

No. 14054

**FRANCE
and
SPAIN**

**Convention for the avoidance of double taxation on income
and fortune. Signed at Madrid on 27 June 1973**

Authentic texts: French and Spanish.

Registered by France on 27 May 1975.

**FRANCE
et
ESPAGNE**

**Convention en vue d'éviter les doubles impositions en ma-
tière d'impôts sur le revenu et sur la fortune. Signée à
Madrid le 27 juin 1973**

Textes authentiques : français et espagnol.

Enregistrée par la France le 27 mai 1975.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE FRENCH REPUBLIC AND THE SPANISH STATE FOR THE AVOIDANCE OF DOUBLE TAXATION ON INCOME AND FORTUNE

The President of the French Republic and the Head of the Spanish State, desiring to conclude a convention for the avoidance of double taxation on income and fortune, have for that purpose appointed as plenipotentiaries:

The President of the French Republic: His Excellency Mr. Robert Gillet, Ambassador Extraordinary and Plenipotentiary of France at Madrid;

The Head of the Spanish State: His Excellency Mr. Laureano López Rodó, Minister for Foreign Affairs;

who, having exchanged their full powers, found in good and due form, have agreed on the following provisions:

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 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 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, as well as taxes on capital appreciation.

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

(a) In the case of Spain:

- The general tax on the income of individuals (*impuesto general sobre la renta de las personas físicas*);
- 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 of 4 per cent instituted by article 104 of Act No. 41/1964 of 11 June;
- 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*);

¹ Came into force on 10 March 1975 by the exchange of the instruments of ratification, which took place at Paris, in accordance with article 32 (1) and (2).

- In Sahara, the taxes on income (from services and from fortune) and the taxes on the profits of enterprises;
 - 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;
- (b) In the case of France:
- The tax on the income of individuals (*l'impôt sur le revenu des personnes physiques*);
 - The complementary tax (*taxe complémentaire*);
 - The company tax (*l'impôt sur les sociétés*);
- as well as any deductions at the source; prelevies (*précomptes*) and advances on these taxes.
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 each other of any changes which have been made in their respective taxation laws.

Article 3. GENERAL DEFINITIONS

1. In this Convention:
- (a) The term "Spain" means the Spanish State (Peninsular Spain, the Balearic and Canary Islands and the Spanish towns and provinces in Africa), including any area adjacent to the territorial sea of Spain which is, in accordance with international law, an area within which Spain may exercise rights with respect to the sea-bed and subsoil and their natural resources;
- (b) The term "France" means the European *départements* and overseas *départements* (Guadeloupe, Guiana, Martinique and Réunion) of the French Republic, including any area adjacent to the territorial sea of France which is, in accordance with international law, an area within which France may exercise rights with respect to the sea-bed and subsoil and their natural resources;
- (c) The terms "a Contracting State" and "the other Contracting State" mean Spain or France, as the context requires;
- (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 "competent authority" mean:
- (1) In Spain: the Minister of Finance, the Director-General of Taxation or any other authority designated by the Minister;
 - (2) In France: the Minister of Economic Affairs and Finance or his duly authorized representative.
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 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 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 taxation 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 of 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 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.

4. Shipping enterprises whose place of effective management is in France shall not be liable in Spain for the location tax (*arbitrio de radicación*) in respect of the activities referred to in paragraph 1 above.

5. Shipping enterprises whose place of effective management is in Spain shall not be liable in France for the licence fee (*contribucion des patentes*) in respect of the activities referred to in paragraph 1 above.

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 25 per cent of the capital of the company paying the dividends, provided that such participation is represented by shares or by corporate rights that have been held for at least one year prior to distribution;

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

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

3. Subject to the conditions laid down in subparagraphs (b) and (c) below:

(a) A resident of Spain who receives dividends distributed by a French company, which would entitle him to a tax credit (*avoir fiscal*) if they were received by a resident of France, shall be entitled to a payment from the French Treasury in an amount equal to such tax credit, after deduction at the source of the tax referred to in subparagraph 2(b) of this article;

(b) An individual who is a resident of Spain shall be entitled to the payment referred to in subparagraph (a) above only if he includes that payment as a dividend in his gross income determined for the purposes of the Spanish tax;

(c) A company which is a resident of Spain shall be entitled to the payment referred to in subparagraph (a) above when the full amount of the dividends paid by the French company and of the payment from the French Treasury is included in the basis for assessment of the taxes on income paid by the company;

(d) The payment referred to in subparagraph (a) shall be regarded as a dividend for the purposes of the application of all the provisions of the Convention.

4. (a) A resident of Spain who receives dividends from France may, unless he is entitled to the payment referred to in paragraph 3, apply for a refund of any prelevy (*précompte*) that may have been paid in respect of such dividends by the company which made the distribution. France may deduct the tax at the source, as provided for in paragraph 2, on the aggregate of the amounts refunded;

(b) Any prelevy that is refunded shall be regarded as a dividend for the purposes of the application of all the provisions of the Convention.

5. 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.

