Regulations and other acts

Gouvernement du Québec

O.C. 568-2005, 15 June 2005

An Act respecting the Ministère du Revenu
(R.S.Q., c. M-31; 2004, c. 21)

Tax Agreement between the Gouvernement du Québec and the Gouvernement de la République française
— Protocol for the purposes of avoiding double taxation and preventing evasion of taxes on income
— Ratification
— Implementation

Ratification of the Protocol to the Tax Agreement between the Gouvernement du Québec and the Gouvernement de la République française for the purposes of avoiding double taxation and preventing evasion of taxes on income signed on 3 September 2002 and making of the Regulation respecting the implementation of the Protocol

WHEREAS the Tax Agreement between the Gouvernement du Québec and the Gouvernement de la République française for the purposes of avoiding double taxation and preventing evasion of taxes on income, signed on 1 September 1987, was approved by Order in Council 1341-87 dated 26 August 1987 and came into force on 19 September 1988;

WHEREAS the Agreement was implemented by the Regulation respecting implementation of the tax agreement between the Gouvernement du Québec and the Gouvernement de la République française for the purposes of avoiding double taxation and preventing evasion of taxes on income, made by Order in Council 422-88 dated 23 March 1988;

WHEREAS the Protocol to the Tax Agreement between the Gouvernement du Québec and the Gouvernement de la République française for the purposes of avoiding double taxation and preventing evasion of taxes on income was signed at Paris on 3 September 2002 and its signing was authorized by Order in Council 572-2002 dated 15 May 2002;

WHEREAS the Protocol is an international agreement within the meaning of section 19 of the Act respecting the Ministère des Relations Internationales (R.S.Q., c. M-25.1.1);

WHEREAS the Protocol is also an important international commitment within the meaning of subparagraph 1 of the second paragraph of section 22.2 of the Act respecting the Ministère des Relations Internationales;

WHEREAS, under the third paragraph of section 20 of the Act respecting the Ministère des Relations Internationales, international agreements referred to in section 22.2 of the Act must, to be valid, be signed by the Minister of International Relations, approved by the National Assembly and ratified by the Government;

WHEREAS, under section 22.4 of the Act respecting the Ministère des Relations Internationales, the ratification of an international agreement or the making of an order referred to in the third paragraph of section 22.1 of the Act shall not take place, where it concerns an important international commitment, until the commitment is approved by the National Assembly;

WHEREAS the National Assembly approved the Protocol on 18 December 2002;

WHEREAS, under section 96 of the Act respecting the Ministère du Revenu (R.S.Q., c. M-31), amended by section 516 of chapter 21 of the Statutes of 2004, the Government may make regulations to prescribe the measures required to carry out that Act, to give effect to any agreement entered into under section 9 and to exempt certain classes of individuals from the duties provided for by a fiscal law;

WHEREAS, under section 12 of the Regulations Act (R.S.Q., c. R-18.1), a proposed regulation may be made or approved at the expiry of a shorter period than the period applicable to it, or without having been published, if the authority making or approving it is of the opinion that the proposed regulation is to establish, amend or repeal norms of a fiscal nature;

IT IS ORDERED, therefore, on the recommendation of the Minister of International Relations and Minister responsible for La Francophonie and the Minister of Revenue:

THAT the Protocol to the Tax Agreement between the Gouvernement du Québec and the Gouvernement de la République française for the purposes of avoiding double taxation and preventing evasion of taxes on income, signed at Paris on 3 September 2002 and approved by

the National Assembly on 18 December 2002, the text of which appears as a Schedule to the Regulation respecting the implementation mentioned hereafter, be ratified;

THAT the Regulation respecting the implementation of the Protocol to the Tax Agreement between the Gouvernement du Québec and the Gouvernement de la République française for the purposes of avoiding double taxation and preventing evasion of taxes on income, attached to this Order in Council, be made.

ANDRÉ DICAIRE,
Clerk of the Conseil exécutif

Regulation respecting the implementation of the Protocol to the Tax Agreement between the Gouvernement du Québec and the Gouvernement de la République française for the purposes of avoiding double taxation and preventing evasion of taxes on income

An Act respecting the Ministère du Revenu
(R.S.Q., c. M-31, ss. 9 and 96; 2004, c. 21, s. 516)

1. The Protocol to the Tax Agreement between the Gouvernement du Québec and the Gouvernement de la République française for the purposes of avoiding double taxation and preventing evasion of taxes on income, signed at Paris on 3 September 2002, and appearing as Schedule I, applies to Québec.

