

**No. 12802**

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**DENMARK  
and  
SPAIN**

**Convention for the avoidance of double taxation with respect  
to taxes on income and capital (with protocol). Done  
at Copenhagen on 3 July 1972**

*Authentic texts: Danish, Spanish and English.*

*Registered by Denmark on 26 October 1973.*

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**DANEMARK  
et  
ESPAGNE**

**Convention tendant à éviter les doubles impositions en matière  
d'impôts sur le revenu et sur la fortune (avec protocole).  
Signée à Copenhague le 3 juillet 1972**

*Textes authentiques: danois, espagnol et anglais.*

*Enregistrée par le Danemark le 26 octobre 1973.*

## CONVENTION<sup>1</sup> BETWEEN DENMARK AND SPAIN FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND CAPITAL

The Government of Denmark and the Government of Spain desiring to conclude a convention for the avoidance of double taxation with respect to taxes on income and capital have agreed as follows:

### 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 capital imposed on behalf of each Contracting State or of its administrative subdivisions or local authorities, irrespective of the manner in which they are levied.

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

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

a) In the case of Denmark:

- (1) *indkomstkatten til staten* (the income tax to the State);
- (2) *den kommunale indkomstskat* (the municipal income tax);
- (3) *folkepensionsbidraget* (the old age pension contribution);
- (4) *somandsskatten* (the seamen's tax);
- (5) *den særlige indkomstskat* (the special income tax);
- (6) *kirkeskatten* (the church tax);
- (7) *udbytteskatten* (the tax on dividends) and
- (8) *formueskatten til staten* (the capital tax to the State);

(hereinafter referred to as "Danish tax").

b) In the case of Spain:

- (1) *el Impuesto General sobre la Renta de las personas físicas* (the general income tax on individuals);
- (2) *el Impuesto General sobre la Renta de Sociedades y demás entidades jurídicas, con inclusión del gravamen especial del 4 por ciento establecido por el artículo 104 de la Ley 41/1964, de 11 de junio* (the general corporation tax including the special charge of 4 per cent established by article 104 of law 41/1964 of June 11th);

<sup>1</sup> Came into force on 21 June 1973, i.e. 15 days after the exchange of notes confirming that each of the Contracting States had completed its constitutional procedures, in accordance with article 30(1).

- (3) *los siguientes impuestos a cuenta: La Contribución Territorial sobre la Riqueza Rústica y Pecuaria, la Contribución Territorial sobre la Riqueza Urbana, el Impuesto sobre los Rendimientos del Trabajo Personal, el Impuesto sobre las Rentas del Capital y el Impuesto sobre Actividades y beneficios comerciales e industriales* (the following prepayments: the tax on rural land, the tax on urban land, the tax on earned income, the tax on income from capital, the tax on business and industrial activities);
- (4) *en Sahara, los impuestos sobre la renta (sobre los rendimientos del trabajo y del patrimonio) y sobre los beneficios de las empresas* (in Sahara the income taxes (on earned income and on income from capital) and the taxes on profits of the enterprises);
- (5) *el Canon de superficie, el impuesto sobre el producto bruto y el impuesto especial sobre los beneficios, regulados por la Ley de 26 de diciembre de 1958 (aplicable a las empresas que se dedican a la investigación y explotación de hidrocarburos)* (the “surface royalty”, the tax on gross yield and the special tax on corporation profits, regulated by the law of 26th December 1958 (applicable to enterprises engaged in prospecting and exploiting oil wells));
- (6) *los impuestos locales sobre la renta o el patrimonio* (the local taxes on income or capital);
- (hereinafter referred to as “Spanish tax”).

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. Each year, the competent authorities of the Contracting States shall notify to each other any substantial changes which have been made in their respective taxation laws.

### Article 3. GENERAL DEFINITIONS

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

- a) The terms “a Contracting State” and “the other Contracting State” mean Denmark or Spain as the context requires;
- b) The term “Denmark” means the Kingdom of Denmark, including any area within which, under the laws of Denmark and in accordance with international law, the sovereign rights of Denmark with respect to the exploration and exploitation of the natural resources of the Continental Shelf may be exercised; the term does not comprise the Faeroe Islands and Greenland;
- c) The term “Spain” means the Spanish State and, when used in a geographical sense Peninsular Spain, the Balearic and Canary Islands, the Spanish towns and the province in Africa, including any area outside the territorial sea of Spain which in accordance with international law 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;
- d) The term “person” comprises an individual, a company and any other body of persons;
- e) The term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
- f) The terms “enterprise of a Contracting State” and “enterprise of the other

Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

g) The term “international traffic” means any voyage of a ship or aircraft operated by an enterprise of a Contracting State, except where the voyage is confined solely to places in the other Contracting State;

h) The term “competent authorities” means:

- 1) In the case of Denmark, the Minister of Finance, or his authorised representative;
- 2) In the case of Spain, the Minister of Finance, the General Director of Taxation or any other authority to whom the Minister delegates.

