No. 12139

BELGIUM
and
SPAIN

Convention for the avoidance of double taxation and the regulation of certain other matters with respect to taxes on income and fortune (with additional protocol). Signed at Brussels on 24 September 1970

Authentic texts: French, Dutch and Spanish.
Registered by Belgium on 3 November 1972.

BELGIQUE
et
ESPAGNE

Convention en vue d'éviter les doubles impositions et de régler certaines autres questions en matière d'impôts sur le revenu et sur la fortune (avec protocole additionnel). Signée à Bruxelles le 24 septembre 1970

Textes authentiques : français, néerlandais et espagnol.
Enregistrée par la Belgique le 3 novembre 1972.

[TRANSLATION — TRADUCTION]

CONVENTION[1] BETWEEN BELGIUM AND SPAIN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE REGULATION OF CERTAIN OTHER MATTERS WITH RESPECT TO TAXES ON INCOME AND FORTUNE

His Majesty the King of the Belgians and

His Excellency the Head of the Spanish State,

Desiring to avoid double taxation and to regulate certain other matters with respect to taxes on income and fortune, have decided to conclude a convention and for that purpose have appointed as their Plenipotentiaries:

His Majesty the King of the Belgians:

His Excellency Mr. Pierre Harmel, Minister for Foreign Affairs;

His Excellency the Head of the Spanish State:

His Excellency Mr. Jaime Alba Delibes, Ambassador Extraordinary and Plenipotentiary of Spain at Brussels,

who, having exchanged their full powers, found in good and due form, have agreed as follows:

I. SCOPE OF THE CONVENTION

Article 1. PERSONAL SCOPE

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

Article 2. TAXES COVERED

1. This Convention shall apply to taxes on income and on fortune imposed on behalf of each Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on fortune all taxes imposed on total income, on total fortune, or on elements of income or of fortune, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises (excluding social security contributions), as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are, in particular:

(1) In the case of Belgium:

(*a*) The tax on individuals (*l'impôt des personnes physiques*);

(*b*) The company tax (*l'impôt des sociétés*);

(*c*) The tax on legal entities (*l'impôt des personnes morales*);

(*d*) The non-residents' tax (*l'impôt des non-résidents*);

[1] Came into force on 8 October 1972, i.e. the fifteenth day following the date of the exchange of the instruments of ratification, which took place at Madrid on 23 September 1972, in accordance with article 28 (2).

including taxes collected in advance précomptes and supplements to taxes collected in advance (*compléments de précomptes*), surcharges (*centimes additionnels*) on the aforementioned taxes and advance collections, and the additional communal tax (*taxe communale additionnelle*) to the tax on individuals.

(2) In the case of Spain:

(*a*) The general tax on the income of individuals (*Impuesto general sobre la renta de las personas físicas*);

(*b*) The general tax on the income of companies and other legal entities (*Impuesto general sobre la renta de Sociedades y demás entidades jurídicas*), including the special tax instituted by article 104 of Act No. 41/1964 of 11 June 1964;

(*c*) The following taxes collected in advance: the land tax on agricultural and stock-raising property and livestock (*contribución territorial sobre la Riqueza Rústica y Pecuaria*), the land tax on urban property (*Contribución Territorial sobre la Riqueza Urbana*), the tax on earnings from personal services (*Impuesto sobre los Rendimientos del Trabajo Personal*), the tax on income from capital (*Impuesto sobre las Rentas del Capital*) and the tax on commercial and industrial activities and profits (*Impuesto sobre Actividades y Beneficios Comerciales e Industriales*);

(*d*) In Sahara and Ifni, the taxes on income (from services and from fortune) and the taxes on the profits of enterprises;

(*e*) In the case of enterprises governed by the Act of 26 December 1958, which are engaged in prospecting for and extracting oil, over and above the other taxes enumerated in this article, the tax on surface area (*canon de superficie*) the tax on gross earnings (*impuesto sobre el producto bruto*) and the special tax on the profits of such companies;

(*f*) The local taxes on income or fortune and on capital appreciation.