2. This Regulation comes into force on 1 August 2005.

PROTOCOL TO THE TAX AGREEMENT BETWEEN THE GOUVERNEMENT DU QUÉBEC AND THE GOUVERNEMENT DE LA RÉPUBLIQUE FRANÇAISE FOR THE PURPOSES OF AVOIDING DOUBLE TAXATION AND PREVENTING EVASION OF TAXES ON INCOME SIGNED ON 1 SEPTEMBER 1987

THE GOUVERNEMENT DU QUÉBEC

AND

THE GOUVERNEMENT DE LA RÉPUBLIQUE FRANÇAISE

RESOLVED to amend the Tax Agreement between Québec and France for the purposes of avoiding double taxation and preventing evasion of taxes on income, signed on 1 September 1987, hereinafter referred to as "the Agreement",

HAVE AGREED AS FOLLOWS:

ARTICLE 1

In the title of the Agreement and its preamble, the words "taxes on income" are replaced by the words "taxes on income and on capital".

ARTICLE 2

Article 2 is deleted and replaced by the following:

"**ARTICLE 2**
TAXES COVERED

1. This Agreement shall apply to taxes on income and on capital imposed on behalf of each Contracting Party or its territorial communities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable and 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 the Agreement shall apply are in particular

(a) in the case of Québec, the taxes imposed by the Gouvernement du Québec pursuant to the Taxation Act (hereinafter referred to as "Québec tax");

(b) in the case of France, the income tax, the corporation tax, the tax on wages and salaries (regulated by the provisions of the Agreement applicable, as the case may be, to business profits or to income from independent personal services), the solidarity tax on net wealth and any withholding tax, prepayment or advance payment with respect to the aforesaid taxes (hereinafter referred to as "French tax").

4. Notwithstanding the preceding provisions of this Article, the existing taxes to which the Agreement shall apply also include, in the case of France, the inheritance tax, but only for the application of Articles 4, 22, 24 and 25.

5. The Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting Parties shall notify each other of any important changes which have been made in their respective taxation laws.".

ARTICLE 3

1. Subparagraph *c* of paragraph 1 of Article 3 is deleted and replaced by the following:

"*(c)* the term "company" means any body corporate or any other entity which is treated as a body corporate for tax purposes;".

2. Paragraph 2 of Article 3 is deleted and replaced by the following:

"2. As regards the application of the Agreement by a Contracting Party any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that Party concerning the taxes to which the Agreement applies, any meaning under the tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.".

ARTICLE 4

Article 4 is deleted and replaced by the following:

"**ARTICLE 4**
RESIDENT

1. For the purposes of this Agreement, the term "resident of a Contracting Party" means

(a) any person who, under the law of that Party, is liable to tax in the Party by reason of domicile, residence, place of management or any other criterion of a similar nature, but the term does not include any person who is liable to tax in that Party in respect only of income from sources in that Party;

(b) that Party, the territorial communities of that Party and their legal persons established in the public interest;

(c) in the case of France, partnerships or other bodies of persons which have their place of effective management in France, and whose partners, shareholders or other members are personally liable to tax in France in respect of their share of the profits under domestic French law; but, with respect to the benefits granted by Québec under the Agreement, such partnerships and bodies of persons shall not be treated as residents of France except insofar as their partners, shareholders or other members are liable to French tax on income in respect of which these benefits are granted;

(d) any other person constituted and established in that Party and exempted from tax in that Party, where the competent authorities agree that for the purposes of the Agreement or certain provisions of the Agreement such person shall be deemed to be a resident of that Party.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting Parties, then the person's status shall be determined as follows:

(a) the person shall be deemed to be a resident of the Party in which that person has a permanent home available to him or her; if the person has a permanent home available to him or her in both Parties, the person shall be deemed to be a resident of the Party with which personal and economic relations are closer (centre of vital interests);

(b) if the Party in which the person has a centre of vital interests cannot be determined, or if the person has not a permanent home available to him or her in either Party, the person shall be deemed to be a resident of the Party in which the person has an habitual abode;

(c) if the person has an habitual abode in both Parties or in neither of them, the person shall be deemed to be a resident of France where the person is a national of France or of Québec where the person is a national of Canada;

(d) if the person is a national of both France and Canada or of neither of them, the competent authorities of the Contracting Parties 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 Parties, the competent authorities of the Contracting Parties shall endeavour to settle the question by mutual agreement. In the absence of such agreement, such person shall not be considered to be a resident of either Contracting Party for the purposes of enjoying benefits under the Agreement.".

