No. 14109

FRANCE
and
SPAIN

Convention for the avoidance of double taxation and for reciprocal administrative assistance with respect to taxes on income and inheritances (with additional protocol and exchange of letters). Signed at Madrid on 8 January 1963

Authentic texts: French and Spanish.

Registered by France on 16 July 1975.

FRANCE
et
ESPAGNE

Convention tendant à éviter les doubles impositions et à établir des règles d'assistance administrative réciproque en matière d'impôts sur le revenu et d'impôts sur les successions (avec protocole additionnel et échange de lettres). Signée à Madrid le 8 janvier 1963

Textes authentiques : français et espagnol.

Enregistrée par la France le 16 juillet 1975.

[TRANSLATION — TRADUCTION]

CONVENTION[1] BETWEEN FRANCE AND SPAIN FOR THE AVOIDANCE OF DOUBLE TAXATION AND FOR RECIPROCAL ADMINISTRATIVE ASSISTANCE WITH RESPECT TO TAXES ON INCOME AND INHERITANCES

The President of the French Republic and the Head of State of Spain, desiring to avoid double taxation and to establish rules of reciprocal administrative assistance with respect to income taxes and death duties, have decided to conclude a Convention and have for that purpose appointed as their plenipotentiaries:

The President of the French Republic: H.E. Mr. Armand du Chayla, Ambassador Extraordinary and Plenipotentiary of France in Spain;

The Head of State of Spain: H.E. Mr. Fernando María Castiella y Maíz, Minister for Foreign Affairs;

who, having communicated to each other their full powers, found in good and due form, have agreed on the following provisions:

TITLE I. GENERAL PROVISIONS

Article 1. This Convention shall apply to persons who are residents of one or both of the Contracting States.

Article 2. For the purposes of this Convention:

1. The term "France" means metropolitan France and the overseas *départements* (Guadeloupe, Guiana, Martinique and Réunion).

The term "Spain" means the Spanish State (peninsular Spain, the Balearic Isles, the Canary Islands and the Spanish towns and provinces in Africa).

2. The term "person" means:

(*a*) Any individual;

(*b*) Any body corporate;

(*c*) Any body of persons, corporate or non-corporate, which is subject as such to taxation.

Article 3. 1. For the purposes of this Convention, a "resident of a Contracting State" means any person who, under the law of that State, is liable to taxation in that State by reason of his domicile, residence, juridical status, place of management or any other criterion of a similar nature.

2. Where, under the terms of paragraph 1 above, an individual is a resident of both Contracting States, the matter 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);

[1] Came into force on 29 December 1963, i.e., one month after the exchange of the instruments of ratification, which took place in Paris, in accordance with article 44.

(*b*) If the Contracting State in which he has his centre of vital interests cannot be determined, or if he has no permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he habitually resides;

c) If he habitually resides 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 agreement.

3. Bodies corporate shall be deemed to be residents of the Contracting State in which they were incorporated. A body corporate whose residence cannot be determined by that criterion shall be deemed to be a resident of the State in which its place of actual management is situated.

The above provision shall also apply to partnerships (*sociétés de personnes*), associations and groups which, under the national laws to which they are subject, do not possess corporate personality.

Article 4. 1. The term "permanent establishment" means a fixed place of business in which the business of an enterprise is wholly or partly carried on.

2. The following shall in particular be deemed to be permanent establishments:

(*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 following shall not be deemed to constitute a "permanent establishment":

(*a*) The use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise. Where sales of goods or merchandise to clients or intermediaries are effected from these facilities, the facilities shall be deemed to constitute a permanent establishment;

(*b*) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery. Where such goods and merchandise are sold directly in the places of storage, the latter shall be deemed to constitute a permanent establishment;

(*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 purchase of goods or merchandise, or for procuring 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 of a preparatory or auxiliary character on behalf of 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 independent status within the

meaning of paragraph 6—shall be deemed to constitute a permanent establishment in the first-mentioned State if he has and habitually exercises in that State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

5. An insurance enterprise of one of the Contracting States shall be deemed to have a permanent establishment in the other State if it collects premiums in the territory of that State or insures risks situated in that territory through a representative who is not an agent within the meaning of paragraph 6.

6. 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, a general commission agent or any other agent of independent status, where such persons are acting in the ordinary course of their business.

7. The fact that a company domiciled in a Contracting State controls or is controlled by a company which is domiciled in 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 5. 1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of the latter State in the same circumstances are or may be subjected.

2. In particular, nationals of one of the two Contracting States who are liable to tax in the territory of the other State shall be entitled, under the same conditions as nationals of the latter State, to any tax exemptions, allowances, rebates and reductions granted in respect of family responsibilities.

