

regulations thereunder, as though the convention had not come into effect.

§ 514.9 Refund of excess tax withheld.

(a) *Years 1952, 1953, 1954, 1955, 1956.* Where the tax withheld at the source upon dividends and interest paid in any one or more of the calendar years 1952, 1953, 1954, 1955, and 1956 is in excess of the tax due from the taxpayer under the convention, supplemented as set forth above, it will be necessary for the taxpayer to file an income tax return (Form 1040NB France for individuals and Form 1120NB France for corporations) with respect to such taxable year or years. The return shall cover all years for which a refund is claimed. The return must be filed on or before June 13, 1959. One return shall cover all years for which a refund is claimed. The taxpayer's total fixed or determinable, annual or periodical income (other than royalties) from sources within the United States should be reported on the return, and the income for each taxable year should be shown separately. There shall also be shown on such returns the amounts, if any, received in any of such years of capital gains (other than gains from the sale or exchange of stocks, securities or commodities) from sources within the United States. For this purpose, beginning with the calendar year 1954, certain distributions from employees' trusts, and amounts received incident to disposal of timber or coal or patent rights shall be included in such capital gains. See section 871(a)(1) of the Internal Revenue Code of 1954 for provisions pertaining to individual taxpayers and section 881(a) for provisions pertinent to corporate taxpayers. There shall be included with the return the following statements:

(1) That the taxpayer was a nonresident alien (including a nonresident alien individual, fiduciary, or partnership) resident in France or was a French corporation, during the year or years for which the return is filed;

(2) That the taxpayer had no permanent establishment in the United States during the respective years in which the income was received;

(3) That no penalty for fraud has been imposed by the United States against the taxpayer claimant with respect to

income tax for the year or years for which the return is filed.

In addition to the above statements, all information requested on the return must be furnished. Any tax paid in excess of that due from the owner of the income will be refunded by the United States Government as required by law. For the purpose of refund of excess tax withheld resulting from the tax convention, a properly executed return on Form 1040NB France or Form 1120NB France shall constitute a claim for refund or credit for the amount of the overpayment disclosed by such return.

(b) *Date of payment of tax.* The United States tax withheld from dividends and interest derived from sources within the United States by nonresident aliens, or by a foreign corporation not engaged in trade or business in the United States, is deemed to have been paid on March 15 of the calendar year immediately succeeding that in which such income has been so derived. Section 1461, Internal Revenue Code of 1954. Hence, the United States tax withheld from dividends and interest derived by such aliens resident in France and such French corporations for the years 1952, 1953, 1954, 1955, and 1956 is deemed to have been paid, respectively, on March 15, 1953, March 15, 1954, March 15, 1955, March 15, 1956, and March 15, 1957.

§ 514.10 Effective date.

The provisions of §§ 514.1 through 517.9 shall be effective with respect to taxable years beginning after December 31, 1956, and before January 1, 1967, or with respect to dividends, interest, and royalties paid before August 11, 1968.

[T.D. 6986, 34 FR 136, Jan. 4, 1969]

TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1966, OR DIVIDENDS, INTEREST, AND ROYALTIES PAID ON OR AFTER AUGUST 11, 1968

SOURCE: Treasury Decision 6986, 34 FR 136, Jan. 4, 1969, unless otherwise noted.

§ 514.20 Introductory.

(a) *Applicable provisions of convention.* The income tax convention between the United States and France, signed on July 28, 1967 (the instruments of

ratification of which were exchanged on July 11, 1968), provides in part as follows, effective for taxable years beginning after December 31, 1966, or with respect to the rate of withholding tax, for dividends, interest, and royalties paid on or after August 11, 1968:

ARTICLE 1—TAXES COVERED

(1) The taxes which are the subject of the present Convention are:

(a) In the case of the United States, the Federal income tax, including surtax, imposed by the Internal Revenue Code and

(b) In the case of France:

(i) The income tax on the income of physical persons, the complementary tax, the corporation tax, including any withholding tax, prepayment (precompte) or advance payment with respect to the aforesaid taxes, and

(ii) The tax on Stock Exchange transactions.

(2) The Convention shall also apply to any documentary taxes on sales or transfers of shares or certificates of stock or bonds which are subsequently imposed.

(3) The Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes.

(4) For the purpose of Article 24 (Non-discrimination), this Convention shall also apply to taxes of every kind and to those imposed at the national, State, and local level.

ARTICLE 2—GENERAL DEFINITIONS

(1) In this Convention, unless the context otherwise requires:

(a) The term “United States of America” means the United States of America and when used in the geographical sense means the States thereof and the District of Columbia. The term “France” when used in a geographical sense means Metropolitan France and the Overseas departments (Guadeloupe, Guyane, Martinique, and Reunion).

