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PROTOCOL AMENDING THE TAX CONVENTION WITH FRANCE

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

PROTOCOL AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE FRENCH REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL, SIGNED AT PARIS ON AUGUST 31, 1994

SEPTEMBER 28, 2005.—The Protocol was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and order to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE

39–112 WASHINGTON : 2005

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *September 28, 2005.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith a Protocol Amending the Convention Between the Government of the United States of America and the Government of the French Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, signed at Paris on August 31, 1994 (the "Convention"), signed at Washington on December 8, 2004 (the "Protocol"). Also transmitted for the information of the Senate is the report of the Department of State with respect to the Protocol.

The Protocol was negotiated to address certain technical issues that have arisen since the Convention entered into force. The Protocol was concluded in recognition of the importance of U.S. economic relations with France.

The Protocol clarifies the treatment of investments made in France by U.S. investors through partnerships located in the United States, France, or third countries. It also modifies the provisions of the treaty dealing with pensions and pension contributions in order to achieve parity given the two countries' fundamentally different pension systems. The Protocol makes other changes to the Convention to reflect more closely current U.S. tax treaty policy.

I recommend that the Senate give early and favorable consideration to this Protocol and that the Senate give its advice and consent to ratification.

GEORGE W. BUSH.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, September 2, 2005.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, a Protocol Amending the Convention Between the Government of the United States of America and the Government of the French Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, signed at Paris on August 31, 1994 (the "Convention"), and signed at Washington December 8, 2004 (the "Protocol").

The Protocol was negotiated to address certain technical issues that have arisen since the Convention entered into force. The Protocol was concluded in recognition of the importance of the United States' economic relations with France.

The Protocol clarifies the treatment of investments made in France by U.S. investors through partnerships located in the United States, France, or third countries. Since France taxes French partnerships on their worldwide income and does not treat them as fiscally transparent, the Protocol confirms that France maintains taxing rights with respect to French partnerships. However, the Protocol provides that French treaty benefits will apply to U.S. residents who invest through U.S. partnerships or partnerships located in certain third countries. These partnership provisions will eliminate uncertainty and provide significant benefits to U.S. investors.

The Protocol modifies the provisions of the treaty dealing with pensions and pension contributions in order to achieve parity given the two countries' fundamentally different pension systems. Under the Protocol, the country of source is assigned taxing rights with respect to both state social security payments and private pension payments. The Protocol also includes a provision that allows U.S. persons to deduct voluntary contributions to the French social security system to the same extent that contributions to a U.S. plan would be deductible, which is comparable to the provision in the Convention that allows French residents deductions for contributions to U.S. private pension plans.

The Protocol makes other changes to the Convention to reflect more closely current U.S. tax treaty policy. The Protocol updates the treatment of dividends paid by U.S. real estate investment trusts to reflect a change in approach adopted in 1997, which is intended to prevent the use of structures designed to avoid U.S. withholding taxes on outbound dividends while providing appropriate benefits to portfolio investors in such trusts. The Protocol also extends the provision in the Convention preserving U.S. taxing rights with respect to certain former citizens to cover certain former long-term residents.

The United States and France will notify each other when their respective constitutional and legislative requirements for entry into force of the Protocol have been satisfied. The Protocol will enter into force on the date of receipt of the later of such notifications. In general, it will have effect with respect to taxes withheld at source, for amounts paid or credited on or after the first day of the second month following the date on which the Protocol enters into force, and with respect to other taxes, for taxable periods beginning on or after the first day of January following entry into force. However, the rules benefiting U.S. residents investing through partnerships will be applicable as of the effective dates of the Convention.

The Department of the Treasury and the Department of state cooperated in the negotiation of the proposed Protocol. It has the full approval of both Departments.

Respectfully submitted,

CONDOLEEZZA RICE.

PROTOCOL
AMENDING THE CONVENTION BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND
THE GOVERNMENT OF THE FRENCH REPUBLIC
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME AND CAPITAL,
SIGNED AT PARIS ON AUGUST 31, 1994

The Government of the United States of America and the Government of the French Republic, desiring to amend the Convention Between the Government of the United States of America and the Government of the French Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, signed at Paris on August 31, 1994, have agreed as follows:

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ARTICLE I

1. Subparagraph (b) (iii) of paragraph 2 of Article 4 (Resident) of the Convention shall be deleted and replaced by the following:

"(iii) in the case of the United States, a regulated investment company, a real estate investment trust, and a real estate mortgage investment conduit; in the case of France, a "société d'investissement à capital variable"; and any similar investment entities agreed upon by the competent authorities of both Contracting States;".