3. The term "nationals" means:

(*a*) In relation to France: All individuals possessing French nationality;

(*b*) In relation to Spain: All individuals possessing Spanish nationality;

(*c*) All bodies corporate, partnerships and associations deriving their status as such from the law in force in a Contracting State.

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

5. A permanent establishment maintained by an enterprise of a Contracting State in the other Contracting State shall not be taxed in the latter State less favourably than enterprises of the latter State carrying on the same business.

This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal tax allowances, reliefs and reductions in respect of civil status (or family responsibilities) which it grants to its own residents.

6. Enterprises of a Contracting State whose capital is wholly or partly, directly or indirectly, owned or controlled 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 the first-mentioned State are or may be subjected.

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

Article 6. In this Convention, the term "competent authorities" means:

— In the case of Spain, the Minister of Finance;
— In the case of France, the Minister of Finance and Economic Affairs;
— Or their duly authorized representatives.

Article 7. In the application of this Convention by one of the Contracting States, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws in force in that State with respect to the taxes referred to in this Convention.

TITLE II. DOUBLE TAXATION

Chapter I. INCOME TAXES

Article 8. 1. This Convention shall apply to taxes on income levied in whatsoever manner on behalf of either Contracting State or of its administrative subdivisions and local government authorities.

The expression "taxes on income" shall be deemed to mean taxes levied on total income or on elements of income, including taxes on profits derived from the alienation of movable or immovable property and taxes on capital appreciation.

2. The object of the provisions of this Convention is to avoid double taxation which might result, for residents of either Contracting State, from the simultaneous or successive collection in both Contracting States of the taxes referred to in paragraph 1.

3. The existing taxes to which this Convention shall apply in each of the Contracting States are:

A. In the case of France:
   (1) The tax on the income of individuals (*l'impôt sur le revenu des personnes physiques*);
   (2) The complementary tax (*la taxe complémentaire*);
   (3) The tax on the profits of companies and other bodies corporate (*l'impôt sur les bénéfices des sociétés et autres personnes morales*);

B. In the case of Spain:
   (1) The tax on urban and rural land (*la contribución territorial, rústica y urbana*);
   (2) The earned income tax (*el impuesto sobre los rendimientos del trabajo personal*);
   (3) The tax on income from capital (*el impuesto sobre las rentas del capital*);
   (4) The tax on commercial and industrial activities and profits (*el impuesto sobre actividades y beneficios comerciales o industriales (licencia fiscal y cuota por beneficios*);
   (5) The tax on the income of companies and other bodies corporate (*el impuesto sobre la renta de sociedades y demás entidades jurídicas*);
   (6) The general income tax (*la contribución general sobre la renta*);

(7) With respect to enterprises governed by the Act of 26 December 1958 which are engaged in the business of oil prospecting and oil extraction, this Convention shall also apply to the surface royalty (*canon de superficie*), the tax on gross yield (*el impuesto sobre el producto bruto*) and the special tax on the profits (*el impuesto especial sobre beneficios*) of such enterprises;

(8) The local income taxes (*los impuestos locales sobre la renta*);

(9) In the Province of Spanish Sahara:

(*a*) The earned income tax (*el impuesto sobre los rendimientos del trabajo*);

(*b*) The tax on income from capital (*el impuesto sobre el rendimiento del patrimonio*);

(*c*) The tax on business profits (*el impuesto sobre beneficios de empresas*);

(10) In the Equatorial Provinces of Fernando Póo and Río Muni:

(*a*) The tax on income from agricultural property (*el impuesto sobre el rendimiento de las fincas rústicas*);

(*b*) The tax on income from urban property (*el impuesto sobre el rendimiento de las fincas urbanas*);

(*c*) The tax on income from movable capital (*el impuesto sobre el rendimiento del patrimonio mobiliario*);

(*d*) The earned income tax (*el impuesto sobre los rendimientos del trabajo*);

(*e*) The tax on business profits (*el impuesto sobre beneficios de empresas*);

(11) In the Province of Ifni:

(*a*) The earned income tax (*el impuesto sobre los rendimientos del trabajo*);

(*b*) The tax on income from capital (*el impuesto sobre el rendimiento del patrimonio*);

(*c*) The tax on business profits (*el impuesto sobre beneficios de empresas*).

4. This Convention shall also apply to any identical or similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes. At the beginning of each year the competent authorities of the Contracting States shall notify each other of any changes which have been made during the preceding year in their taxation laws.