4. 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. The competent authorities of the Contracting States shall notify each other each year of any changes which have been made in their respective taxation laws.

II. DEFINITIONS

Article 3. General definitions

1. In this Convention, unless the context otherwise requires:

(1) The term "Belgium", when used in a geographical sense, means the territory of the Kingdom of Belgium; the term "Spain", when used in the same sense, means the Spanish State (Peninsular Spain, the Balearic and Canary Islands and the Spanish towns and provinces in Africa;

(2) The terms "a Contracting State" and "the other Contracting State" mean Belgium or Spain, as the context requires;

(3) The term "person" comprises an individual, a company and any other body of persons;

(4) The term "company" means any body corporate or any entity which is liable to taxation as such in respect of its income in the State of which it is a resident;

(5) The terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(6) The term "competent authority" means:

(*a*) In the case of Belgium the authority which is competent under its national laws, and

(*b*) In the case of Spain, the Minister of Finance, the Director-General for Direct Taxes or any other authority designated by the Minister.

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 4. FISCAL DOMICILE

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then this case shall be determined in accordance with the following rules:

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

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

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

(*d*) If he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

Article 5. PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

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

(*a*) A place of management;

(*b*) A branch;

(*c*) An office;

(*d*) A factory;

(*e*) A workshop.

(*f*) A mine, quarry or other place of exploitation of natural resources;

(*g*) A building site or construction or assembly project which exists for more than 12 months.

3. The term "permanent establishment" shall not be deemed to include:

(*a*) The use of facilities solely for the purpose of storage, display of 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 advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4. A person—other than an agent of an independent status to whom paragraph 5 applies—acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment of the enterprise in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it 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.

This provision shall not be deemed to apply to an agent acting on behalf of an insurance enterprise who habitually concludes contracts in the name of that enterprise.

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

III. TAXATION OF INCOME

Article 6. INCOME FROM IMMOVABLE PROPERTY

1. Income from immovable property may be taxed in the Contracting State in which such property is situated.

2. The term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Debt-claims guaranteed by mortgages on property as aforementioned, as well as ships, boats and aircraft, shall not be regarded as immovable property.

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

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

Article 7. BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Without prejudice to the application of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and acting wholly independently.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

4. In the absence of adequate accounts from which it is possible to determine how much of the profits of an enterprise of a Contracting State is attributable to its permanent establishment situated in the other Contracting State, the tax in that other State may be determined in accordance with the law of that other

State. The method applied shall, however, be such that the result shall be in accordance with the principles laid down in this article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. Where the profits of an enterprise include items of income which are dealt with separately in other articles of this Convention, then the provisions of this article shall not affect the provisions of those articles as concerns the taxation of such items of income.

Article 8. SHIPPING AND AIR TRANSPORT

1. Notwithstanding the provisions of article 7, paragraphs 1 to 5, profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. If the place of effective management of a shipping enterprise engaged in international traffic is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

3. The provisions of paragraph 1 shall also apply to the profits of an enterprise of a Contracting State which participates in a shipping or air transport pool, joint business or international operating agency.

Article 9. INTERDEPENDENT ENTERPRISES

Where:

— An enterprise of a Contracting State participates directly or indirectly in the management, control or financing of an enterprise of the other Contracting State, or

— The same persons participate directly or indirectly in the management, control or financing of an enterprise of a Contracting State and an enterprise of the other Contracting State,

— And in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, 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 10. DIVIDENDS

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

2. However, such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the said dividends.

The provisions of this paragraph shall not limit 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 from other corporate rights treated in the same way as income from shares under the taxation law of the State of which the company making the distribution is a resident.