ARTICLE 5

Article 5 is deleted and replaced by the following:

"**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" includes especially

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop; and

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

3. It is understood that a place of exploration of natural resources is also considered a permanent establishment if it constitutes a fixed place of business within the meaning of paragraph 1.

4. A building site or construction or installation project constitutes a permanent establishment only if it lasts for more than 12 months.

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

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

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

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

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise 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 listed in subparagraphs *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.

6. Notwithstanding the provisions of paragraphs 1, 2 and 3, where a person – other than an agent of an independent status to whom paragraph 7 applies – is acting on behalf of an enterprise and has, and habitually exercises in a Contracting Party an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that Party in respect of any activities which that person undertakes for that enterprise, unless the activities of such person are limited to those referred to in paragraph 5 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.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting Party merely because it carries on business in that Party through a broker, a general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

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

ARTICLE 6

1. The first sentence of paragraph 2 of Article 6 is deleted and replaced by the following:

"For the purposes of this Agreement, the term "immovable property" has the meaning which it has under the law of the Contracting Party in which the property involved is situated. It is understood that the term includes options and similar rights relating to such property.".

2. The following paragraph is added to Article 6:

"5. Where ownership of shares, interests or other rights in a company gives the owner the enjoyment of immovable property situated in a Contracting Party and held by that company, the income that the owner derives from the direct use, letting or use in any other form of the owner's right of enjoyment may be taxed in that Party. The provisions of this paragraph shall apply notwithstanding the provisions of Articles 7 and 14.".

ARTICLE 7

1. Paragraph 4 of Article 7 is replaced by the following:

"4. If it has been customary in a contracting Party 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 paragraph 2 shall preclude that Contracting Party 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.".

2. Paragraphs 4, 5 and 6 become paragraphs 5, 6 and 7 respectively.

ARTICLE 8

Article 9 is deleted and replaced by the following:

"**ARTICLE 9**
ASSOCIATED ENTERPRISES

Where

(a) an enterprise of a Contracting Party participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting Party; or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting Party and an enterprise of the other Contracting Party;

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, 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.".

ARTICLE 9

Article 10 is deleted and replaced by the following:

"**ARTICLE 10**
DIVIDENDS

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

2. However, where the company paying dividends is a resident of France, the dividends shall be taxable in France in accordance with French law, but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed

(a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company liable to corporation tax which holds directly or indirectly at least 10 per cent of the capital of the company paying the dividends;

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

The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. 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 taxation treatment of distributions or to same taxation treatment as the income from shares by the laws of the Contracting Party of which the company making the distribution is a resident.

4. The gross amount of the payment from the French Treasury ("tax credit") referred to in subparagraph *a* of paragraph 3 of Article 10 of the Convention between the Government of the French Republic and the Government of Canada for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital signed on May 2, 1975, modified by the Protocol of January 16, 1987 and the Protocol of November 30, 1995, and the amount of the prepayment refunded to a resident of Québec pursuant to paragraph 4 of Article 10 of the aforesaid Tax Convention shall be deemed to be dividends for the purposes of this Agreement.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of the Contracting Party, carries on an industrial or commercial activity in the other Contracting Party of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other Contracting Party independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. 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 Party derives profits or income from the other Contracting Party, that other Party 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 Party 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 Party, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Party.

7. Nothing in the Agreement shall prevent France from imposing on the earnings attributable to a permanent establishment, situated in France, of a company which is a resident of Québec a tax in addition to the tax allowable under the other provisions of the Agreement, provided that any additional tax so imposed shall not exceed 5 per cent of the amount of such earnings. This additional tax shall also apply to profits or gains derived from the alienation of immovable property situated in France by a company which is a resident of Québec, whether or not that company has a permanent establishment in France. For the purpose of these provisions, the term "earnings" means the profits or gains after deducting the taxes, other than the additional tax referred to herein, imposed on such profits or gains by France.".

ARTICLE 10

1. Paragraph 1 of section 11 is deleted and replaced by the following:

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

2. Subparagraph *c* of paragraph 3 of Article 11 is deleted and replaced by the following:

"*(c)* is paid with respect to indebtedness resulting from the sale or furnishing on credit by a resident of Québec of any equipment, merchandise or services, except where the sale or furnishing is made between associated enterprises within the meaning of subparagraph *a* or *b* of Article 9 or where the payer and the recipient of the interest are associated enterprises within the meaning of the same subparagraphs.".