5. It is agreed that if the taxation laws of one of the Contracting States are amended in a manner substantially affecting the nature or the character of the taxes referred to in paragraph 3 of this article, the competent authorities of the two States shall consult together to agree on such changes as it may be necessary to make in the provisions of this Convention.

Article 9. 1. Income from immovable property shall be taxable only in the Contracting State in which the 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 of agricultural and forestry enterprises, rights to which the provisions of private law concerning real property apply, rights of usufruct in immovable property and rights to variable or fixed payments as consideration for the working of mineral deposits, springs and other natural resources.

3. The provisions of paragraphs 1 and 2 shall apply to income derived from the direct use or the letting or leasing of immovable property or from the use in any other form of such property, including income from agricultural or forestry enter-

prises. They shall likewise apply to profits derived from the alienation of immovable property.

4. The provisions of paragraphs 1 to 3 shall also apply to income from the immovable property of enterprises other than agricultural and forestry enterprises and to income from immovable property used in the exercises of a profession.

Article 10. 1. The profits of an enterprise of one of the Contracting States 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 such business, its profits may be taxed in the other State, but only to the extent that they are attributable to the permanent establishment.

2. Where an enterprise of one of the Contracting States carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each State be attributed to that permanent establishment the profits which it might have derived if it had been a distinct and separate enterprise engaged in the same or similar business under the same or similar conditions and dealing quite 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. In so far as it is customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 of this article shall preclude such Contracting State from determining the taxable profits by such an apportionment as may be customary.

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

6. For the purposes of the preceding paragraphs the profits to be attributed to the permanent establishment shall be determined by the same method year by year, unless there is good and sufficient reason to the contrary.

Article 11. Where

(*a*) An enterprise of one of the Contracting States 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 one of the Contracting States 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 12. 1. Income derived from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of actual management of the enterprise is situated.

2. If the place of actual management of a shipping enterprise is on board a ship, then it shall be deemed to be situated in the Contracting State in which the home port of the ship is situated, or, in the absence of such home port in the Contracting State of which the operator of the ship is a resident.

Article 13. 1. Profits derived from the alienation of property and rights shall be taxable only in the Contracting State of which the alienor is a resident.

2. Paragraph 1 shall not apply in the case of immovable property or of property forming part of the assets of a permanent establishment or fixed base owned by the alienor in the other State. In such cases, article 9, paragraph 3, article 10 and article 22 shall apply respectively.

Article 14. 1. Companies resident in one of the two States which maintain a permanent establishment in the other State shall remain liable in the latter State, in respect of such profits as they may distribute, to the tax applicable to such distributions in that State in accordance with its law. However, the amount of tax thus levied may not exceed 15 per cent of the gross amount of the dividends taxable in that State.

The tax assessed in accordance with the preceding paragraph shall be credited against the corresponding tax chargeable against the same earnings in the State of which the company is a resident, provided that such credit may not exceed the amount of the latter tax.

2. A company resident in one of the two States shall not be liable in the other State to the tax referred to in paragraph 1 by reason of its participation in the management or in the capital of a company resident in the latter State or by reason of any other relationship with that company, but profits distributed by the latter company and liable to such tax shall, where the case arises, be increased for the purpose of assessing the tax by any profits or advantages which the first-mentioned company may have indirectly derived from the other company in the manner referred to in article 11 above, the double taxation of such profits and advantages being avoided in conformity with the provisions of article 28.

Article 15. 1. Dividends paid by a company which is a resident of one of the Contracting States to a resident of the other Contracting State shall be taxable in the latter State.

2. However, the Contracting State of which the company paying the dividends is a resident shall have the right to tax such dividends according to its own law; but the rate of the tax thus assessed may not exceed:

(*a*) 10 per cent of the gross amount of the dividends if the recipient is a company (not a partnership) which holds directly not less than 50 per cent of the capital of the company paying the dividends, provided that that holding has existed in the form of shares or registered stock for not less than one year on the date of the distribution;

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

The competent authorities of the two States shall determine by agreement the mode of application of this limitation.

3. The term "dividends" as used in this article means income from shares, *jouissance* shares or rights, mining shares, or founders' shares or other similar rights, and income from other corporate rights assimilated to income from shares by the taxation law of the State of which the payer company is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the dividends, being a resident of one of the Contracting States, has in the other State, of which the company paying the dividends is a resident, a permanent establishment with which the right producing the dividends is actually connected. In that case, article 10 relating to the attribution of profits to permanent establishments shall apply.

Article 16. 1. Interest arising in one of the Contracting States and paid to a resident of the other Contracting State shall be taxable in the latter State.