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 relations 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 an habitual abode;
- c) if he has an 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 extraction of natural resources;
- g) a building site or construction or assembly project which exists for more than twelve months.

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

- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of 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 acting in a Contracting State on behalf of an enterprise 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 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.

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

#### *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; 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 business 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. Where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which 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. 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.

5. Where profits include items of income, which are dealt with separately in other articles of this Convention, then the provisions of those articles shall not be affected by the provisions of this article.

#### *Article 8. SHIPPING AND AIR TRANSPORT*

1. 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 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. Profits from the operation of ships or aircraft in international traffic made by an enterprise of a Contracting State and obtained through the participation in a pool, in a joint business or in an international operating agency shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

*Article 9. ASSOCIATED ENTERPRISES*

Where

- a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, 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:

- a) 10 per cent of the gross amount of the dividends if the recipient is a company (excluding partnership) which holds directly at least 50 per cent of the capital of the company paying the dividends;
- b) in all other cases, 15 per cent of the gross amount of the dividends.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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

3. The term "dividends" as used in this article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident.

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 provisions of article 7 shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company to persons who are not residents of that other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other 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 10 per cent of the amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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 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 arises.

4. 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 from which the interest arises is effectively connected. In such a case, the provisions of article 7 shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, an administrative 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 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 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 law of each Contracting State, due regard being had to the other provisions of this Convention.

*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 6 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 and films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, transportation or scientific equipment, 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 provisions of article 7 shall apply.

5. Royalties shall be deemed to arise in one of the Contracting States when the payer is that State itself, an administrative 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 connection with which the obligation to pay the royalties was incurred, and the royalties are borne by the permanent establishment, then the 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 or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the 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 law of each Contracting State, due regard being had to the other provisions of this Convention.

#### *Article 13. CAPITAL GAINS*

1. Gains from the alienation of immovable property, as defined in paragraph 2 of article 6, 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. However, gains from the alienation of movable property of the kind referred to in paragraph 3 of article 23 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 property other than those mentioned in paragraphs 1 and 2, shall be taxable only in the Contracting State of which the alienator is a resident.

#### *Article 14. INDEPENDENT PERSONAL 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. However, in the following circumstances such income may be taxed in the other Contracting State, that is to say:

a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or

b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 90 days in the fiscal year and the services or activities are performed in that other Contracting State.

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

#### *Article 15. DEPENDENT PERSONAL SERVICES*

1. Subject to the provisions of articles 16, 18 and 19, 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, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned, 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 by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

#### *Article 16. DIRECTORS' FEES*

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

#### *Article 17. ARTISTES AND ATHLETES*

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

#### *Article 18. PENSIONS*

Subject to the provisions of paragraph 1 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 REMUNERATIONS*

1. Remunerations, including pensions, paid by, or out of funds created by, a Contracting State or an administrative subdivision or a local authority or a public autonomous institution thereof to any individual in respect of services rendered to

that State or subdivision or local authority or public autonomous institution shall be taxable only in that State.

2. The provisions of articles 15, 16 and 18 shall apply to remuneration or pensions in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or an administrative subdivision or a local authority or a public autonomous institution thereof.

#### *Article 20. PROFESSORS AND TEACHERS*

A resident of a Contracting State who, at the invitation of a university, college, school or other educational institution in the other Contracting State, visits that other State solely for the purpose of teaching or scientific research at such an institution, for a period not exceeding two years, shall not be taxed in that other State on his remuneration for such teaching or research.

#### *Article 21. STUDENTS*

A person who is, or was formerly, resident of a Contracting State and who is temporarily present in the other Contracting State solely :

- a) as a student at a university, college or school, or
  - b) as a commercial, agricultural, forestry or technical apprentice for the purpose of training, or
  - c) as a recipient of a grant, allowance or award for the primary purpose of study or research from a religious, charitable, scientific or educational organisation,
- shall not be taxed in that other State in respect of remittances received for the purposes of his maintenance, education or training or in respect of a scholarship grant. The same shall apply to any amount representing remuneration for services rendered in that other State, provided that such services are in connection with his studies or training or are necessary for the purpose of his maintenance. However, this clause shall not apply to such cases where the studies or training have a secondary character as compared with the services for which the remuneration is paid.

#### *Article 22. INCOME NOT EXPRESSLY MENTIONED*

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing articles of this Convention shall be taxable only in that State.

