No. 14710

JAPAN
and
SPAIN

Convention for the avoidance of double taxation with respect to taxes on income (with protocol and exchange of notes). Signed at Madrid on 13 February 1974

Authentic texts of the Convention and protocol: Japanese, Spanish and English.

Authentic text of the exchange of notes: English.

Registered by Japan on 14 April 1976.

JAPON
et
ESPAGNE

Convention visant à éviter la double imposition en matière d'impôts sur le revenu (avec protocole et échange de notes). Signée à Madrid le 13 février 1974

Textes authentiques de la Convention et du protocole : japonais, espagnol et anglais.

Texte authentique de l'échange de notes : anglais.

Enregistrée par le Japon le 14 avril 1976.

CONVENTION[1] BETWEEN JAPAN AND THE SPANISH STATE FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME

The Government of Japan and the Government of the Spanish State,

Desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income,

Have agreed as follows:

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

Article 2. 1. The taxes which are the subject of this Convention are:

(*a*) In Japan:

(i) the income tax;

(ii) the corporation tax; and

(iii) the local inhabitant taxes

(hereinafter referred to as "Japanese tax");

(*b*) In Spain:

(i) the general income tax on individuals;

(ii) the general income tax on corporations, including the special charge of 4 per cent established by Article 104, Law 41 of June 11, 1964;

(iii) the following prepayments: the tax on rural land, the tax on urban land, the tax on earned income, the tax on income from capital and the tax on business and industrial activities;

(iv) in Sahara, the income taxes (on earned income and on income from capital) and the taxes on profits of the enterprises;

(v) the surface royalty, the tax on gross yield and the special tax on corporation profits, regulated by the Law of December 26, 1958 (applicable to enterprises engaged in prospecting and exploiting oil wells); and

(vi) the local taxes on income

(hereinafter referred to as "Spanish tax").

2. This Convention shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Convention in addition to, or in place of, those referred to in the preceding paragraph. The competent authorities of the Contracting States shall notify to each other any changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

[1] Came into force on 20 November 1974, i.e., the thirtieth day after the date of the exchange of instruments of ratification, which took place at Tokyo on 21 October 1974, in accordance with article 28.

Article 3. 1. In this Convention, unless the context otherwise requires:

(*a*) the term "Japan", when used in a geographical sense, means all the territory in which the laws relating to Japanese tax are in force;

(*b*) the term "Spain", when used in a geographical sense, means all the territory in which the laws relating to Spanish tax are in force;

(*c*) the terms "a Contracting State" and "the other Contracting State" mean Japan or Spain, as the context requires;

(*d*) the term "tax" means Japanese tax or Spanish tax, as the context requires;

(*e*) the term "person" includes a company and any other body of persons;

(*f*) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(*g*) 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;

(*h*) the term "nationals" means all individuals possessing the nationality of either of the Contracting States and all corporations and other associations (with or without juridical personality) deriving their status as such from the laws in force in either of the Contracting States;

(*i*) the term "competent authority" means, in the case of Japan, the Minister of Finance or his authorized representative, and, in the case of Spain, the Minister of Finance, the General Director of Taxation or any representative authorized by the Minister.

2. As regards the application of this Convention in a Contracting State any term not otherwise defined in this Convention 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 this Convention.

Article 4. 1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that Contracting State, is liable to taxation therein by reason of his domicile, residence, place of head or main office, place of management or any other criterion of a similar nature.

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

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

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

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

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

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then the competent authorities shall determine by mutual agreement the Contracting State of which that person shall be deemed to be a resident for the purposes of this Convention.

Article 5. 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 Contracting State if he has, and habitually exercises in that first-mentioned Contracting 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 Contracting 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 Contracting State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6. 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 laws 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 immovable 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. 1. The profits of an enterprise of a Contracting State shall be taxable only in that Contracting 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 that other Contracting 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 Contracting State in which the permanent establishment is situated or elsewhere.

4. Insofar as it has been 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 shall preclude that Contracting State from determining the

profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles laid down in this Article.

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

6. 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.

7. 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. 1. Profits from the operation of ships or aircraft in international traffic carried on by an enterprise of a Contracting State shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall also apply to profits derived from the participation in a pool, a joint business or in an international operating agency.

Article 9. 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. 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 Contracting 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 laws of that Contracting 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 which holds directly at least 25 per cent of the voting shares of the company paying such dividends during the period of six months immediately before the end of the accounting period for which the distribution of profits takes place;

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

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

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

3. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, 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 laws of the Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the dividends, being a resident of a Contracting State, has in the other Contracting State, of which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provisions of Article 7 shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting State may not impose any tax on the dividends paid by the company to persons who are not residents of that other Contracting 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 that other Contracting State.