2. However, the Contracting State in which the interest paid to a resident of the other Contracting State arises shall have the right to tax such interest according to its own law; but the rate of tax applied shall not exceed the following:

A. In the case of France: Subject to the existing provisions of French taxation law, the taxation of interest on negotiable bonds and other evidences of indebtedness arising from French sources and paid to persons resident in Spain shall be limited to 12 per cent. All other interest accruing to persons resident in Spain shall be exempt from tax in that country.

B. In the case of Spain: Subject to the existing provisions of Spanish taxation law, the taxation of interest of any kind arising from Spanish sources and paid to persons resident in France shall not exceed 10 per cent.

However, interest on the Spanish Public Debt may be taxed by the Spanish State in accordance with its law, without any limitation.

The competent authorities of the two States shall determine by agreement the mode of application of the limitation provided for in this article.

3. The term "interest" as used in this article means income from securities, from bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and from debt-claims of any kind, and all other income assimilated to income from money lent by the taxation law of the debtor's State.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the interest, being a resident of one of the Contracting States, has in the other Contracting State, in which the interest arises, a permanent establishment with which the debt-claim producing the interest is actually connected. In that case, article 10 relating to the attribution of profits to permanent establishments shall apply.

5. Interest shall be deemed to arise in a Contracting State where the payer is that State itself or an administrative sub-division, local government authority or resident of that State. Where, however, the payer of the interest, whether a resident of a Contracting State or not, has in a Contracting State a permanent establishment for whose requirements the loan on which the interest is paid was contracted, and the interest is borne by that permanent establishment, then the 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 them and a third 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 in accordance with the municipal law of the Contracting States, subject to the other provisions of this Convention.

Article 17. 1. Royalties arising in one of the Contracting States and paid to a resident of the other Contracting State shall be taxable in the latter State.

2. Nevertheless, the Contracting State in which the royalties arise shall have the right to tax such royalties in accordance with its own law; but the rate of tax applied may not exceed 5 per cent of the gross amount of the royalties. The competent authorities of the two States shall determine by agreement the mode of application of this limitation.

3. The term "royalties" as used in this article means payments of any kind made as consideration for the use of, or the right to use, any copyright in literary, scientific or artistic work, including cinematography films, patents, trade marks, designs or models, plans, or secret formulae or processes, 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. Profits derived from the alienation of any rights or property mentioned in paragraph 3 shall be taxable only in the Contracting State of which the alienor is a resident.

5. The provisions of paragraphs 1, 2 and 4 shall not apply if the recipient of the royalties or profits, being a resident of one of the Contracting States, has in the other State, in which the royalties or profits arise, a permanent establishment with which the right or the property producing the royalty or profit is actually connected. In that case, article 10 relating to industrial and commercial profits shall apply.

6. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself or an administrative sub-division, local government authority or resident of that State. Where, however, the payer, whether or not a resident of a Contracting State, has in one of the Contracting States, a permanent establishment, and the property or rights in question were acquired in the interest of such permanent establishment, the income paid by the permanent establishment shall be deemed to arise in the State in which the establishment is situated.

7. Where, owing to a special relationship existing between the payer and the recipient or between both of them and a third person, the amount of the royalties paid, having regard to the benefit 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 in accordance with the municipal law of the Contracting States, subject to the other provisions of this Convention.

Article 18. 1. Subject to the provisions of articles 19, 20 and 21, wages, salaries and other similar remuneration received by a resident of one of the Contracting States in respect of gainful employment shall be taxable only in that State, unless the employment is exercised in the other Contracting State. If the employment is so exercised, the remuneration derived from it shall be taxable in the latter State.

2. Notwithstanding the provisions of paragraph 1 above, remuneration received by a resident of one of the Contracting States in respect of gainful employment 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.

(*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 deducted from the profits of a permanent establishment or fixed base maintained by the employer in the other State.

All of the three preceding conditions must be fulfilled.

3. Notwithstanding the preceding provisions of this article, remuneration for services performed on board a ship or aircraft in international traffic may be taxed in the Contracting State in which the place of actual management of the enterprise is situated.

4. Frontier workers who are able to show proof of their identity as such by production of the frontier card provided for in the special convention concluded between the two Contracting States shall be taxable only in the Contracting State in which they are resident in respect of such salaries, wages and other remuneration as they receive for their work.

Article 19. 1. Remuneration, including pensions, paid by or out of funds created by one of the Contracting States or an administrative sub-division or local government authority thereof to any individual in respect of services rendered to that State or sub-division or local authority thereof in the discharge of functions of a governmental nature shall be taxable only in that State. However, this provision shall not apply where the remuneration is paid to individuals who are nationals of the other State without at the same time being nationals of the first-mentioned State; in that case, the remuneration shall be taxable only in the State of which such individuals are residents.