(b) The terms “a Contracting State” and “the other Contracting State” means the United States or France, as the context requires.

(c) The term “person” comprises an individual or a corporation, or any other body of individuals or persons.

(d)(i) The term “United States corporation” or “corporation of the United States” means a corporation, or any entity treated as a corporation for U.S. tax purposes, which is created or organized under the laws of the United States or any State thereof or the District of Columbia; and

(ii) The term “French corporation” or “corporation of France” means any body corporate or any entity which is treated as a body corporate under French tax law, which

is resident within France for French tax purposes.

(e) The term “competent authority” means:

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

(ii) In the case of France, the Minister of Economy and Finance or his delegate.

(2) As regards the application of the Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of the Convention.

ARTICLE 3—FISCAL DOMICILE

(1) The term “resident of France” means:

(a) A French corporation, and

(b) Any person (other than a body corporate or any entity which under French law is treated as a body corporate) who is resident in France for purposes of its tax.

(2) The term “resident of the United States” means:

(a) A U.S. corporation, and

(b) Any person (other than a corporation or an entity treated under U.S. law as a corporation) who is resident in the United States for purposes of its tax, but in the case of a person acting as a partner or fiduciary only to the extent that the income derived by such person in that capacity is taxed as the income of a resident.

(3) An individual who is a resident in both Contracting States shall be deemed a resident of that Contracting State in which he maintains his permanent home. If he has a permanent home in both Contracting States or in neither of the Contracting States, he shall be deemed a resident of that Contracting State with which his personal and economic relations are closest (center of vital interests). If the Contracting State in which he has his center of vital interests cannot be determined, he shall be deemed a resident of that Contracting State in which he has an habitual abode. If he has an habitual abode in both Contracting States or in neither of the Contracting States, the competent authorities of the Contracting States shall settle the question by mutual agreement. For purposes of this Article, a permanent home is the place in which an individual dwells with his family. An individual who is deemed to be a resident of one Contracting State and not a resident of the other Contracting State by reason of the provisions of this paragraph shall be deemed a resident only of the former State for all purposes of this Convention (including Article 22).

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ARTICLE 4—PERMANENT ESTABLISHMENT

(1) For the purposes of this Convention, the term “permanent establishment” means a fixed place of business through which a resident of one of the Contracting States engages in industrial or commercial activity.

(2) The term “permanent establishment” shall include especially:

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

(3) Notwithstanding paragraph (1) of this Article, a permanent establishment shall not include a fixed place of business used only for one or more of the following activities:

- (a) The use of facilities for the purpose of storage, display, or delivery of goods or merchandise belonging to the resident;
 - (b) The maintenance of a stock of goods or merchandise belonging to the resident for the purpose of storage, display, or delivery;
 - (c) The maintenance of a stock of goods or merchandise belonging to the resident for the purpose of processing by another person;
 - (d) The maintenance of a fixed place of business for the purpose of purchasing goods or merchandise, or for collecting information, for the resident;
 - (e) The maintenance of a fixed place of business for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the resident.
- (4) A person acting in a Contracting State on behalf of a resident of the other Contracting State—other than an agent of an independent status to whom paragraph (5) applies—shall be deemed to be a permanent establishment in the first-mentioned State if such person:

- (a) Has, and habitually exercises in that State, an authority to conclude contracts in the name of that resident, unless the exercise of such authority is limited to the purchase of goods or merchandise for that resident, or
 - (b) Maintains substantial equipment or machinery within the first-mentioned State for a period of 12 months or more.
- (5) A resident of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because such resident carries on business in that other State through a broker, general commission agent, or any other agent of an independent status, where such

persons are acting in the ordinary course of their business.

(6) The fact that a resident of one of the Contracting States is a related person, as defined in Article 8 of this Convention, with respect to a resident of the other Contracting State or with respect to a person which engages in industrial or commercial activity in that other Contracting State (whether through a permanent establishment or otherwise) shall not be taken into account in determining whether that resident of the first Contracting State has a permanent establishment in the other Contracting State.

(7) An insurance company of one of the Contracting States shall be considered as having a permanent establishment in the other Contracting State if, through a representative other than one described in paragraph (5), such company receives premiums from or insures risks in the territory of that other Contracting State.