ARTICLE 11

1. Paragraph 1 of Article 12 is deleted and replaced by the following:

"1. Royalties arising in a Contracting Party and paid to a resident of the other Contracting Party may only be taxed in that other Party.".

2. Paragraph 3 of Article 12 is deleted and replaced by the following:

"3. Notwithstanding the provisions of paragraph 2,

(a) royalties arising in France and paid to a resident of Québec who is the beneficial owner of the royalties, shall be taxable only in Québec if they are

i. copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or artistic work (but not including royalties in respect of motion picture films nor royalties in respect of works on film or videotape or other means of reproduction for use in connection with television broadcasting), or

ii. royalties for the use of, or the right to use, computer software, or

iii. royalties for the use of, or the right to use, any patent or for information concerning industrial, commercial or scientific experience (but not including any such information provided in connection with a rental or franchise agreement);

(b) royalties arising in France and paid to the Gouvernement du Québec or to a body of Québec approved by the competent authorities of the Contracting Parties, shall be taxable only in Québec.".

3. The second paragraph of paragraph 4 of Article 12 is deleted and replaced by the following:

"This provision shall apply to royalties paid to a resident of Québec in respect of films wholly or principally directed and produced in Québec and which are included in the list of films prepared by the Société de développement des entreprises culturelles.".

4. Paragraph 5 of Article 12 is deleted and replaced by the following:

"5. 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 motion picture films, any patent, trademark, 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, commercial or scientific experience.".

ARTICLE 12

Article 13 is deleted and replaced by the following:

"**ARTICLE 13**
CAPITAL GAINS

1. *(a)* Gains from the alienation of immovable property may be taxed in the Contracting Party in which such property is situated.

(b) Gains from the alienation of shares or other rights in a company the assets of which consist principally of immovable property situated in a Contracting Party may be taxed in that Party.

(c) Gains from the alienation of an interest in a partnership or a trust the assets of which consist principally of immovable property situated in a Contracting Party may be taxed in that Party.

(d) For the purposes of subparagraphs *b* and *c,* and for the purposes of paragraph 2 of Article 21 A, the term "immovable property situated in a Contracting Party" includes immovable property situated in that Party which is referred to in Article 6, and the shares or other rights the value of which is derived, directly or indirectly, principally from immovable property situated in that Party, and an interest in a partnership or trust, the value of which is derived, directly or indirectly, principally from immovable property situated in that Party; but it does not include property, other than rental property, through which the business of the company, partnership or trust is carried on.

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

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

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 Party of which the alienator is a resident.

5. The provisions of paragraph 4 shall not prevent a Contracting Party from taxing, according to its law, gains derived by an individual who is a resident of the other Contracting Party from the alienation of any property, if the alienator

(a) is a national of Canada where the first-mentioned Party is Québec or a national of France where the first-mentioned Party is France or has been a resident of that first-mentioned Party for ten years or more prior to the date of the alienation of the property; and

(b) has been a resident of that first-mentioned Party at any time within the five-year period immediately preceding the date of the alienation.".

ARTICLE 13

Paragraph 3 of Article 15 is deleted and replaced by the following:

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

ARTICLE 14

Article 17 is deleted and replaced by the following:

"**ARTICLE 17**
ARTISTS AND SPORTSMEN

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

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

3. The provisions of paragraphs 1 and 2 shall not apply to income in respect of activities exercised by a resident of a Contracting Party as an entertainer or a sportsman in the other Contracting Party if the visit to that other Party is principally supported by public funds of the first-mentioned Party, its territorial communities or their legal persons established in the public interest. In such case, the income shall be taxable only in the first-mentioned Party.".

ARTICLE 15

1. Paragraph 2 of Article 18 is deleted and replaced by the following:

"2. War pensions and allocations (including pensions and allowances paid to war veterans or paid as a consequence of damages or injuries suffered as a consequence of a war) arising in a Contracting Party and paid to a resident of the other Contracting Party shall, notwithstanding the provisions of Article 22, be exempt from tax in that other Party to the extent that they would be exempt from tax if received by a resident of the first-mentioned Party.".

2. The first sentence of paragraph 3 of Article 18 is deleted and replaced by the following:

"Annuities arising in a Contracting Party and paid to a resident of the other Contracting Party may be taxed in the first-mentioned Party.".