The said term also includes income—even if paid in the form of interest —which is taxable as income from capital invested by partners in partnership, other than partnerships limited by shares, which are residents of Belgium.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the dividends, being a resident of a Contracting State, has in the other Contracting State, of which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the dividends may be taxed in that other State in accordance with its laws.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, the other State may not impose any tax on the dividends paid outside its territory by that company to persons who are not residents of that other State, or subject the company's undistributed profits to any additional taxation, even if the dividends distributed or the undistributed profits consist wholly or partly of profits or income arising in such other State; this provision shall not prevent such other State from taxing dividends pertaining to a holding which is effectively connected with a permanent establishment maintained in that other State by a resident of the first-mentioned State.

Article 11. INTEREST

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

2. However, such interest may be taxed in the Contracting State in which it arises, and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the amount of the interest.

3. 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, subject to the provisions of paragraph 4, debt-claims or deposits of every kind, as well as lottery bond prizes and all other income treated in the same way as income from money lent or deposited under the taxation law of the State in which the income arises.

4. This article shall not apply to:

(*a*) Interest assimilated to dividends by article 10, paragraph 3, second subparagraph;

(*b*) Interest on commercial debt-claims, including debt-claims represented by negotiable instruments, arising from payment by instalments for supplies of goods, products or services by an enterprise of a Contracting State to a resident of the other Contracting State;

(*c*) Interest on current accounts or advances between banking enterprises of the two Contracting States.

Interest of the kinds referred to in subparagraphs (*b*) and (*c*) above shall be treated in the manner provided for in article 7.

5. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the interest, being a resident of a Contracting State, has in the other Contracting State in which the interest arises a permanent establishment with which the debt-claim or deposit from which the interest arises is effectively connected. In such a case, the interest may be taxed in that other State in accordance with its laws.

6. Interest shall be deemed to arise in 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 connexion with which the indebtedness on which the interest is paid was incurred, and the interest is borne as such by the permanent establishment then such interest shall be deemed to arise in 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, having regard to the debt-claim or deposit 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 rate limitation provided for in paragraph 2 shall apply only to the last-mentioned amount. In that case, the excess amount of the interest may be taxed in the Contracting State in which the interest arises, in accordance with the law of that State.

Article 12. ROYALTIES

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

2. However, such royalties may be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, not being immovable property within the meaning of article 6 or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise a permanent establishment with which the right or property giving rise to the royalties is effectively connected. In such a case, the royalties may be taxed in that other State in accordance with its laws.

5. Royalties shall be deemed to arise in 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 royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connexion with which the contract giving rise to the royalties was concluded, and the royalties are borne as such by the permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, owing to a special relationship between the payer and the recipient of between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the normal amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the rate limitation provided for in paragraph 2 shall apply only to the last-mentioned amount. In that case, the excess amount of the royalties may be taxed in the Contracting State in which the royalties arise, in accordance with the law of that State.

Article 13. CAPITAL GAINS

1. Gains from the alienation of immovable property, as defined in article 6, paragraph 2, may be taxed in the Contracting State in which such property is situated.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State. The rules laid down in article 7, paragraphs 2 and 3, shall apply to the determination of the amount of such gains.

However, gains from the alienation of movable property of the kind referred to in article 22, paragraph 3, shall be taxable only in the Contracting State in which such movable property is taxable according to the said article.

3. Gains from the alienation of any other property, including a holding—not forming part of the business property of a permanent establishment as referred to in paragraph 2, first subparagraph—in a company or partnership limited by shares, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14. PROFESSIONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless he has a fixed base regularly available to him in the other State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to the activities performed through that fixed base.

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

Article 15. DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1 and subject to the proviso contained therein, remuneration derived by a resident of a Contracting State in respect of an employment, not being an employment of the kind referred to in paragraph 3, exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

(*a*) It is paid in respect of an activity exercised in the other State for a period or periods not exceeding in the aggregate 183 days—including normal interruptions of work—in the calendar year, and

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

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

3. Notwithstanding the provisions of paragraph 1, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic shall be deemed to pertain to an activity exercised in the Contracting State in which the place of effective management of the enterprise is situated and may be taxed in that State.