Article 11. 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

2. However, such interest may be taxed in the Contracting State in which it arises, and according to the laws of that Contracting State, but the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation laws of the Contracting State in which the income arises.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the interest, being a resident of a Contracting State, has in the other Contracting State in which the interest arises a permanent establishment with which the debt-claim from which the interest arises is effectively connected. In such a case, the provisions of Article 7 shall apply.

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

6. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 12. 1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

2. However, such royalties may be taxed in the Contracting State in which they arise, and according to the laws of that Contracting State, but the tax so charged shall not exceed 10 per cent of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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 Contracting State itself, a local authority or a resident of that Contracting State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, owing to a special relationship between the payer and the recipient 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 laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13. 1. Gains from the alienation of immovable property, as defined in paragraph 2 of Article 6, may be taxed in the Contracting State in which such property is situated.

2. Gains from the alienation of any property, other than immovable 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 any property, other than immovable 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 that other Contracting State. However, gains derived by a resident of a Contracting State from the alienation of ships, boats or aircraft operated in international traffic and any property, other than immovable property, pertaining to the operation of such ships, boats or aircraft shall be taxable only in that Contracting State.

3. Gains derived by a resident of a Contracting State from the alienation of any property other than those mentioned in paragraphs 1 and 2 shall be taxable only in that Contracting State.

Article 14. 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 Contracting 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 that 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. 1. Subject to the provisions of Articles 16, 18, 19 and 20, 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 Contracting 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 Contracting 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 Contracting State if:

(*a*) the recipient is present in that other Contracting State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned;

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

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

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that Contracting State.

Article 16. Remuneration derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which

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

Article 17. 1. Notwithstanding the provisions of Articles 14 and 15, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

2. Notwithstanding anything contained in this Convention, where the services of a public entertainer or an athlete mentioned in paragraph 1 are provided in a Contracting State by an enterprise of the other Contracting State, the profits derived from providing those services by such enterprise may be taxed in the first-mentioned Contracting State if the public entertainer or the athlete performing the services controls, directly or indirectly, such enterprise.

Article 18. Subject to the provisions of paragraph 1 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that Contracting State.

Article 19. 1. Remuneration, including pensions, paid by, or out of funds to which contributions are made by, a Contracting State or a local authority thereof to any individual in respect of services rendered to that Contracting State or local authority thereof in the discharge of functions of a governmental nature shall be taxable only in that Contracting State. However, such remuneration shall be taxable only in the other Contracting State if the recipient is a national of that other Contracting State.

2. The provisions of Articles 15, 16, 17 and 18 shall apply to remuneration or pensions in respect of services rendered in connection with any business carried on by a Contracting State or a local authority thereof for the purpose of profits.

3. The application of the provisions of this Article shall not be limited by the provisions of Article 1.

Article 20. A professor or teacher who makes a temporary visit to a Contracting State for a period not exceeding two years for the purpose of teaching or conducting research at a university, college, school or other educational institution, and who is, or immediately before such visit was, a resident of the other Contracting State shall be taxable only in that other Contracting State in respect of remuneration for such teaching or research.

Article 21. Payments received for the purpose of his maintenance, education or training by a student or business apprentice who is present in a Contracting State solely for the purpose of his education or training and who is, or immediately before being so present was, a resident of the other Contracting State shall be exempt from tax of the first-mentioned Contracting State, provided that such payments are made to him from outside that first-mentioned Contracting State.

Article 22. 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 Contracting State.

Article 23. 1. Subject to the provisions of the laws of Japan regarding the allowance as a credit against Japanese tax of tax payable in any country other than Japan, Spanish tax payable in respect of income derived from Spain shall be allowed as a credit against the Japanese tax payable in respect of that income. Where such income is a dividend paid by a company which is a resident of Spain to a company which is a resident of Japan and which owns not less than 25 per cent either of the voting shares of the company paying the dividend or of the total shares issued by that company, the credit shall take into account the Spanish tax payable by the first-mentioned company in respect of its income.

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

3. Where a resident of Spain derives income which, in accordance with the provisions of Articles 10, 11 and 12 may be taxed in Japan and is not exempt from Spanish tax, Spain shall allow as a deduction from the tax on the income of that person an amount equal to the tax paid in Japan. 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 Japan. In these cases the tax paid in Japan shall also be allowed as a deduction against the corresponding Spanish prepayment taxes, in accordance with the provisions of this paragraph.

4. For the purposes of paragraph 1, the term "Spanish tax payable" shall be deemed to include, in the case of dividends, interest or royalties, the amount of Spanish tax which would have been paid if the Spanish tax had not been reduced or exempted in accordance with the special incentive measures designed to promote economic development in Spain, effective on the date of signature of this Convention, or which may be introduced in future in the Spanish tax laws in modification of, or in addition to, the existing measures.

Provided that the scope of the benefit accorded to the taxpayer by those measures shall be agreed to by the Governments of both Contracting States.