2. The provisions of articles 18, 20 and 21 shall apply to remuneration or pensions in respect of services rendered in connexion with any trade or business carried on by one of the Contracting States or an administrative sub-division.

Article 20. Subject to the provisions of article 19, paragraph 1, pensions and life annuities shall be taxable only in the Contracting State of which the recipient is a resident.

Article 21. 1. Directors' fees, attendance fees and similar payments received 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 shall be taxable only in that other State.

2. Remuneration received by persons referred to in paragraph 1 in any other capacity shall be taxable according to its nature, under the provisions of article 18 or article 22.

Article 22. 1. Income received by a resident of one of the Contracting States 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, such part of the income as is attributable to that base shall be taxable in that other State.

2. For the purposes of this article the term "professional services" includes, in particular, scientific, artistic, literary, educational or teaching activities and the activities of physicians, lawyers, architects and engineers.

Article 23. Income received by brokers in payment for services rendered in the course of their activities as such shall be taxable in accordance with the following provisions:

(*a*) In Spain, tax shall be levied on income received through a permanent establishment or fixed base situated in Spain, and on income received by a resident of Spain which is not derived from a permanent establishment situated in France.

(*b*) In France, tax shall be levied on income received through a permanent establishment situated in France and on income received by a resident of France which is not derived from a permanent establishment situated in Spain.

Article 24. Notwithstanding any other provision of this Convention, income derived by public entertainers such as musicians and theatre, motion picture, radio or television artists and by athletes from their personal activities as such shall be taxable only in the Contracting State in which these activities are exercised.

Article 25. Payments which a student or trainee from one of the Contracting States who is present in the other State solely for the purpose of his education or professional training receives for his maintenance, education or training, shall not be taxed in that other State, provided that such payments are made to him from sources outside that other State.

Article 26. A professor or teacher resident in one of the Contracting States who visits the other State temporarily for the purpose of teaching at a university or secondary school of that State for a period not exceeding two years shall be exempt in the latter State from taxation in respect of allowances paid to him by that State for teaching during the said period in addition to the salary paid to him by the State of origin.

Article 27. Any income not mentioned in the foregoing articles shall be taxable only in the State of which the recipient is a resident, unless such income is connected with the activity of a permanent establishment owned by the recipient in the other Contracting State.

Article 28. It is agreed that double taxation shall be avoided in the following manner:

A. In the case of France:

1. Income which in accordance with this Convention is liable to taxation only in Spain shall be exempt from the French taxes mentioned in article 8, paragraph 3A, of this Convention.

2. Notwithstanding the provisions of paragraph 1 above, the French taxes referred to in that paragraph may be charged to income taxable in France under this Convention at a rate corresponding to the total income taxable under French law.

3. In determining the taxes applicable to persons resident in its territory, France may include in the bases upon which such taxes are imposed all categories of income, the taxation of which is not exclusively reserved under this Convention to Spain. Nevertheless, France shall deduct from the taxes so calculated the amount of the Spanish tax payable in respect of income arising in Spain which is included in the tax bases in both Contracting States, such deduction being limited, however, to that part of the French taxes which corresponds to the ratio between the income in question and the total income taxable in France.

4. As respects income from movable capital referred to in the articles 15 and 16 of this Convention, the deduction mentioned in paragraph 3 of this article shall be effected as follows:

(*a*) In the case of dividends arising in Spain from which the Spanish tax on income from capital has been deducted at the source as provided in article 15 of this

Convention, the deduction shall be made either from the tax on the income of individuals deducted at the source or, where no such tax is deductible from taxes levied on bases in which the dividends are included.

Where, however, dividends arising in Spain and accruing to a resident of France have been charged with the Spanish tax on the profits of oil companies, this tax shall be deemed to cover the deduction at the source referred to in the preceding paragraph to which such dividends are liable in France.

(*b*) In the case of interest arising in Spain from which the Spanish tax on income from capital has been deducted at the source as provided in article 16 of this Convention, the deduction shall be made:

— Where the interest accrues from negotiable bonds or other debentures—either from the tax on the income of individuals deducted at the source or from any taxes levied on bases in which the interest is included;

— Where the interest accrues from loans of any other kind—from any taxes levied on bases in which the interest is included.

For the purposes of such deduction, interest in respect of which a reduction in Spanish tax is granted under article 1 of the Legislative Decree of 19 October 1961 providing for reductions in certain taxes applicable to loans contracted by Spanish enterprises and loans made to such enterprises by foreign financial organizations for the purpose of financing new investments, shall be deemed to have been charged with the Spanish tax as provided in article 16B.