* * * * *

ARTICLE 6—BUSINESS PROFITS

(1) Industrial or commercial profits of a resident of one of the Contracting States shall be taxable only in that State unless such resident is engaged in industrial or commercial activity in the other Contracting State through a permanent establishment situated therein. If such resident is so engaged, tax may be imposed by such other State on the industrial or commercial profits of such resident but only on so much of them as are attributable to the permanent establishment.

(2) Where a resident 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 industrial or commercial profits which would be attributable to such permanent establishment if such permanent establishment were an independent entity engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the resident 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 are reasonably connected with such profits including executive and general administrative expenses, whether incurred in the State in which the permanent establishment is situated or elsewhere.

(4) No profits shall be attributed to a permanent establishment merely by reason of the purchase of goods or merchandise by that permanent establishment, or by the resident of which it is a permanent establishment, for the account of that resident.

(5) The term “industrial or commercial profits of a resident” includes income derived from manufacturing, mercantile, agricultural, fishing, or mining activities, from the operation of ships or aircraft, from the furnishing of personal services, from the rental of tangible personal property, and from insurance activities and rents or royalties derived from motion picture films, films or tapes of radio or television broadcasting. It also includes income derived from real property and natural resources and dividends, interest, royalties (as defined in paragraphs (3) and (4) of Article 11), and capital gains but only if the right or property giving rise to such income, dividends, interest, royalties, or capital gains is effectively connected with a permanent establishment which the recipient, being a resident of one Contracting State, has in the other Contracting State. It does not include income received by an individual as compensation for personal services either as an employee or in an independent capacity.

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ARTICLE 9—DIVIDENDS

(1) Dividends derived from sources within a Contracting State by a resident of the other Contracting State may be taxed in that other State.

(2) Dividends derived from sources within a Contracting State by a resident of the other Contracting State may also be taxed by the former Contracting State but the tax imposed on such dividends shall not exceed—

(a) 15 percent of the amount actually distributed; or

(b) When the recipient is a corporation, 5 percent of the amount actually distributed if—

(i) During the part of the paying corporation's taxable year which precedes the date of payment of the dividend and during the whole of its prior taxable year (if any), at least 10 percent of the outstanding shares of the voting stock of the paying corporation was owned by the recipient corporation, and

(ii) Not more than 25 percent of the gross income of the paying corporation for such prior taxable year (if any) consisted of interest and dividends (other than interest derived in the conduct of a banking, insurance, or financing business and dividends or interest received from subsidiary corporations, 50 percent or more of the outstanding shares of the voting stock of which was owned by the paying corporation at the time such dividends or interest were received).

(3) Paragraph (2) of this Article and, in the case of dividends derived by a resident of France, paragraph (1) of this Article, shall not apply if the recipient of the dividends has a permanent establishment in the other Contracting State and the shares with re-

spect to which the dividends are paid are effectively connected with the permanent establishment. In such a case, the provisions of Article 6 shall apply.

(4)(a) Except as provided in subparagraph (b), dividends paid by a corporation of one of the Contracting States shall be treated as income from sources within that Contracting State, and dividends paid by any other corporation shall be treated as income from sources outside that Contracting State.

(b) Dividends paid by a corporation other than a U.S. corporation shall be treated as dividends from sources within the United States if such corporation had a permanent establishment in the United States and more than 80 percent of its gross income was taxable to such permanent establishment for a 3-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such portion of that period as the corporation has been in existence).

(5) When the prepayment (precompte) is levied on dividends paid by a French corporation to a resident of the United States, such resident shall be entitled to the refund of that prepayment, subject to deduction of the withholding tax with respect to the refunded amount in accordance with paragraph (2) of this Article.

ARTICLE 10—INTEREST

(1) Interest derived from sources within one Contracting State by a resident of the other Contracting State may be taxed in that other State.

(2) Interest on bonds, notes, debentures, or any other form of indebtedness from sources within the United States and paid to a resident of France may also be taxed by the United States at a rate not in excess of 10 percent of the amount paid.

(3) Interest on bonds, notes, debentures, or any other form of indebtedness from sources within France and paid to a resident of the United States may also be taxed by France at a rate not in excess of 10 percent of the amount paid except that interest on bonds issued before January 1, 1965, may be taxed at a rate not in excess of 12 percent of the amount paid.

(4) Paragraphs (2) and (3) of this Article and, in the case of interest derived by a resident of France, paragraph (1) of this Article, shall not apply if the recipient of the interest, being a resident of one of the Contracting States, has a permanent establishment in the other Contracting State and the indebtedness giving rise to the interest is effectively connected to such permanent establishment. In such a case, the provisions of Article 6 shall apply.

(5) The term “interest” as used in this article means income from Government securities, bonds, or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the State in which the income has its source.

