exchange of diplomatic notes or other procedures in line with the constitutional provisions of the two States. This Agreement also stipulates that, if possible, the necessary changes to the Agreement and the implementation conditions of the Agreement in overseas territories and other territorial units where the Agreement applies with expansion.

2. Unless otherwise agreed by the two States, that one of the two States annuls this Agreement under the provisions of article 28 shall also terminate of implementation of this Agreement in any territory or territorial unit where the Agreement applies with extension under the provisions of this article.

## **Article 27. Entry into force**

1. Each Contracting Party shall notify the other Contracting Party of the completion of the necessary procedures related to the entry into force of this Agreement. This Agreement shall enter into force on the first day of the second month after the date of receipt of the final notification.
2. The provisions of this Agreement shall apply for the first time:
  - a) in respect of taxes withheld at source, on amounts levied after the effective date of this Agreement.
  - b) for taxes imposed on income or incomes implemented in the solar year or current accounting year on the effective date of the Agreement;
  - c) for taxes imposed on property and owned property to 01/01 of effective year of this Agreement.

## **Article 28. Termination**

1. This Agreement shall remain in force indefinitely. However, after the solar fifth year after the effective year of this Agreement, either State may terminate this Agreement at the end of a calendar year after giving prior notice of at least 6 months through diplomatic channel.
2. In the event of termination, the provisions of this Agreement shall apply the last time:
  - a) for the taxes imposed by deduction at source, for the taxable amounts in calendar year and at the end of which the termination will be notified;
  - b) for the other taxes imposed on income or gains made in the calendar year or accounting year and at the end of which the termination will be notified;
  - c) for the other taxes imposed on property and owned property to 01/01 of calendar year and at the end of which the termination will be notified;

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Agreement.

DONE in Hanoi, on 10th February of 1993 in duplicate, in Vietnamese and French languages, both texts being equally authentic.

**FOR THE GOVERNMENT OF THE  
SOCIALIST REPUBLIC OF  
VIETNAM  
MINISTER OF FINANCE**

**FOR THE GOVERNMENT OF  
FRANCE  
MINISTER OF FINANCE**

**Ho Te**

**Martin Malvy**

## **PROTOCOL**

When signing the Agreement between the Government of the Socialist Republic of Vietnam and the Government of the French Republic to avoid double taxation and prevent tax evasion and contraband for taxes imposed on income and on the property, the persons who signed have agreed the following provisions which constitute a part of this Agreement.

1. With respect to Clause 1 of Article 4, automatically, the term “resident of a Contracting State” includes, when this State is French State, the companies have many persons and all other organizations have many persons and have place of management in France and their members must be levied on their income respectively in accordance with the law of France.
2. a) With respect to Article 10 and Article 11, if in an Agreement on avoidance of double taxation and prevention of tax evasion and contraband with a third State which is a member of the European Economic Community (CEE), Vietnam shall agree upon a tax rate at source lower than (including the tax rate of 0%) the tax rates mentioned in this Agreement, such tax rates shall automatically replace the tax rates mentioned in this Agreement and calculated from the effective date of that Agreement between Vietnam and the mentioned third State.  
b) In the event that one or many Agreements on avoidance of double taxation are signed after 30/07/1992 between Vietnam and one or many States of the European Economic Community (CEE) imply one or many provisions which are like or the same as the ones specified in Article 24 of sample of tax Agreement of Organization for economic Co-operation and Development (OCDE), Vietnam shall accept a treatment in the most favorable manner by automatic application of one or many of such provisions to the citizens, enterprises or residents of France like the citizens, enterprises or residents of that member State.
3. The remuneration paid for technical services, including the analyses or researches with the scientific, geological or technical character, the industrial researches including the projects pertaining to the supervision or consultation services shall not be regarded as the royalty but the gains, as the case may be, apply according to the provisions of Article 7 or Article 13.
4. a) With respect to loan interest, in the event for the purpose of special relationship between the payer and the beneficiary or in the event of such relationship between this person or the other person and a third person, the total loan interest, especially when taking into account the interest and scale of loan thus this interest must be paid, exceeds the total interest agreed upon between the payer and the beneficiary in the absence of such relationship, the provisions of Article 20 shall only apply to the agreed amount. In this case, the excessive amount must be taxed in

accordance with the law of each Contracting State while considering the other provisions of this Agreement.

b) Generally for any income or property, no Article in this Agreement shall prevent a Contracting State to apply its regulations of law to prevent or punish illegal tax evasion or contraband to the resident of that State.

5. With respect to Clause 2 of Article 22, automatically, the term "the sum of French taxes corresponding with such gains" is used to specify:

a) sum of relevant net gains multiplied by the tax rate actually applies to those gains. In this case, the taxes payables to such gains must be calculated by the rated tax;

b) sum of relevant net gains multiplied by the tax rate is drawn from the rate between the tax actually paid for the entire taxable net gains according to the French tax law with the sum of such gains in the event the taxes payable for such gains are calculated by the progressive tariff.

Similarly this interpretation also applies to the term "the sum of French taxes corresponding with such property"

6. No article in this Agreement prevents France to apply its regulations of law which permit the French resident companies, based on the requirements of such companies, to determine their taxable profits under the regime of whole gathering especially including the results of Vietnamese resident branches or permanent establishments situated in Vietnam. However, this regulation does not affect the law of Vietnam in identification and taxation of profits of the said branches and permanent establishments according to its law and any other provision of this Agreement.

7. It is obvious that the provisions in Article of the Agreement between the Government of the Socialist Republic of Vietnam and the Government of the French Republic on bilateral promotion and protection of investments signed on 26/05/1992 shall not apply in the field of taxation.

DONE in Hanoi, on 10th February of 1993 in duplicate, in Vietnamese and French languages, both texts being equally authentic.

**FOR THE GOVERNMENT OF THE  
SOCIALIST REPUBLIC OF  
VIETNAM  
MINISTER OF FINANCE**

**FOR THE GOVERNMENT OF  
FRANCE  
MINISTER OF FINANCE**

**Ho Te**

**Martin Malvy**