B. In the case of Spain:

1. Income which in accordance with this Convention is liable to taxation only in France shall be exempt from the Spanish taxes mentioned in article 8, paragraph 3B, above.

2. However, the taxes referred to in the preceding paragraph may be calculated at the rate applicable to the total income whatever its origin, which would have been taxable under Spanish law.

3. Subject to the provisions of the preceding paragraphs, Spain may include in the base for the taxes applicable to its residents all categories of income taxable under Spanish law, as though this Convention did not exist.

However, it shall deduct from the total amount of tax thus calculated the smaller of the following amounts:

(*a*) The amount of the taxes paid in France on income received in France and included in the base of calculation of the Spanish tax;

(*b*) The product of the actual average rate of taxation applicable in this case in Spain and the income arising in France.

Chapter II. DEATH DUTIES

Article 29. 1. This chapter shall apply to succession duties levied by either of the Contracting States.

The term "succession duties" shall be understood to include taxes imposed *mortis causa* in the form of estate duties, inheritance taxes and taxes on gifts *mortis causa*.

2. The object of this Convention is to avoid such double taxation as might result, on the death of a person who was a resident of one of the two States, from the simultaneous levying of Spanish and French succession duties.

3. The duties to which this Convention shall apply are:

(*a*) In the case of France:

— The succession duty levied on inheritances;

(*b*) In the case of Spain:

— The estate duty;

— The succession duty levied on inheritances.

4. This Convention is concluded in the light of the French and Spanish legislation in force on the date of its signature. It shall also apply to any identical or similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other at the beginning of each year of any changes which have been made during the preceding year in their taxation law.

5. It is agreed that if the taxation laws of one of the Contracting States are amended in a manner substantially affecting the nature or the character of the taxes referred to in paragraph 3 of this article, the competent authorities of the two States shall consult together to agree on such changes as it may be necessary to make in this Convention.

6. Subject to the provisions of the articles 37 and 38, this Convention shall not apply to duties levied on gifts *inter vivos*.

Article 30. Immovable property (including property accessory thereto) shall be liable to succession duties only in the Contracting State in which it is situated; equipment or livestock used in the operation of an agricultural or forestry enterprise shall be taxable only in the Contracting State in which the enterprise is situated.

Rights which are governed by the provisions of private law concerning real property and rights of usufruct of immovable property, with the exception of claims of any kind secured on immovable property, shall be deemed to be immovable property.

The question whether a property or a right is immovable or may be regarded as accessory to an immovable shall be determined by the law of the State in which the property or the property to which the right relates is situated.

Article 31. 1. Tangible or intangible movable property left by a deceased person who at the moment of his death was a resident of one of the two Contracting States and invested in a commercial, industrial or other enterprise shall be liable to succession duties in accordance with the following rules:

(*a*) If the enterprise has a permanent establishment in only one of the two Contracting States, the property shall be liable to duty only in that State; this provision shall also apply even where the enterprise extends its operations to the territory of the other State, without maintaining a permanent establishment there.

(*b*) If the enterprise has a permanent establishment in each of the two Contracting States, the property shall be liable to duty in each State to the extent that it is used for a permanent establishment situated in the territory of that State.

The term "permanent establishment" means any fixed place of business as defined in article 4 of this Convention and, in relation to real estate companies, any immovable property operated in accordance with their business purposes.

2. The provisions of paragraph 1 shall not apply to investments made by the deceased in the form of stocks and bonds (shares, bonds, founders' shares or other securities) or corporate rights in joint stock companies (private limited companies, co-operative societies, civil companies subject to the tax regulations governing joint

stock companies), or in the form of *commandite* interests in *commandite* partnerships.

Article 32. Tangible or intangible movable property connected with fixed places of business and used for the performance of professional services in one of the two Contracting States shall be liable to succession duties only in the State in which such fixed places of business are situated.

Article 33. Tangible movable property, including furniture, linen and household goods and art objects and collections, other than the movables referred to in articles 31 and 32, shall be liable to succession duties at the place in which it is actually located at the date of decease.

However, ships, aircraft, motor cars and other motor vehicles shall be liable to succession duties in the State in which they are registered.

Article 34. 1. Intangible property of a deceased person's estate to which articles 31 and 32 do not apply shall be liable to succession duties only in the State in which the deceased was a resident at the moment of his death.

2. For the purposes of the preceding paragraph:

— Movable stocks, bonds and all other forms of indebtedness shall be deemed to be intangible property;

— Patents, trade marks and other rights of intellectual property shall be liable to succession duties in the Contracting State in which they were registered. If they were registered in both Contracting States, the State other than that of the deceased's last domicile shall tax the value of the rights arising from their registration in its territory.