(6) Interest shall be deemed to be from sources within a Contracting State when the payer is that State itself, a political subdivision, a local authority, or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to be from sources within the Contracting State in which the permanent establishment is situated.

(7) Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, having regard to the debt claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that 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 Convention.

(8) Interest received by one of the Contracting States, or by an instrumentality of that State not subject to income tax by such State, shall be exempt in the State in which such interest has its source.

ARTICLE 11—ROYALTIES

(1) Royalties derived from sources within one Contracting State by a resident of the other Contracting State may be taxed in that other State.

(2) Except as provided in paragraph (3), royalties derived from sources within a Contracting State by a resident of the other Contracting State may also be taxed by the former Contracting State but the tax imposed on such royalties shall not exceed 5 percent of the gross amount paid.

(3) Royalties derived from copyrights of literary, artistic, or scientific works (including gain from the sale or exchange of property giving rise to such royalties) by a resident of one Contracting State shall be taxable only in that Contracting State.

(4) The term “royalties” as used in paragraph (1) of this Article means—

(a) Any royalties, rentals, or other amounts paid as consideration for the use of, or the right to use, patents, designs or mod-

els, plans, secret processes or formulae, trademarks, or other like property or rights, or for knowledge, experience, or skill (know-how), and

(b) Gains derived from the sale or exchange of any such right or property, if payment of the amounts realized on such sale or exchange is contingent, in whole or in part, on the productivity, use or disposition of such right or property. If the amounts derived from the sale or exchange of any such right or property are not so contingent, the provisions of Article 12 shall apply.

(5) Paragraphs (2) and (3) of this Article, and, in the case of royalties derived by a resident of France, paragraph (1) of this Article, shall not apply if the recipient of the royalty, being a resident of one of the Contracting States, has in the other Contracting State a permanent establishment and the right or property giving rise to the royalties is effectively connected with such permanent establishment. In such a case, the provisions of Article 6 shall apply.

(6) Royalties paid for the use of, or the right to use, property described in paragraph (4) in a State shall be treated as income from sources within that State.

(7) Where, owing to a special relationship between the payer and the recipient, or between both of them and some other person, the amount of the royalties paid exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall only apply to the last-mentioned amount. In that 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 Convention.

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ARTICLE 13—BRANCH PROFITS

(1)(a) Dividends paid by a French corporation to a person other than a citizen, resident, or corporation of the United States shall be exempt from tax by the United States unless such French corporation had a permanent establishment in the United States and more than 80 percent of its gross income was taxable to such permanent establishment for a 3-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such portion of that period as the corporation has been in existence).

* * * * *

ARTICLE 16—GOVERNMENTAL FUNCTIONS

(1) Remuneration, including pensions, paid by, or out of funds created by, a Contracting

State or a political subdivision or a local authority thereof to any individual who is a national of that State in respect of services rendered to that State or a subdivision or local authority thereof in the discharge of functions of a governmental nature shall be taxable only in that Contracting State.

(2) The provisions of Articles 15, 19, and 20 shall apply to remuneration or pensions in respect of services rendered in connection with any industrial or commercial activity carried on by one of the Contracting States or a political subdivision or a local authority thereof.

(3) In the case of an individual who is a national of both Contracting States, the provisions of Article 22, paragraph (4), shall apply to remuneration described in paragraph (1) but such remuneration shall be treated as income from sources within the Contracting State from which such individual receives such remuneration.

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ARTICLE 19—PRIVATE PENSIONS AND ANNUITIES

(1) Except as provided in Article 16, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that Contracting State.

(2) Alimony and annuities paid to a resident of a Contracting State shall be taxable only in that Contracting State.

(3) The term "annuities," as used in this Article, means a stated sum paid periodically at stated times during life, or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered).

(4) The term "pensions," as used in this Article, means periodic payments made after retirement in consideration for, or by way of compensation for injuries received in connection with, past employment.

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ARTICLE 27—ASSISTANCE IN COLLECTION

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

(2) In the case of an application for enforcement of taxes, revenue claims of each of the Contracting States which have been finally determined will be accepted for en-

forcement by the State to which application is made and collected in that State in accordance with the laws applicable to the enforcement and collection of its own taxes.

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

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

(5) The assistance provided for in this Article shall not be accorded with respect to citizens, corporations, or other entities of the State to which application is made.