6. The provisions of paragraphs 1, 2, 3 and 4 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.

The permanent establishment in France of a Spanish company shall be subject to the provisions of French taxation law. It shall be entitled to a refund of the prelevy.

7. 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.

Pursuant to the preceding provision, it is agreed that:

- (a) Companies which are residents of Spain and have a permanent establishment in France shall not be liable for the distribution tax (*impôt de distribution*) provided for in article 115 *quinquies* of the General Tax Code;
- (b) Companies which are residents of France and have a permanent establishment in Spain shall not be liable for the tax provided for in article 4^o-2 of the revised text of the Act governing the tax on income from capital (*impuesto sobre las rentas del capital*).

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.

3. Notwithstanding the provisions of paragraph 2:

- (a) Interest on bonds or debentures issued in France before 1 January 1965 shall continue to be subject in that State to a deduction, which shall not exceed 12 per cent;
- (b) Interest arising from the Spanish public debt may be taxed by the Spanish State, in accordance with its legislation, without any limitation;
- (c) Interest on loans made directly by French residents to the Spanish State or to independent agencies of that State shall be exempt from Spanish tax.

4. 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.

5. The provisions of paragraphs 1, 2 and 3 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.

6. 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 connexion 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.

7. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid,

having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the 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 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, 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, 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 a Contracting State when the payer is that State itself, an administrative subdivision, local authority or a resident of that State where, however, the person paying the royalties, whether or not he is a resident of one of the Contracting States, has a permanent establishment in one of those States, and where the property or rights in question were acquired for the benefit of that establishment, the royalties borne by the permanent establishment shall be deemed to arise in the State in which the said 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 article 6, paragraph 2, may be taxed in the Contracting State in which such property is situated.

Gains from the alienation of shares or similar rights in a company whose entire business property consists mainly of immovable property situated in a Contracting State may be taxed in that State.

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 article 24, 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 property other than that 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 unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.

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.

4. Frontier workers who can prove their status as such by producing the frontier document established by the special Convention concluded between the Contracting States may be taxed on the salaries, wages and other remuneration which they derive in that capacity only in the Contracting State of which they are residents.

Article 16. DIRECTORS' FEES

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 of a company which is a resident of the other Contracting State may be taxed only in that other State.

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 15 or article 14.

Article 17. ARTISTS AND ATHLETES

1. 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.

2. Notwithstanding any other provision of this Convention, a company which is a resident of a Contracting State and which provides in the other Contracting State the services of a person mentioned in paragraph 1 shall be taxed in that other Contracting State on the profits which it derives from providing those services, if it is controlled, directly or indirectly, by that person.

Article 18. PENSIONS

Subject to the provisions of article 19, pensions, life annuities 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. GOVERNMENTAL FUNCTIONS

1. Remuneration, including pensions, paid by, or out of funds created by, a Contracting State or an administrative subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof in the discharge of functions of a governmental nature may be taxed only in that State. However, this provision shall not apply where the remuneration is paid to persons who possess the nationality of the other State and are not at the same time nationals of the first State; in that case, the remuneration may be taxed only in the State of which such persons are residents.

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

Article 20. BROKERS

Income received by brokers as remuneration for services rendered as part of their proper activities shall be taxed in accordance with the following rules:

- (a) Income received through a permanent establishment or a fixed base situated in Spain shall be taxable in Spain, as shall income received by a resident of Spain that is not derived from a permanent establishment or a fixed base situated in France.
- (b) Income received through a permanent establishment or a fixed base situated in France shall be taxable in France, as shall income received by a resident of France that is not derived from a permanent establishment or a fixed base situated in Spain.

Article 21. TEACHERS

An individual who is a resident of a Contracting State at the commencement of his visit to the other Contracting State and who, at the invitation of the Government of the other Contracting State, or of a university or other officially recognized educational or research establishment situated in that other Contracting State, is

present in the last-mentioned State primarily for the purpose of teaching and/or engaging in research work at a university or other officially recognized educational or research establishment, shall be exempt from taxation in the last-mentioned Contracting State, for a period not exceeding two years from the date of his arrival in that State, in respect of the remuneration derived from such activities in the said establishments.

Article 22. STUDENTS

1. 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.

The same shall apply to any remuneration derived by such a student or business apprentice from an employment exercised in the Contracting State in which he is receiving his education or training, provided that such remuneration is strictly necessary for his maintenance.

2. A student attending a university or a higher or technical educational establishment in a Contracting State who engages in a remunerated activity in the other Contracting State in order to obtain practical experience related to his studies shall not be subject to tax in the last-mentioned State in respect of the remuneration derived therefrom, provided that the duration of such activity does not exceed one year and the amount of such remuneration does not exceed 10,000 francs or the equivalent in pesetas.

Article 23. 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 24. FORTUNE

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. 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 boats engaged in inland waterways transport, and movable property pertaining to the operation of such ships, aircraft and boats, 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 shall be taxable only in that State.