ARTICLE 16

Article 19 is deleted and replaced by the following:

"**ARTICLE 19**
GOVERNMENT SERVICE

1. Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting Party or one of its territorial communities or by one of the legal persons established in the public interest to an individual who is a national of Canada when that Party is Québec and a national of France when that Party is France in respect of services rendered to that Party, community or legal person, shall be taxable only in that Party.

2. The provisions of paragraph 1 shall not apply to salaries, wages and other similar remuneration paid in respect of services rendered in connection with a trade or business carried on by a Contracting Party or one of its territorial communities or by one of the legal persons established in the public interest.".

ARTICLE 17

The following paragraph is added to Article 20:

"Bursaries paid by a Contracting Party or one of its territorial communities, or by one of their legal persons established in the public interest to a resident of the other Contracting Party, or for the benefit of that resident, shall be taxable only in the first-mentioned Party and shall not be taken into account for the calculation of income tax in the other Party.".

ARTICLE 18

The following is added after Article 21:

"**ARTICLE 21 A**
CAPITAL

1. Capital represented by immovable property owned by a resident of a Contracting Party and situated in the other Contracting Party, may be taxed in that other Party.

2. Capital represented by shares or other rights in a company the assets of which consist principally of immovable property situated in a Contracting Party and referred to in subparagraph *d* of paragraph 1 of Article 13, may be taxed in that Party.

3. Capital represented by shares or other rights (other than shares or other rights referred to in paragraph 2) forming part of a substantial interest in a company which is a resident of a Contracting Party may be taxed in that Party. A substantial interest is considered to exist when an individual holds, alone or with related persons, directly or indirectly, shares or other rights the total of which gives right to at least 25 per cent of the profits of the company.

4. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party or by movable property pertaining to a fixed base available to a resident of a Contracting Party in the other Contracting Party for the purpose of performing independent personal services, may be taxed in that other Party.

5. Capital of an enterprise of a Contracting Party represented by ships and aircraft operated by that enterprise in international traffic or by movable property pertaining to their operation, or by containers referred to in paragraph 4 of Article 8, shall be taxable only in that Party.

6. All other elements of capital of a resident of a Contracting Party shall be taxable only in that Party.

7. Notwithstanding the preceding provisions of this Article, for the purposes of taxation with respect to the solidarity tax on net wealth referred to in subparagraph *b* of paragraph 3 of Article 2, of an individual who is a resident of France and who is a national of Canada but not a national of France, the assets situated outside of France that such person owns on the first of January of each of the five years following the calendar year in which the person becomes a resident of France shall be excluded from the base of assessment of the taxes relating

to each of those five years. If such an individual loses the status of resident of France for a period of at least three years and then again becomes a resident of France, the assets situated outside of France that such a person owns on the first of January of each of the five years following the calendar year in which the person again becomes a resident of France shall be excluded from the base of assessment of the taxes relating to each of those five years.

ARTICLE 19

1. Article 22 is deleted and replaced by the following:

"**ARTICLE 22**
ELIMINATION OF DOUBLE TAXATION

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

(a) Subject to the existing provisions of the law of Québec regarding the deduction from tax payable in Québec of tax paid in a territory outside of Québec and to any subsequent modification of those provisions (which shall not affect the principle hereof), and unless a greater deduction or relief is provided under the law of Québec, French tax payable under the law of France and in accordance with this Agreement on profits, income or gains arising in France shall be deducted from any Québec tax payable in respect of such profits, income or gains up to the portion of French tax that is not deducted from the tax payable to the Government of Canada;

(b) Subject to the existing provisions of the law of Québec regarding the taxation of the income of a foreign affiliate and to any subsequent modification of those provisions (which shall not affect the principle hereof) for the purpose of computing Québec tax, a company which is a resident of Québec shall be allowed to deduct in computing its taxable income any dividend received by it out of the exempt surplus of a foreign affiliate which is a resident of France;

For the purpose of computing the exempt surplus of a foreign affiliate which is a resident of France, profits derived from a permanent establishment of that company situated in an Overseas Territory of the French Republic shall be deemed to be derived from France;

(c) In determining the amount of tax payable in Québec for a taxation year by an individual who died in that year and, at the time was a resident of Québec, the amount of any inheritance tax payable in France, after deduction of the credit provided for in paragraph 2*c* ii, in respect of property situated in France which form part of the estate of that person shall be allowed as a deduction from the amount of any tax otherwise payable in Québec, taking into account the deduction that is provided for under subparagraph *a* for tax payable in France, on income, profits or gains of the individual arising in France in that year up to the portion of such inheritance tax that is not deducted from the tax payable to the Government of Canada;

(d) For the purposes of this paragraph, profits, income or gains of a resident of Québec which may be taxed in France in accordance with the Agreement shall be deemed to arise from sources in France;

(e) Where in accordance with any provision of the Agreement income derived or capital owned by a resident of Québec is exempt from tax in Québec, Québec may nevertheless, in calculating the amount of tax on other income or capital, take into account the exempted income or capital.