In determining the "amount of Spanish tax which would have been paid" referred to in this paragraph, the provisions of paragraph 2 of Article 10, paragraph 2 of Article 11 and paragraph 2 of Article 12 shall not be taken into account.

Article 24. 1. The nationals of a Contracting State, whether or not resident in one of the Contracting States, 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 Contracting State in the same circumstances are or may be subjected.

2. 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 Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities.

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

3. 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 Contracting State are or may be subjected.

4. In this Article the term "taxation" means taxes of every kind and description.

Article 25. 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 laws of those Contracting 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 that 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 this Convention.

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

Article 26. 1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention and of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is in accordance with this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes which are the subject of this Convention.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State 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; or

(*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.

Article 27. Nothing in this Convention shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

Article 28. 1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Tokyo as soon as possible.

2. This Convention shall enter into force on the thirtieth day after the date of the exchange of instruments of ratification and shall be applicable in both Contracting States as respects income for any taxable year beginning on or after the first day of January in the calendar year next following that in which this Convention enters into force.

Article 29. This Convention shall continue in effect indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting State, through the diplomatic channel, written notice of termination and, in such event, this Convention shall cease to be effective in both Contracting States as respects income for any taxable year beginning on or after the first day of January in the calendar year next following that in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention.

DONE at Madrid on the thirteenth day of February, 1974, in six originals, two each in the Japanese, Spanish and English languages, all texts being equally authentic and, in case there is any divergence of interpretation between the Japanese and the Spanish texts, the English text shall prevail.

For the Government of Japan:

SHOJI SATO

For the Government of the Spanish State:

PEDRO CORTINA

PROTOCOL

At the signing of the Convention between Japan and the Spanish State for the Avoidance of Double Taxation with respect to Taxes on Income, the undersigned have agreed upon the following provisions which shall form an integral part of the said Convention:

1. It is understood that income derived by a resident of a Contracting State from or in connection with the exploration for or exploitation of mineral resources of the continental shelf of the other Contracting State undertaken in accordance with international law may be taxed by that other Contracting State in accordance with the provisions of the Convention.

2. With reference to Article 2 of the Convention, it is understood that the Spanish *arbitrio de radicación* is included in the local taxes on income.

3. With reference to Article 8 of the Convention, it is understood that, in respect of the operation of ships or aircraft in international traffic carried on by an enterprise of Spain, that enterprise shall be exempt from the enterprise tax in Japan.

4. With reference to Articles 12 and 13 of the Convention, it is agreed that the term "royalties" includes a lump sum payment received as a consideration for the use of, or the right to use, the right or property mentioned in paragraph 3 of Article 12 but the gains derived from the genuine alienation of such right or property shall be governed by the provisions of Article 13.

5. Notwithstanding the provisions of paragraph 2 of Article 28 of the Convention, the provisions of Article 8 of the Convention shall be applicable as respects income derived during the taxable years beginning on or after the first day of January, 1968. The provisions of this paragraph shall not oblige the Contracting States to refund taxes already paid.

DONE at Madrid on the thirteenth day of February, 1974, in six originals, two each in the Japanese, Spanish and English languages, all texts being equally authentic and, in case there is any divergence of interpretation between the Japanese and the Spanish texts, the English text shall prevail.

For the Government of Japan:

SHOJI SATO

For the Government of the Spanish State:

PEDRO CORTINA

EXCHANGE OF NOTES

I

Madrid, February 13, 1974

Excellency,

I have the honour to refer to the Convention between the Spanish State and Japan for the Avoidance of Double Taxation with respect to Taxes on Income which was signed today and to confirm, on behalf of the Government of the Spanish State, the following understanding reached between the two Governments.

With reference to paragraph 4 of Article 23 of the said Convention, "the special incentive measures designed to promote economic development in Spain, effective on the date of signature of this Convention" referred to in the said paragraph are those set forth in the following provisions of the Consolidated Text of Tax on Income from Capital of December 23, 1967:

(i) Subparagraphs A) and B) of paragraph 1 of Article 31—relating to reduction of income tax on interest from bonds issued through or loans provided by international organizations or foreign banks or financial institutions;

(ii) Subparagraph A) of paragraph 2 of Article 20—relating to reduction of income tax on royalties arising in connection with technical assistance for industrial or agricultural exploitation.

I have further the honour to request Your Excellency to be good enough to confirm the foregoing understanding on behalf of the Government of Japan.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

PEDRO CORTINA

His Excellency Mr. Shoji Sato
Ambassador Extraordinary and Plenipotentiary
of Japan to Spain

II

Madrid, February 13, 1974

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's note of today's date which reads as follows:

[*See note I*]

I have further the honour to confirm the understanding contained in Your Excellency's note on behalf of the Government of Japan.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

SHOJI SATO

His Excellency Mr. Pedro Cortina Mauri
Minister of Foreign Affairs of Spain