Article 35. 1. Debts pertaining to an enterprise of the kinds referred to in articles 31 and 32 shall be charged against the property of that enterprise. If the enterprise possesses a permanent establishment or a fixed place of business, as the case may be, in each of the two States, the debts shall be charged against the property of the permanent establishment or the fixed place of business to which they pertain. If they pertain to a number of establishments or fixed places of business, they shall be charged in proportion to the value of the gross assets of such establishments or places of business.

2. Debts secured on immovable property or on rights in immovable property, or on ships, aircraft or motor vehicles referred to in article 33, or on property used in the performance of professional services as provided in article 32, or on the property of an enterprise of the kind referred to in article 31, shall be charged against such property. If a debt is secured at the same time on property situated in both States, it shall be charged against the property situated in each of the two States in proportion to the gross value thereof.

This provision shall apply to the debts referred to in paragraph 1 only to the extent to which they are not covered in the manner provided for in that paragraph.

3. Debts to which the provisions of paragraphs 1 and 2 do not apply shall be charged against property covered by the provisions of article 34.

4. If, after the procedure provided for in the three preceding paragraphs, there remains an outstanding balance in one of the Contracting States, such balance shall be deducted from the value of any other property liable to succession duties in that State.

Article 36. Nothwithstanding the provisions of this Convention, each State shall be entitled to assess the duty on inherited property which would be applicable to the sum of the property liable to duty under its domestic legislation.

Article 37. As respects succession duties and gift taxes, nationals of either Contracting State shall enjoy in the territory of the other Contracting State the same reliefs in respect of civil status and family responsibilities as are granted to nationals of the latter State.

Article 38. Local government bodies, public corporations and approved private corporations, and companies, associations, institutions and foundations having their headquarters in the territory of one of the two Contracting States, shall enjoy in the territory of the other State, under the conditions provided by its legislation, the same exemptions, allowances, reductions and all other reliefs granted in respect of gift taxes and succession duties to bodies of the same or of a similar category having their headquarters in the territory of the latter State.

TITLE III. ADMINISTRATIVE ASSISTANCE

Article 39. 1. The taxation authorities of the Contracting Parties shall exchange such information, available in the normal course of administration under their respective taxation laws, as may be useful for ensuring the assessment and regular collection of the taxes referred to in this Convention and the application, in respect of such taxes, of the statutory provisions relating to the prevention of tax fraud.

2. Any information thus exchanged which is of a secret nature shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes referred to in this Convention. No information shall be exchanged which would disclose any business, industrial or professional secret. Assistance may not be given where the requested State considers that it would be such as to endanger its sovereignty or security or to prejudice its general interests.

3. The exchange of information may take place *ex officio* or, in particular cases, on request. The competent authorities of the Contracting States shall consult together to determine the information to be exchanged *ex officio*.

TITLE IV. SPECIAL PROVISIONS

Article 40. 1. Where a resident of a Contracting State considers that actions of one or both of the Contracting States are resulting or will result in his case in taxation inconsistent with this Convention, he may, independently of the remedies provided by national laws, present his case to the competent authority of the Contracting State of which he is a resident.

2. If the claim appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, the said authority shall endeavour to resolve the case by amicable agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation inconsistent with this Convention.

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

4. The competent authorities of the Contracting States may communicate with each other direct for the purpose of reaching agreement as indicated in the

preceding paragraphs. Where it appears that such agreement would be facilitated by an oral exchange of views, such exchange may take place through a commission consisting of representatives of the competent authorities of the Contracting States.

Article 41. The competent authorities of the two Contracting States shall consult together to determine by agreement the procedure for the application of this Convention.

Article 42. 1. This Convention may be extended, either in its present form or with any necessary modifications, to French overseas territories which levy taxes similar in character to those which are the subject of this Convention. Any such extension shall take effect from such date and subject to such modifications and conditions (including conditions as to termination) as may be agreed upon between the Contracting States by exchange of notes through the diplomatic channel or by any other procedure consistent with their constitutional law.

2. Save as otherwise agreed by the Contracting States, the denunciation of this Convention under article 45 below by either of them shall terminate the application of its provisions to any territory to which it has been extended under this article.

Article 43. Nothing in this Convention shall affect the tax privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

Article 44. 1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Paris as soon as possible.

2. It shall enter into force one month after the exchange of the instruments of ratification, and its provision shall apply for the first time:

(*a*) In respect of taxes levied by deduction at the source on dividends and interest of the kinds referred to in articles 15 and 16, to dividends and interest paid after its entry into force.