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

(a) income arising in Québec and taxable or taxable only in Québec in accordance with the provisions of this Agreement shall be taken into account in calculating the French tax when the recipient is a resident of France and the income is not exempt from the corporation tax under French law. In such case, the Québec tax shall not be deductible from such income, but the recipient shall be entitled to a tax credit deductible from the French tax. This tax credit is equal:

i. for income not referred to in *a* ii of this paragraph, to the amount of French tax corresponding to such income;

ii. for income referred to in paragraphs 1 and 5 of Article 13, in paragraph 3 of Article 15, in Article 16, in paragraphs 1 and 2 of Article 17 and in paragraph 3 of Article 18, to the amount of tax paid in Québec in accordance with the provisions of those Articles. The aggregate of such credit and the credit corresponding to the tax payable to the Government of Canada may not exceed the amount of French tax corresponding to such income. It is understood that the term "amount of tax paid in Québec" means the amount of Québec tax effectively and finally paid in respect of such income, in accordance with the provisions of this Agreement, by the resident of France receiving such income.

(b) A resident of France who owns taxable capital in Québec in accordance with the provisions of paragraphs 1, 2, 3 or 4 of Article 21 A may also be taxed in

France in respect of such capital. The French tax is calculated subject to a deduction of a tax credit equal to the amount of Québec tax on such capital. This tax credit and the credit relating to tax payable to the Government of Canada shall not exceed that amount of the French tax which is attributable to such capital.

(c) Notwithstanding any other provision of the Agreement:

i. where a deceased person was at the time of death a resident of France, France shall apply the inheritance tax to all of the property taxable in accordance with its domestic legislation and shall allow as a deduction from that tax an amount equal to the Québec tax paid on the gains which, at the time of death and under the provisions of the Agreement, were taxable in Québec. Such deduction shall not, however, exceed that share of the French inheritance tax, as computed before the deduction is given, attributable to the property in respect of which the deduction shall be allowed;

ii. where a deceased person was at the time of death a resident of Québec, France shall apply the inheritance tax to all of the property taxable in accordance with its domestic legislation and shall allow as a deduction from that tax an amount equal to the Québec tax paid on the gains which, at the time of death and under the provisions of paragraph 4 of Article 13, were taxable only in Québec, and that are not referred to in paragraph 5 of the same Article; such deduction shall not, however, exceed the lesser of the two following shares:

(aa) the share of the inheritance tax, as calculated before the deduction is given, attributable to the property from the alienation of which are derived the gains referred to above and in respect of which the deduction shall be allowed; and

(bb) the share of the Québec tax attributable to such property, as calculated before the deduction provided for in paragraph 1*c*;

(d) it is understood that the term "amount of French tax corresponding to such income" used in subparagraph *a* means:

i. where the tax payable in respect of such income is calculated by applying a proportional rate, the product of the taxable amount of such net income multiplied by the rate which is applied to such net income;

ii. where the tax payable in respect of such income is calculated by applying a progressive scale, the product of the taxable amount of such net income multiplied by the rate resulting from the ratio between the tax actually payable in respect of the total net income taxable under the laws of France and the amount of such total net income.

This interpretation applies by analogy to the term "that amount of the French tax which is attributable to such capital" used in subparagraph *b* and to the terms "share of the French inheritance tax, as calculated before the deduction is given, attributable to the property in respect of which the deduction shall be allowed" and "share of the Québec tax attributable to such property" used in subparagraph *c*.

3. The provisions of the Agreement, and in particular those of this Article, shall not prevent the application of the domestic legislation of a Contracting Party:

(a) which authorizes enterprises of that Party to determine their taxable profits on the basis of a consolidation which may include the results of subsidiaries which are resident in the other Contracting Party, or permanent establishments situated in that other Party; or

(b) in accordance with which the first-mentioned Party determines the taxable profits of enterprises of that first-mentioned Party by deducting the losses of subsidiaries which are resident in the other Contracting Party or of permanent establishments situated in that other Party, and by including the profits of these subsidiaries or of these permanent establishments up to the amount of the losses deducted.".