2. Subparagraph (b) (iv) of paragraph 2 of Article 4 (Resident) of the Convention shall be deleted and replaced, and new subparagraphs (b) (v) and (vi) of paragraph 2 of Article 4 are added as follows:

"iv) a partnership or similar pass-through entity, an estate, and a trust (other than one referred to in subparagraph (ii) or (iii) above), whether or not organized or managed in one of the Contracting States, but only to the extent that the income derived by such partnership, similar entity, estate, or trust is treated for taxation purposes in that Contracting State as the income of a resident, either in the hands of such partnership, entity, estate or trust, or in the hands of its partners, beneficiaries or grantors, it being understood that a "société de personnes", a "fonds commun de placement", a "groupement d'intérêt économique" (economic interest group), or a "groupement européen d'intérêt économique" (European economic interest group) that is constituted in France and has its place of effective management in France and that is not subject to company tax therein shall be treated as a partnership for purposes of United States tax benefits under this Convention, provided that a partnership or similar pass-through entity, an estate and a trust which is not organized or managed in one of the Contracting States shall be entitled to the benefits of this convention with respect to the income or gains derived by such entity arising in France if the following additional conditions are satisfied:

(aa) the absence of contrary provisions in a double taxation convention

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between a Contracting State and the third State;

(bb) the fact that the partnership or similar pass-through entity, estate or trust is not treated as a body corporate for tax purposes or otherwise liable to tax on French source income either in its own hands or in the hands of its partners, beneficiaries or grantors under the tax law of the third State;

(cc) a partner's, beneficiary's, or grantor's share of the income or gain of the partnership or similar pass-through entity, estate or trust is taxed in the same manner, including the nature or source of that income or gain and the time when that income or gain is taxed, as would have been the case if the income or gain had been derived directly, except to the extent resulting from any difference in accounting methods, accounting periods, or other similar difference; and

(dd) it is possible to exchange information concerning the partnership or similar pass-through entity, estate or trust or partners, beneficiaries or grantors under the terms of a double taxation convention between the Contracting State in which the income or gain arises and the third State;

v) a partnership or similar pass-through entity, an estate, and a trust (other than one referred to in subparagraph (ii) or (iii) above), which is organized in the United States, shall be treated as a resident of the United States to the extent provided in subparagraph (iv) above, and as a resident of France to the extent that the income derived by such partnership, similar pass-through entity, estate or trust arises in France and corresponds to the share of the profits or losses of such entity which benefits a resident of France;

vi) it is understood that, for the purposes of the subparagraphs (iv) and (v) above, the income derived by a partnership or similar pass-through entity, an estate and a trust (other than one referred to in subparagraph (ii) or (iii) above), is considered to be treated for taxation purposes in a Contracting State as the income of a resident to the extent of this income which benefits a partner, beneficiary, or grantor that is a pension trust, an other organization or a not-for-profit

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organization referred to in subparagraph (ii) above, notwithstanding that all or part of this income of such trust, other organization, or not-for-profit organization is exempt from income taxation in that State."

ARTICLE II

The last sentence in the final paragraph of paragraph 2 of Article 10 (Dividends) of the Convention shall be deleted and replaced by the following new sentence:

"In the case of dividends paid by a United States real estate investment trust, the provisions of subparagraph (b) shall apply only if:

(i) the beneficial owner of the dividends is an individual holding an interest of not more than 10 percent in such real estate investment trust;

(ii) the dividends are paid with respect to a class of stock that is publicly traded and the beneficial owner of the dividends is a person holding an interest of not more than 5 percent of any class of the real estate investment trust's stock; or

(iii) the beneficial owner of the dividends is a person holding an interest of not more than 10 percent in the real estate investment trust and the value of no single interest in the real estate investment trust's real property exceeds 10 percent of the real estate investment trust's total interests in real property."

ARTICLE III

Article 18 (Pensions) of the Convention shall be deleted and replaced by the following:

"ARTICLE 18 - Pensions

1. Payments under the social security legislation or similar legislation of a Contracting State to a resident of the other Contracting State, and pension distributions and other similar remuneration arising in one of the Contracting States in consideration of past employment paid to a resident of the other contracting State, whether paid periodically or in a lump sum, shall be taxable only in the first-mentioned State. For purposes of this paragraph, pension distributions

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and other similar remuneration shall be deemed to arise in a Contracting State only if paid by a pension or other retirement arrangement established in that State.

2. (a) Where an individual renders personal services and is a resident of a Contracting State but not a national of that State, and that individual is a participant in a pension or other retirement arrangement that is established, maintained, and recognized for tax purposes in the other Contracting State:

(i) contributions paid by, or on behalf of, such individual to such pension or retirement arrangement shall be deductible from the income taxable in the first-mentioned State as if the contributions had been paid to a pension or other retirement arrangement that is established, maintained, and recognized for tax purposes in that State, subject to the same monetary limits provided for by the law of that State; and

(ii) in the case of dependent personal services, any benefits accrued under such arrangement or payments made to such an arrangement by or on behalf of the individual's employer shall be excluded from the individual's income taxable in the first-mentioned State and shall be allowed as a deduction in computing the profits of the employer in that State as if the contributions had been paid to a pension or other retirement arrangement that is established, maintained, and recognized for tax purposes in that State, subject to the same monetary limits provided for by the law of that State.