Article 16. COMPANY DIRECTORS

1. Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or similar organ of a company limited by shares which is a resident of the other Contracting State may be taxed in that other State. The same shall apply to remuneration derived by a general partner in a limited partnership with share capital.

2. Remuneration derived by persons of the kind referred to in paragraph 1 in any other capacity shall be subject, according to its nature, to the provisions of article 14 or article 15.

Article 17. ARTISTS AND ATHLETES

Notwithstanding the provisions of articles 14 and 15, income derived by public entertainers, such as theatre, motion picture, radio or television artists, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

Article 18. PENSIONS

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

Article 19. PUBLIC REMUNERATION AND PENSIONS

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 in respect of services rendered to that State or a political subdivision or local authority thereof shall be taxable only in that State.

This provision shall not apply if the recipient of such income is a national of the other Contracting State but is not at the same time a national of the first-mentioned State.

2. Paragraph 1 shall not apply to remuneration or pensions in respect of services rendered in connexion with any trade or business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 20. TEACHERS AND STUDENTS

1. Any remuneration paid to professors and other teachers who are residents of a Contracting State and who are temporarily present in the other Contracting State for the purpose of teaching or carrying on scientific research at a university or other officially recognized educational or research institution in that State for a period not exceeding two years shall be taxable only in the first-mentioned State.

2. Payments which a student or business apprentice who is or was formerly a resident of a Contracting State and who is present in the other Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that other State, provided that such payments are made to him from sources outside that other State.

Article 21. INCOME NOT EXPRESSLY MENTIONED

Items of income of a resident of a Contracting State which are of a kind not mentioned in the foregoing articles of this Convention or are derived from sources not mentioned therein and which are liable to tax in that State shall be taxable only in that State.

IV. TAXATION OF FORTUNE

Article 22

1. Fortune represented by immovable property, as defined in article 6, paragraph 2, may be taxed in the Contracting State in which such property is situated.

2. Subject to the provisions of paragraph 3, fortune represented by movable property forming part of the business property of a permanent establishment of an enterprise, or by movable property pertaining to a fixed base used for the performance of professional services, may be taxed in the Contracting State in which the permanent establishment or fixed base is situated.

3. Ships and aircraft operated in international traffic, and movable property pertaining to the operation of such ships and aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. All other elements of fortune of a resident of a Contracting State —including a holding in a company or partnership limited by shares—shall be taxable only in that State.

V. METHODS FOR AVOIDANCE OF DOUBLE TAXATION

Article 23

1. Where a resident of a Contracting State derives income other than that referred to in paragraphs 3 and 4 below which, in accordance with the provisions of the Convention, may be taxed in the other Contracting State, the first-mentioned State shall exempt such income from tax but may, in calculating its taxes on the remaining income of that person, apply the rate of tax which would have been applicable if the exempted income had not been so exempted.

2. Where under the law of a Contracting State, losses sustained by an enterprise of that State in a permanent establishment situated in the other State have been effectively deducted from the profits of such enterprise for the purpose of its taxation in the first-mentioned State, the exemption provided for in paragraph 1 shall not apply in that first-mentioned State to the profits for other taxable periods which are attributable to such establishment, to the extent that such profits have also been exempted from tax in the other State by reason of their being offset by the said losses.

3. Subject to the provisions of paragraph 4 below, where a resident of a Contracting State derives income which in accordance with article 10, paragraph 2, article 11, paragraphs 2 and 7, or article 12, paragraphs 2 and 6, may be taxed in the other Contracting State, the first-mentioned State shall allow as a deduction from the tax payable on such income by that person an amount which shall be computed on the amount of such income included in the taxable base of that person and the rate of which shall not be lower than the rate of the tax levied in the other Contracting State on the said income in accordance with article 10, paragraph 2, article 11, paragraph 2, or article 12, paragraph 2, as the case may be.