(*b*) In respect of other taxes on income, to the taxation of income accruing during the calendar year in which the exchange of the instruments of ratification takes place or during the fiscal years ended in the course of that year.

(*c*) In respect of succession duties, to the taxation of estates of persons deceased on or after the date of the exchange of the instruments of ratification.

Article 45. This Convention shall remain in force so long as it is not denounced by one of the Contracting States.

However, either State may denounce this Convention, wholly or in part, by giving six months' notice through the diplomatic channel, the denunciation to take effect from the end of the calendar year.

In that event, this Convention shall apply for the last time:

(*a*) In respect of taxes levied by deduction at the source on dividends and interest of the kinds referred to in articles 15 and 16, to dividends and interest paid before the expiry of the calendar year at the end of which the denunciation takes effect.

(*b*) In respect of other taxes on income, to the taxation of income accruing in the calendar year at the end of which the denunciation takes effect.

(*c*) In respect of succession duties, to the taxation of estates of persons deceased not later than 31 December of that year.

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

DONE at Madrid on 8 January 1963 in two original copies, in the French and Spanish languages, both texts being equally authentic.

For the President
of the French Republic:

[*Signed*]

ARMAND DU CHAYLA
Ambassador Extraordinary
and Plenipotentiary of France in Spain

For the Head of State
of Spain:

[*Signed*]

FERNANDO MARÍA CASTIELLA Y MAÍZ
Minister for Foreign Affairs

ADDITIONAL PROTOCOL

On signing this Convention, the undersigned plenipotentiaries have made the following statements defining the conditions for the application of articles 10 and 14.

I

A. For the purposes of article 10, paragraph 4, the taxable profit in Spain of French enterprises having one or more permanent establishments in Spain shall be determined according to Spanish municipal law, subject to the provisions of articles 2, 3 and 4 of the Agreement signed on 18 May 1926 between France and Spain.

However, in determining the total profit to be considered for the assessment of the taxable profit of the permanent establishment situated in Spain, no account shall be taken of gains resulting from compulsory legal revaluations of fixed assets or investment interests and securities having their situs outside Spain.

Subject to the proviso that these provisions shall not be used for the evasion of Spanish taxation law, the following shall also be left out of account for the purpose referred to:

(*a*) Gains resulting from optional or voluntary revaluations of fixed assets (not including investment interests and securities) situated outside Spain.

(*b*) Gains resulting from the transfer of fixed assets (not including investment interests and securities) situated outside Spain.

B. French enterprises having one or more permanent establishments in Spain may elect to be taxed on the same terms as Spanish enterprises operating only in Spain.

Their right of election shall be open for two years. It must be exercised before the beginning of the first fiscal year to which it applies.

C. Subject to the provisions of paragraph A above, the provisions of the Agreement signed on 18 May 1926 shall cease to have effect in respect of the taxes referred to in this Convention.

II

For the purposes of article 14, it is specified that where a company resident in one of the Contracting States possesses a permanent establishment in the other State, any incorporation of reserves into capital resulting from the compulsory legal revaluation or the optional revaluation of fixed assets situated outside the latter State shall not be deemed to be a taxable distribution in the latter State.

EXCHANGE OF LETTERS

I

Madrid, 8 January 1963

Sir,

On signing the Convention negotiated between our two countries for the avoidance of double taxation and for reciprocal administrative assistance with respect to taxes on income and inheritances, I have the honour to inform you, on behalf of the High Contracting Party which I represent, that the provisions of article 4, paragraph 5, of the Convention are to be interpreted as follows:

An insurance enterprise of one of the two Contracting States which has a representative approved by the authorities of the other State shall be deemed to have a permanent establishment in that State only if such representative, in addition to performing an administrative function, also engages in an activity which, by virtue of its nature and scope, gives sufficient grounds for considering that the enterprise carries out, through that representative, a habitual and normal commercial activity in the other country.

It is also understood that, when an insurance entreprise of one of the two States has a permanent establishment in the other State, the reinsurance premiums accepted shall be used to calculate the taxable profit only in the State of which the enterprise is a resident.

Accept, Sir, etc.

[ARMAND DU CHAYLA]

Mr. Fernando María Castiella y Maíz
Minister for Foreign Affairs
Madrid

II

Madrid, 8 January 1963

Sir,

In your letter of today's date, you inform me of the following:

[*See letter I*]

I have the honour to state that the High Contracting Party which I represent agrees to the text of the above communication.

Accept, Sir, etc.

[*Signed—Signé*]
FERNANDO MARÍA CASTIELLA Y MAÍZ

Mr. Armand du Chayla
Ambassador of France to Spain
Madrid