ARTICLE 20

Paragraph 1 of Article 23 is deleted and replaced by the following:

"1. Individuals who are nationals of a Contracting Party shall not be subject in the other Contracting Party to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which individuals who are nationals of that other Party in the same circumstances are or may be subjected, notably with respect to the residence.".

ARTICLE 21

1. Paragraph 3 of Article 24 is deleted and paragraphs 4 and 5 become paragraphs 3 and 4 respectively.

2. The following paragraph is added to Article 24:

"5. If any question, difficulty or doubt arising as to the interpretation or application of the Agreement cannot be resolved or dealt with by the competent authorities as a result of the application of the provisions of paragraph 1, 2 or 3, these questions, difficulties or doubts may, if the competent authorities agree, be submitted to an arbitration commission. The decisions of the commission shall have the force of law. The composition of the commission and the arbitration procedures shall be determined, after consultation between the competent authorities, through an exchange of letters between the Contracting Parties. The provisions of this paragraph shall take effect from the date agreed to in the exchange of letters.".

ARTICLE 22

Article 25 is deleted and replaced by the following:

"**ARTICLE 25**
EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting Parties shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting Parties concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information received by a Contracting Party shall be treated as secret in the same manner as information obtained under the domestic laws of that Party and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or proceeding 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 paragraph 1 be construed so as to impose on a Contracting Party the obligation

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting Party;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting Party;

(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.".

ARTICLE 23

Paragraph 1 of Article 27 is deleted and replaced by the following:

"1. This Agreement shall apply, with respect to France, to the European and Overseas Departments (Guadeloupe, Guyane, Martinique and Reunion) of the French Republic as well as to the Territorial Authority of Saint-Pierre-et-Miquelon.".

ARTICLE 24

1. Paragraph 1 of Article 28 is deleted and replaced by the following:

"1. The provisions of this Agreement shall not prevent

(a) Québec from imposing a tax on amounts included in the income of a resident of Québec with respect to a partnership, trust or controlled foreign affiliate, in which the resident has an interest;

(b) France from applying the provisions of Articles 209 B and 212 of the Code général des impôts or other identical or substantially similar provisions which would amend or replace them.".

2. Paragraph 3 of Article 28 is deleted and replaced by the following:

"3. The competent authorities of the Contracting Parties may settle the mode of application of the Agreement. In particular, they may prescribe the formalities that must be followed by a resident of a Contracting Party to obtain, in the other Contracting Party, the exemptions or reductions of tax or other tax benefits provided for by the Agreement. Such formalities may include the filing of a form certifying residency, indicating in particular the nature and the amount or value of the income or of the capital involved, certified by the tax authorities of the first-mentioned Party.".

3. Paragraph 5 of Article 28 is deleted and replaced by the following:

"5. Contributions in a year in respect of services rendered in that year paid by, or on behalf of, an individual who is a resident of one of the Contracting Parties or who is temporarily present in that Party, to a pension plan that is recognized for tax purposes in the other Contracting Party shall, during a period not exceeding in the aggregate 60 months, be treated in the same way for tax purposes in the first-mentioned Party as a contribution paid to a pension plan that is recognized for tax purposes in the first-mentioned Party, provided that

(a) such individual was regularly contributing to the pension plan (or to another pension plan for which that plan has been substituted) over a period ending immediately before becoming a resident of or temporarily present in the first-mentioned Party ; and

(b) the competent authority of the first-mentioned Party agrees that the pension plan corresponds generally to a pension plan recognized for tax purposes by that Party.

For the purposes of this paragraph, the term "pension plan" includes especially a pension plan created under a public social security system.".

4. The following paragraph is added to Article 28 :

"7. *(a)* A mutual fund in securities constituted and established in Québec, not subject to tax in Québec, and which receives dividends paid by a company which is a resident of France or interest arising in France, may claim as a whole the benefit of the reductions or exemptions of taxes provided for under the Agreement for the fraction of the income which corresponds to the rights held in that organization by residents of Québec and which is taxable in the hands of those residents.

(b) Notwithstanding the provisions of Article 10, dividends paid by a company which is a resident of France to an organization that was constituted and is established in Québec and is operated exclusively to administer or provide benefits under one or more pension or retirement plans shall be exempt from tax in France provided that

i. the organization is the beneficial owner of the dividends and is generally exempt from tax in Québec ; and

ii. the organization does not own directly or indirectly more than 5 per cent of the capital of the company paying the dividends ; and

iii. the principal class of shares of the company paying the dividends is regularly traded on a stock exchange situated in France.