In the case of residents of Spain, the provisions of this paragraph shall apply both to general taxes and to taxes collected in advance.

4. Where a company which is a resident of a Contracting State owns stocks or shares in a company which is a resident of the other Contracting State, dividends paid to the first-mentioned company by the last-mentioned company shall be treated in the first-mentioned State for the purposes of the application of the tax referred to in article 2, paragraph 3 (1) (*b*) or paragraph 3 (2) (*b*), as the case may be, in the same way as dividends paid by a company which is a resident of the first-mentioned State.

5. For the purposes of the application of paragraph 3 above, interest in respect of which a reduction in Spanish tax is granted and article 1 of the Legislative Decree of 19 October 1961 authorizing reductions on certain taxes applicable to loans issued by Spanish enterprises and loans granted to them by foreign financial bodies for the financing of new investments shall be deemed to have been charged with the tax provided for in article 11, paragraph 2.

VI. SPECIAL PROVISIONS

Article 24. NON-DISCRIMINATION

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. The term "nationals" means:

(1) All individuals possessing the nationality of a Contracting State;

(2) All legal persons, partnerships and associations deriving their status as such from the law in force in a Contracting State.

3. Stateless persons shall not be subjected in a Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that State in the same circumstances are or may be subjected.

4. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status for family responsibilities which it grants to its own residents.

This provision shall not prevent the profits attributable to the permanent establishment maintained in a Contracting State by a company which is a resident of the other Contracting State or by any other body of persons having its place of effective management in that other State from being taxed in their entirety in the first-mentioned State at the rate prescribed by its national law, provided that that rate does not exceed the maximum rate of the tax applicable to all or part of the profits of companies which are residents of the first-mentioned State.

5. Save where article 9 is applicable, interest, royalties and other moneys paid by an enterprise of a Contracting State to a resident of the other Contracting State shall be deductible for the purpose of determining the taxable profits of that enterprise in the same way as if they had been paid to a resident of the first-mentioned State.

Similarly, debts owed by an enterprise of a Contracting State to a resident of the other Contracting State shall be deductible in the same way as if they had been contracted towards a resident of the first-mentioned State.

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

7. In this article the term "taxation" means taxes of every kind and description.

Article 25. MUTUAL AGREEMENT PROCEDURE

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in double taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those States, make written application for a review of the said taxation, indicating his reasons, to the competent authority of the Contracting State of which he is a resident. Such application must be submitted within two years from the date of notification or of deduction at the source of the second taxation.

2. The competent authority referred to in paragraph 1 shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of double taxation not in accordance with the Convention.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the application of the Convention.

4. The competent authorities of the Contracting States shall agree on the administrative measures required for the implementation of the provisions of the Convention, and in particular on the evidence to be produced by residents of each State in order to enjoy in the other State the tax exemptions or reductions provided for in this Convention.

Article 26. EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of the Convention and of the domestic laws of the Contracting States concerning taxes covered by the Convention in so far as the taxation thereunder is in accordance with the Convention.

Any information so obtained shall be treated as secret; it shall be disclosed—other than to the taxpayer or his agent—only to the persons or authorities concerned with the assessment or collection of the taxes which are the subject of the Conventions and with appeals relating thereto.

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

(*a*) To carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;

(*b*) To supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(*c*) To supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*).

Article 27. MISCELLANEOUS PROVISIONS

1. Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions and consulates under the general rules of international law of under the provisions of special agreements.

2. In the case of companies which are residents of Belgium, nothing in the Convention shall limit taxation, in accordance with Belgian laws in the event of redemption of their own stock or shares or division of the assets.

3. The Ministers of Finance of the Contracting States or their deputies duly authorized for the purpose shall communicate with each other directly for the purposes laid down in the Convention.

VII. FINAL PROVISIONS

Article 28. ENTRY INTO FORCE

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Madrid as soon as possible.