#### *Article 23. CAPITAL*

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

2. Capital 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 capital of a resident of a Contracting State shall be taxable only in that State.

*Article 24. METHODS FOR ELIMINATION OF DOUBLE TAXATION*

1. Where a resident of Denmark derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Spain, Denmark shall, subject to the provisions of paragraphs 3 and 4, allow as a deduction from the income tax or the capital tax that part of the tax which is appropriate, as the case may be, to the income or the capital which may be taxed in Spain.

2. Where a resident of Spain derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Denmark, Spain shall, subject to the provisions of paragraphs 3 and 4, exempt such income or capital from tax but may, in calculating tax on the remaining income or capital of that person, apply the rate of tax which would have been applicable if the exempted income or capital had not been so exempted.

3. Where a resident of a Contracting State derives income which, in accordance with the provisions of articles 10, 11 and 12, may be taxed in the other Contracting State, the first-mentioned State shall allow as a deduction from the tax on the income of that person an amount equal to the tax paid in that other Contracting State. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is appropriate to the income derived from that other Contracting State. In the case of Spain, deduction for Danish tax shall, with the limitations and on the conditions provided in this paragraph, be allowed with respect to the general taxes as well as to taxes levied in prepayment of those taxes.

4. Where a resident of a Contracting State owns capital consisting of immovable property not attached to a permanent establishment which in accordance with the provisions of this Convention may be taxed in the other Contracting State, the first-mentioned State shall allow as a deduction from the tax on the capital of that person, an amount equal to the capital tax paid in that other Contracting State. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is appropriate to the capital owned in that other Contracting State.

5. The provisions of paragraph 3 shall apply when the Spanish income tax appropriate to dividends, interest and royalties has been wholly relieved or reduced, as if no such relief had been given or no such reduction had been allowed.

*Article 25. NON-DISCRIMINATION*

1. The nationals of a Contracting State, whether they are residents of that State or not, 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 nor may be subjected.

2. The term "nationals" means:

- a) all individuals possessing the nationality of a Contracting State;
- b) all legal persons, partnerships and associations deriving their status as such from the law in force in a Contracting State.

3. 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 or family responsibilities which it grants to its own residents.

4. 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.

5. In this article the term "taxation" means taxes of every kind and description (*tributos*).

#### Article 26. 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 taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is resident.

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

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

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

#### Article 27. EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention and of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is in accordance with this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes which are the subject of the Convention.

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 28. DIPLOMATIC AND CONSULAR OFFICIALS

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

#### Article 29. TERRITORIAL EXTENSION

This convention may be extended, either in its entirety or with any necessary modifications, to any part of the territory of Denmark which is specifically excluded from the application of the Convention and which imposes taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed between the Contracting States in notes to be exchanged through diplomatic channels.

#### Article 30. ENTRY INTO FORCE

1. The Convention shall enter into force fifteen days after the exchange of notes confirming that each of the Contracting States has completed the constitutional procedures required for such entry into force in the respective States and its provisions shall have effect for the first time :

- a) in respect of taxes withheld at source, the fact giving rise to them appearing on or after the 1st of January in the calendar year next following that in which the Convention enters into force;
- b) in respect of other taxes on income, as to income arising in the calendar year next following that in which the Convention enters into force;
- c) in respect of taxes on capital, for the tax which refers to the calendar year next following that in which the Convention enters into force.

2. The provisions of article 8 shall be applicable for the first time to the taxes on profits from the operation of aircraft in international traffic arising in 1966.

3. The provisions of article 19 (1) shall be applicable for the first time to the income arising in 1970.

#### Article 31. 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 six months before the end of any calendar year after the year 1975. In such event, the Convention shall cease to have effect :

- a) in respect of taxes withheld at source, the fact giving rise to them appearing on or after the 1st of January in the calendar year next following that in which the notice is given;
- b) in respect of other taxes on income, as to income arising on or after the 1st of January in the calendar year next following that in which the notice is given;
- c) in respect of taxes on capital, for the tax which refers to the calendar year next following that in which the notice is given.

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

UDFÆRDIGET i to eksemplarer i København, den 3. juli 1972 på dansk, spansk og engelsk, således at alle tre tekster er lige autentiske undtagen i tvivlstilfælde, hvor den engelske tekst skal være afgørende.

HECHO en Copenhague el 3 Julio de 1972 en idiomas danés, español e inglés, haciendo fe todos ellos igualmente salvo en el caso de duda en que prevalece el texto en idioma inglés.

DONE in duplicate at Copenhagen this 3rd day of July, 1972 in the Danish, Spanish and English languages, all texts being equally authentic except in the case of doubt when the English text shall prevail.