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ARTICLE 31—ENTRY INTO FORCE

(1) This Convention shall be ratified and instruments of ratification shall be exchanged at Washington. It shall enter into force 1 month after the date of exchange of the instruments of ratification. Its provisions shall for the first time have effect:

(a) In the case of France:

(i) As respects withholding taxes, to any proceeds payable and transactions completed on or after the date on which this Convention enters into force;

(ii) As respects other income taxes, to taxes which are levied for the assessment year 1967; and

(iii) As respects the tax on stock exchange transactions, the date on which this Convention enters into force.

(b) In the case of the United States:

(i) As respects the rate of withholding tax, to amounts received on or after the date on which this Convention enters into force;

(ii) As respects other income taxes, to taxable years beginning on or after January 1, 1967.

(2) Upon the coming into effect of this Convention, there shall terminate:

(a) The Convention of July 25, 1939, relating to income and other taxes.

(b) The Convention of October 18, 1946, the supplementary Protocol of May 17, 1948, and the Convention of June 22, 1956, insofar as they concern taxes on income, on capital and tax on stock exchange transactions.

The provisions of those Conventions and of that Protocol will cease to have effect from the date on which the corresponding provisions of the present Convention shall for the first time have effect according to the subparagraph (1) above-mentioned.

ARTICLE 32—TERMINATION

This Convention shall remain in force until denounced by one of the Contracting States. Either Contracting State may denounce the Convention, through diplomatic channels, by giving notice of termination at least 6 months before the end of any calendar year after the year 1969. In such event, the Convention shall cease to have effect:

(1) In the case of France:

(a) As respects withholding taxes, on January 1 of the year following the year in which notice is given.

(b) As respects other income taxes, for any year of assessment beginning on or after January 1 of the year following the year in which notice is given; and

(c) As respects the tax on stock exchange transactions, for any transactions occurring on or after January 1 of the year following the year in which notice is given.

(2) In the case of the United States:

(a) As respects withholding taxes, on January 1 of the year following the year in which notice is given;

(b) As respects other income taxes, for any taxable year beginning on or after January 1 of the year following the year in which notice is given; and

(c) As respects taxes referred to in paragraph (2) of Article 1, for any transactions occurring on or after January 1 of the year following the year in which notice is given.

(b) *Definitions.* Any term defined in the convention shall have the meaning so assigned to it; any term not so defined shall, unless the context otherwise requires, have the meaning which such term has under the internal revenue laws of the United States.

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53498, Oct. 14, 1997, § 514.20 was removed, effective Jan. 1, 1999. By T.D. 8804, 63 FR 72183, Dec. 31, 1998, the effective date was delayed until Jan. 1, 2000. By T.D. 8856, 64 FR 73408, Dec. 30, 1999, the effective date was delayed until Jan. 1, 2001.

§ 514.21 Dividends.

(a) *Exemption from or reduction in rate of United States tax—*(1) *Exempt from U.S. tax.* Except as provided in subparagraph (2) of this paragraph, dividends paid by a French corporation on or after August 11, 1968, to a nonresident alien individual or foreign corporation are exempt from tax by the United States under the provisions of Article 13(1)(a) of the convention. Such dividends are, therefore, not subject to the withholding of U.S. tax at source.

(2) *Exemption and reduced rate of withholding not applicable.* Dividends paid by a French corporation on or after August 11, 1968, to a nonresident alien individual or foreign corporation (other than a resident of France or a French corporation) are subject to U.S. tax in accordance with the provisions of section 871(a) or 881(a) of the Internal Revenue Code and the regulations thereunder if the paying corporation has a permanent establishment in the United States and more than 80 percent of its gross income was taxable to such permanent establishment for a 3-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such portion of that period as the corporation has been in existence). Such dividends are not eligible for the reduced rate of withholding under Article 9(2) of the convention or to exemption from tax under Article 13(1)(a) of the convention.

(3) *Application of reduced rate—*(i) *Rate of 15 percent.* Except as provided in subdivision (ii) of this subparagraph, and subparagraph (4) of this paragraph the rate of U.S. tax imposed upon dividends derived from sources within the United States on or after August 11, 1968, and received by a nonresident alien individual who is a resident of France or a French corporation or a person resident in France for French tax purposes shall not exceed 15 percent of the gross amount actually distributed as provided for in Article 9(2) of the convention. For the purposes of this section the gross amount actually distributed includes amounts constructively received.

(ii) *Rate of 5 percent.* The rate of U.S. tax imposed upon dividends derived from sources within the United States on or after August 11, 1968, and received by a French corporation shall not exceed 5 percent of the gross amount actually distributed if—

(a) During the part of the paying corporation's taxable year which precedes the date of payment of the dividend and during the whole of its prior taxable year (if any), at least 10 percent of the outstanding shares of the voting stock of the paying corporation was owned by the recipient corporation, and