(c) Notwithstanding the provisions of Article 11, interest arising in France and paid to an organization that was constituted and is established in Québec and is operated exclusively to administer or provide benefits under one or more pension or retirement plans, shall be exempt from tax in France provided that

i. the organization is the beneficial owner of the interest and is generally exempt from tax in Québec ; and

ii. the interest is not derived from the carrying on of a trade or a business by the organization or from an associated person within the meaning of subparagraph *a* or *b* of Article 9.".

5. The following paragraph is added to Article 28 :

"8. Subject to an agreement between the competent authorities of the Contracting Parties, the exemptions and other tax benefits provided for by the laws of one of the Contracting Parties for the benefit of that Party, its territorial communities or their legal persons established in the public interest whose activities are not the carrying on of a trade or business, shall apply in the same conditions respectively to

(a) the other Party or organizations whose activities are not the carrying on of a trade or business, created within the framework of an agreement concluded or approved by the Contracting Parties ;

(b) territorial communities of the other Party ; and

(c) legal persons established in the public interest of that other Party or its territorial communities, whose activities are identical or substantially similar to those of the first-mentioned Party or of its territorial communities.

The provisions of this paragraph shall also apply to taxes of any nature or designation, other than those referred to in Article 2, except for taxes owed in respect of services rendered.".

ARTICLE 25

1. Each Contracting Party shall notify to the other the completion of the procedure required for the bringing into force of this Protocol. The Protocol shall enter into force on the first day of the second month following the day on which the later of these notifications is received.

2. The provisions of the Protocol shall apply

(a) in Québec

i. in the case of companies, for any fiscal year beginning on or after the day the Protocol enters into force ; and

ii. in other cases, for any taxation year beginning on or after the day the Protocol enters into force ;

(b) in France

i. in respect of the withholding taxes, for any amount paid on or after the day on which the Protocol enters into force;

ii. in respect of taxes on income which are not levied by way of withholding tax, to income earned in any calendar year or relating to any accounting year beginning on or after the day on which the Protocol enters into force; and

iii. in respect of other taxes, to taxation years with respect to taxable events occurring on or after January 1 following the year in which the Protocol enters into force.

3. Notwithstanding the provisions of paragraph 2, the provisions of paragraph 8 of Article 28 of the Agreement as modified by the Protocol shall apply for taxation years not prescribed on the date of entry into force of the Protocol.

ARTICLE 26

1. This Protocol shall remain in force for as long as the Agreement.

2. The competent authorities of the Contracting Parties shall be empowered, after the entry into force of the Protocol, to publish the text of the Agreement as amended by the Protocol.

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

Done in duplicate at Paris, this September 3, 2002.

FOR THE GOUVERNEMENT DU QUÉBEC	FOR THE GOUVERNEMENT DE LA RÉPUBLIQUE FRANÇAISE
PAULINE MAROIS	FRANCIS MER

6914

Gouvernement du Québec

O.C. 569-2005, 15 June 2005

An Act respecting the Ministère de l'Emploi et de la Solidarité sociale and establishing the Commission des partenaires du marché du travail (R.S.Q., c. M-15.001)

An Act respecting the Ministère du Revenu (R.S.Q., c. M-31; 2004, c. 21)

An Act respecting the Québec Pension Plan (R.S.Q., c. R-9)

Agreement on Social Security between the Gouvernement du Québec and the Government of the Slovak Republic
— Ratification
— Implementation

Ratification of the Agreement on Social Security between the Gouvernement du Québec and the Government of the Slovak Republic, signed at Québec on 25 February 2003 and making of the Regulation implementing that Agreement

WHEREAS Décret 1188-2001 dated 3 October 2001 authorized the Minister of State for International Relations and Minister of International Relations to sign alone the Agreement on Social Security between the Gouvernement du Québec and the Government of the Slovak Republic;

WHEREAS the Agreement was signed at Québec on 25 February 2003;

WHEREAS the purpose of the Agreement is to coordinate the pension plan of Québec and the pension plan of Slovakia in order to mitigate the disadvantages caused by the migration of persons;

WHEREAS, under paragraph 3 of section 5 of the Act respecting the Ministère de l'Emploi et de la Solidarité sociale and establishing the Commission des partenaires du marché du travail (R.S.Q., c. M-15.001), in exercising functions the Minister may, in particular, enter into agreements in accordance with the law, with a government other than the Gouvernement du Québec, a department of such a government, an international organization, or a body under the authority of such a government or organization;