2. The Convention shall enter into force on the fifteenth day following the date of the exchange of the instruments of ratification and its provisions shall apply:

(1) To taxes payable by deduction at the source in respect of income accruing or paid on or after the first day of January of the year following that in which the instruments of ratification are exchanged;

(2) To other taxes levied on income for taxable periods ending on or after the thirty-first day of December of the year in which the instruments of ratification are exchanged;

(3) Notwithstanding the provisions of subparagraphs (1) and (2) above, as regards article 8, to profits earned during financial years ending on or after 31 December 1960.

Article 29. TERMINATION

This Convention shall continue in effect indefinitely, but either of the Contracting States may, on or before the thirtieth day of June of any calendar year beginning with the fifth year after the year in which the instruments of ratification are exchanged, give written notice of termination, through the diplomatic channel, to the other Contracting State. In the event of notice of termination given before the first day of July of any such year, the Convention shall apply for the last time:

(1) To taxes payable by deduction at the source in respect of income accruing or paid on or before the thirty-first day of December of that year;

(2) To other taxes levied on income for taxable periods ending on or before the thirtieth day of December of the calendar year following the said year.

IN WITNESS WHEREOF the Plenipotentiaries of the two States have signed this Convention and have thereto affixed their seals.

DONE at Brussels, on 24 September 1970, in duplicate in the French, Dutch and Spanish languages, the three texts being equally authentic.

For the Kingdom of Belgium:

PIERRE HARMEL

For the Spanish State:

JAIME ALBA DELIBES

ADDITIONAL PROTOCOL

On signing the Convention concluded this day between Belgium and Spain for the avoidance of double taxation and the regulation of certain other matters with respect to taxes on income and fortune, the undersigned Plenipotentiaries have agreed upon the following provisions, which form an integral part of this Convention.

(1) *Ad* article 2, paragraph 3 (2):

The Spanish "*arbitrio de radicación*" is among the taxes referred to in item (*f*) of this provision.

(2) *Ad* article 3, paragraph 1 (1):

(*a*) In the event of the adoption of Belgian legal provisions to that effect, the term "Belgium" shall also refer to the sea-bed and subsoil in the North Sea, adjacent to the Belgian territorial sea, over which Belgium will exercise sovereign rights of exploration and exploitation; Spain shall in that event be notified of the boundary of the area in question, through the diplomatic channel, as soon as agreements with the United Kingdom, France and the Netherlands shall have rendered it possible to establish the said boundary;

(*b*) The term "Spain" also refers to any area adjacent to the territorial sea of Spain which has been or may hereafter be designated, under the laws of Spain concerning the continental shelf, as an area within which the rights of Spain with respect to the sea-bed and subsoil and their natural resources may be exercised.

(3) *Ad* article 4, paragraph 1:

The term "resident of a Contracting State" also means any company or partnership—other than a company or partnership limited by shares—which has elected to have its profits subjected to the tax on individuals.

(4) *Ad* article 11, paragraph 4:

Spain shall retain the right to subject to the tax on income from capital any interest as referred to in subparagraph (*b*) of this provision which is paid to the permanent establishment maintained in Spain by a Belgian enterprise.

(5) *Ad* article 23, paragraph 4:

(*a*) In the case of dividends paid to a company which is a resident of Belgium by a company which is a resident of Spain, this provision shall not preclude the levying of the movable property tax collected in advance payable under Belgian law;

(*b*) In the case of dividends paid to a company which is a resident of Spain by a company which is a resident of Belgium this provision shall not preclude the

levying of the Spanish tax on income from capital, it being understood that double taxation shall be avoided in accordance with article 23, paragraph 3.

DONE at Brussels, on 24 September 1970, in duplicate in the French, Dutch and Spanish languages, the three texts being equally authentic.

For the Kingdom of Belgium:

PIERRE HARMEL

For the Spanish State:

JAIME ALBA DELIBES