(b) The provisions of this paragraph shall not apply unless:

(i) contributions by or on behalf of the individual to the pension or other retirement arrangement (or to another similar arrangement for which this arrangement was substituted) were made before he arrived in the first-mentioned State; and

(ii) the competent authority of the first-mentioned State agrees that the arrangement generally corresponds to a pension or other retirement arrangement established, maintained, and recognized for tax purposes in

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the first-mentioned State.

(c) For purposes of this paragraph:

(i) in the case of the United States, it is understood that a French pension or other retirement arrangement organized under the French social security legislation shall be considered to generally correspond to a pension or other retirement arrangement established, maintained, and recognized for tax purposes in the United States; and

(ii) in the case of France, it is understood that the social security or similar legislation of the United States, qualified plans under section 401(a) of the Internal Revenue Code, individual retirement plans (including individual retirement plans that are part of a simplified employee pension plan that satisfies section 408(k), individual retirement accounts, individual retirement annuities, and section 408(p) accounts), section 403(a) qualified annuity plans, and section 403(b) plans shall be considered to generally correspond to a pension or other retirement arrangement established, maintained, and recognized for tax purposes in France; and

(iii) a pension or other retirement arrangement is recognized for tax purposes in a Contracting State if the contributions to the arrangement would qualify for tax relief in that State."

ARTICLE IV

1. Paragraphs 2 and 3 of Article 19 (Public Remuneration) of the Convention shall be deleted.

2. A new paragraph 2 of Article 19 (Public Remuneration) of the Convention shall be added as follows:

"2. The provisions of Articles 14 (Independent Personal Services), 15 (Dependent Personal Services), 16 (Directors' Fees), and 17 (Artistes and Sportsmen) shall apply to remuneration paid in respect of services rendered in connection with a business carried on

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by a Contracting State, a political subdivision (in the case of the United States) or local authority thereof, or an agency or instrumentality of that State, subdivision, or authority."

ARTICLE V

1. Subparagraph (b) (iv) of paragraph 2 [*Paragraph 1 in French language*] of Article 24 (Relief From Double Taxation) of the Convention shall be deleted.

2. Subparagraphs (b) (v) and (b) (vi) of paragraph 2 [*Paragraph 1 in French language*] of Article 24 (Relief From Double Taxation) of the Convention shall be renumbered as subparagraphs (b) (iv) and (b) (v), respectively.

3. Subparagraph (c) of paragraph 1 [*Paragraph 2 in French language*] of Article 24 (Relief From Double Taxation) of the Convention shall be deleted and replaced by the following:

> "(c) In the case of an individual who is both a resident and citizen of the United States and a national of France, the provisions of paragraph 2 of Article 29 (Miscellaneous Provisions) shall apply to remuneration described in paragraph 1 of Article 19 (Public Remuneration), but such remuneration shall be treated by the United States as income from sources within France."

ARTICLE VI

1. The last sentence of Paragraph 2 of Article 29 (Miscellaneous Provisions) of the Convention shall be deleted and replaced by the following:

> "For this purpose, the term "citizen" shall include a former citizen or long-term resident whose loss of such status had as one of its principal purposes the avoidance of tax (as defined under the laws of the United States), but only for a period of ten years following such loss."

2. Paragraph 3 of Article 29 (Miscellaneous Provisions) of the Convention shall be deleted and replaced by the following:

> " 3. The provisions of paragraph 2 shall not affect:
>
> (a) the benefits conferred under paragraph 2 of Article 9 (Associated

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Enterprises), under paragraph 3 (a) of Article 13 (Capital Gains), under paragraph 1 of Article 18 (Pensions), and under Articles 24 (Relief From Double Taxation), 25 (Non-Discrimination), and 26 (Mutual Agreement Procedure); and

(b) the benefits conferred under paragraph 2 of Article 18 (Pensions), and under Articles 19 (Public Remuneration), 20 (Teachers and Researchers), 21 (Students and Trainees), and 31 (Diplomatic and Consular Officers), upon individuals who are neither citizens of, nor have immigrant status in, the United States."

ARTICLE VII

1. The Contracting States shall notify each other when their respective constitutional and statutory requirements for the entry into force of this Protocol have been satisfied. The Protocol shall enter into force on the date of receipt of the later of such notifications.

2. Except as provided in paragraph 3, the provisions of this Protocol shall have effect:

(a) in respect of taxes withheld at source, for any amount paid or credited on or after the first day of the second month next following the date on which the Protocol enters into force; and

(b) in respect of other taxes, for taxable periods beginning on or after the first day of January next following the date on which the Protocol enters into force.

3. The provisions of Article I, paragraph 2, of this Protocol, except to the extent such paragraph treats a "fonds commun de placement" as a partnership for purposes of United States tax benefits under this Convention, shall have effect:

(a) in respect of taxes withheld at source, for any amount paid or credited on or after February 1, 1996; and

(b) in respect of other taxes, for taxable periods beginning on or after January 1, 1996.

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

Done at Washington, this eighth day of December, 2004, in duplicate, in the English and French languages, each text being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA	FOR THE GOVERNMENT OF THE FRENCH REPUBLIC
Samuel W Bodman	