For Danmarks regering :  
Por el Gobierno de Dinamarca :  
For the Government of Denmark :

K. B. ANDERSEN

For Spaniens regering :  
Por el Gobierno de España :  
For the Government of Spain :

J. M. CASTRO-RIAL



### III. *Ad.* artículo 15

1. Las remuneraciones a que se refiere el número 2 del artículo 15 pueden someterse a imposición en el Estado contratante en que se ejerza el empleo si el receptor de la remuneración permanece en este Estado por un período o períodos que excedan en total de 183 días durante el año fiscal considerado y comprendidos tal período o períodos.

2. Las remuneraciones a que se refiere el número 3 del artículo 15 pueden someterse a imposición en el Estado contratante donde estén registrados el buque o aeronave cuando se obtengan por razón de un empleo ejercido a bordo de un buque o aeronave en tráfico internacional explotado por una empresa dirigida por uno o varios socios, conjunta y solidariamente responsables, residentes de un Estado contratante y por uno o varios socios, conjunta y solidariamente responsables y residentes del otro Estado contratante, siempre que no sea posible determinar que la sede de dirección efectiva de la empresa está situada solamente en uno de los Estados contratantes. Si el buque o aeronave no está registrado en ninguno de los Estados contratantes se aplicará lo dispuesto en el número 1 del artículo 15.

3. Las remuneraciones a que se refiere el número 3 del artículo 15 por razón de un empleo ejercido a bordo de una aeronave explotada en tráfico internacional por Scandinavian Airlines System (SAS) y obtenidas por un residente de Dinamarca sólo podrán someterse a imposición en este Estado.

### IV. *Ad.* número 2 del artículo 30

Las disposiciones de este número no obligan a los Estados contratantes a devolver los impuestos ya satisfechos.

EN FE DE LO CUAL, los Plenipotenciarios de los dos Estados contratantes han firmado y sellado este Protocolo.

## PROTOCOL

At the moment of signing the Convention for the avoidance of double taxation with respect to taxes on income and capital, this day concluded between Denmark and Spain, the undersigned Plenipotentiaries have agreed that the following provisions shall form an integral part of the Convention :

### I. *Ad.* paragraph 2 g) of article 5

Where an enterprise of a Contracting State has several building sites or constructions or assembly projects in the other Contracting State simultaneously or in succession and none of them exceeds the twelve months period, the competent authorities will by mutual agreement decide if there is in that other Contracting State a permanent establishment.

### II. *Ad.* articles 8 and 13

1. Where an enterprise engaged in the operation of ships or aircraft in international traffic is carried on by one or more partners jointly and severally responsible and resident in a Contracting State and by one or more partners jointly and severally responsible and resident in the other Contracting State, and the competent authori-

ties of both States agree that it is not feasible to determine that the place of the effective management of the enterprise is situated in one of the Contracting States only, profits as mentioned in paragraph 1 of article 8 and gains as mentioned in paragraph 2 (second sentence) of article 13 shall be taxable in proportion to the share which each of the partners jointly and severally responsible is holding, only in the Contracting State of which that partner is a resident.

2. The provisions of paragraph 1 of article 8 and paragraph 2 (second sentence) of article 13 shall be applied respectively to profits or capital gains derived by the joint Danish, Norwegian and Swedish air transport organization Scandinavian Airlines System (SAS), but only — in so far as profits and gains so derived by the Danish partner of the Scandinavian Airlines System (SAS) are concerned — in proportion to its share in that organization.

### III. *Ad* article 15

1. Remuneration as mentioned in paragraph 2 of article 15 may be taxed in the Contracting State where the employment is exercised if the recipient of such remuneration is present in that State for a period or periods exceeding in the aggregate 183 days in the calendar year concerned as from the outset of such period or periods.

2. Remuneration as mentioned in paragraph 3 of article 15 may be taxed in the Contracting State where the ship or aircraft is registered when derived in respect of an employment exercised aboard a ship or aircraft in international traffic operated by an enterprise which is carried on by one or more partners jointly and severally responsible and resident in a Contracting State and by one or more partners jointly and severally responsible and resident in the other Contracting State, and where it is not feasible to determine that the place of the effective management of the enterprise is situated in one of the Contracting States only. If the ship or aircraft is not registered in either of the Contracting States paragraph 1 of article 15 shall apply.

3. Remuneration as mentioned in paragraph 3 of article 15 in respect of an employment exercised aboard an aircraft operated in international traffic by the Scandinavian Airlines System (SAS) and derived by a resident of Denmark shall be taxable in that State.

### IV. *Ad* paragraph 2 of article 30

The provision of this paragraph shall not oblige the Contracting States to refund the taxes already paid.

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

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