Article 25. AVOIDANCE OF DOUBLE TAXATION

Double taxation shall be avoided in the following way:

1. In the case of Spain:

(a) Where a resident of Spain derives income or owns fortune which, in accordance with the provisions of this Convention, may be taxed in France, Spain

shall, subject to the provisions of subparagraph (b) below, exempt such income or fortune from tax, but may, in calculating tax on the remaining income or fortune of that resident, apply the rate of tax which would have been applicable if the income or fortune in question had not been so exempted.

- (b) Where a resident of Spain derives income which, in accordance with the provisions of articles 10, 11, 12 and 17 may be taxed in France, Spain shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in France. 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 France. The deduction from the Spanish tax shall apply to both general taxes and prepayment taxes.

2. In the case of France:

- (a) Income other than that mentioned in subparagraph (b) below shall be exempt from the French taxes mentioned in article 2, paragraph 3 (b), while the income is, under this Convention, taxable in Spain.
- (b) As regards income mentioned in articles 10, 11, 12 and 17 which has borne Spanish tax in accordance with the provisions of those articles, France shall allow to a resident of France receiving such income from Spain a tax credit (*crédit d'impôt*) corresponding to the amount of tax levied in Spain.

The tax credit, which shall not exceed the amount of the tax levied in France on such income, shall be applied to the taxes mentioned in article 2, paragraph 3(b), in the taxable base for which the said income has been included.

- (c) For the purposes of the application of subparagraph (b) above:

- Dividends from Spain which have been subjected to the Spanish tax on the profits of petroleum companies shall be deemed to have borne the Spanish tax at the rate of 25 per cent;
- Interest in respect of which a reduction in Spanish tax has been granted in accordance with article 31 of the revised text of the Act on the tax on income from capital, which authorizes reductions in 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 Spanish tax at the rate mentioned in article 11, paragraph 2.

- (d) Notwithstanding the provisions of subparagraphs (a) and (b), French tax may be computed on income taxable in France under this Convention at the rate appropriate to the total amount of the income taxable in accordance with French law.

Article 26. NON-DISCRIMINATION

1. The nationals of a Contracting State, whether or not they are residents of either 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. In particular, the nationals of a Contracting State who may be taxed in the territory of the other Contracting State shall benefit, under the same conditions as nationals of the latter State, from tax exemptions reliefs, allowances and reductions of taxes or dues of any kind granted in respect of family responsibilities.

3. 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.

4. 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.

5. 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 under the same conditions.

The 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.

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 27. 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 a 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 difficulties of any kind which may arise as to the 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 28. 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 Conven-

tion in so far 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 29. DIPLOMATIC AND CONSULAR OFFICIALS

1. Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions and their private servants and the members of consular posts under the rules of international law or under treaty provisions.

2. The Convention shall not apply to international organizations, to organs and officials thereof or to persons who, being members of a diplomatic or consular mission of a third State, are present in a Contracting State and are not treated as residents of either Contracting State in respect of taxes on income and fortune.

Article 30. TERRITORIAL EXTENSION

1. This Convention may be extended, either in its entirety or with any necessary modifications, to the French Overseas Territories which impose 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 the diplomatic channel or in any other manner in accordance with their constitutional procedures.

2. Unless otherwise agreed by both Contracting States, the denunciation of the Convention by one of them under article 32 below shall terminate the application of its provisions to any territory to which it has been extended under this article.

Article 31. APPLICATION OF THE CONVENTION

The competent authorities of the Contracting States shall determine the procedure for the application of this Convention.

Article 32. ENTRY INTO FORCE

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

2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall apply for the first time:

- (a) In respect of taxes payable by deduction at the source on dividends, interest and royalties, to earnings payment of which is effected after its entry into force;
- (b) In respect of other taxes on income, to the taxation of income relating to the calendar year in which the exchange of instruments of ratification takes place or to fiscal years ended in the course of that year.

3. The entry into force of this Convention shall terminate the provisions of articles 8 to 28 of the Convention dated 8 January 1963 between France and Spain.

The said provisions of the Convention dated 8 January 1963 shall cease to apply with effect from the date on which the corresponding provisions of this Convention apply for the first time in accordance with paragraph 2 above.

Article 33. TERMINATION

This Convention shall remain in force until denounced by one of the Contracting States.

However, either State may, by giving six months' notice of termination through the diplomatic channel, denounce the Convention with effect from the end of any calendar year following the fifth year after the year of ratification.

In such event, the Convention shall apply for the last time:

- (a) In respect of the taxes payable by deduction at the source on dividends, interest and royalties, to earnings payment of which is effected before the expiration of the calendar year in which the notice of termination is given;
- (b) In respect of other taxes on income, to the taxation of income relating to the calendar year in which the notice of termination is given or to fiscal years ended in the course of that year.

IN WITNESS WHEREOF, the plenipotentiaries of the two States, being duly authorized, have signed this Convention and have thereto affixed their seals.

DONE at Madrid, on 27 June 1973, in two original copies, each in the French and Spanish languages, both texts being equally authentic.

For the Head
of the Spanish State:

[Signed]

LAUREANO LÓPEZ RODÓ
Minister for Foreign Affairs

For the President
of the French Republic:

[Signed]

ROBERT GILLET
Ambassador Extraordinary
and Plenipotentiary
of the French Republic