No. 15194

SPAIN
and
SWEDEN

Convention for the avoidance of double taxation with respect to taxes on income and capital (with protocol). Signed at Madrid on 16 June 1976

Authentic texts: Spanish, Swedish and English.
Registered by Spain on 19 January 1977.

ESPAGNE
et
SUÈDE

Convention tendant à éviter la double imposition en matière d'impôts sur le revenu et le capital (avec protocole). Signée à Madrid le 16 juin 1976

Textes authentiques : espagnol, suédois et anglais.
Enregistrée par l'Espagne le 19 janvier 1977.

CONVENTION[1] BETWEEN SPAIN AND SWEDEN FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND CAPITAL

The Government of Spain and the Government of Sweden,

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

Have agreed as follows:

Article I. PERSONAL SCOPE

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

Article II. TAXES COVERED

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

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation. Social security fees shall not be regarded as taxes.

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

(*a*) in the case of Sweden:

(i) the State income tax, including sailors' tax and coupon tax;

(ii) the tax on the undistributed profits of companies and the tax on distribution in connection with reduction of share capital or the winding up of a company;

(iii) the tax on public entertainers;

(iv) the communal income tax; and

(v) the State capital tax

(hereinafter referred to as "Swedish tax");

(*b*) in the case of Spain:

(i) *el impuesto general sobre la renta de las personas fisicas* (the general income tax on individuals);

(ii) *el impuesto general sobre la renta de sociedades y demás entidades jurídicas* (the general corporation tax);

(iii) *los siguientes impuestos a cuenta: la contribución territorial sobre la riqueza rústica y pecuaria, la contribución territorial sobre la riqueza*

[1] Came into force on 21 December 1976 by the exchange of the instruments of ratification, which took place at Stockholm, in accordance with article XXIX (1) and (2).

urbana, el impuesto sobre los rendimientos del Trabajo Personal, el impuesto sobre las rentas del Capital y el impuesto sobre actividades y beneficios comerciales e industriales (the following prepayments: the tax on rural land, the tax on earned income, the tax on income from capital, the tax on business and industrial activities);

(iv) *el canon de superficie y el impuesto sobre la renta de sociedades, regulados por la Ley de 27 de junio de 1974 (aplicable a las empresas que se dedican a la investigación y explotación de hidrocarburos)* (the "surface royalty" and the tax on corporation profits, regulated by the Law of 27th June 1974 applicable to enterprises engaged in prospecting and exploiting oil wells);

(v) *los impuestos locales sobre la renta y el patrimonio* (the local taxes on income and capital)

(hereinafter referred to as "Spanish tax").

4. 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, the above-mentioned taxes. Each year the competent authorities of the Contracting States shall notify to [*sic*] each other [of] any changes which have been made in their respective taxation laws.

Article III. GENERAL DEFINITIONS

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

(*a*) The term "Sweden" means the Kingdom of Sweden including any area outside the territorial sea of Sweden within which under the laws of Sweden and in accordance with international law the rights of Sweden with respect to the sea-bed and subsoil and their natural resources may be exercised;

(*b*) The term "Spain" means the Spanish State and, when used in a geographical sense, Peninsular Spain, the Balearic and Canary Islands, the Spanish towns and territories in Africa, including any area outside the territorial sea of Spain which in accordance with international law has been or may hereafter be designated, under the laws of Spain concerning the continental shelf, as an area within which the rights of Spain with respect to the sea-bed and subsoil and their natural resources may be exercised;

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

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

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

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

(*g*) The term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a

Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(*h*) The term "competent authority" means:

(i) in the case of Sweden, the Minister of Finance or his authorised representative;

(ii) in the case of Spain, the Minister of Finance, the Technical General Secretary or any other authority to whom the Minister delegates;

(*i*) The term "nationals" means all individuals possessing the nationality of a Contracting State and all legal persons, partnerships and associations deriving their status as such from the law in force in a Contracting State.

2. As regards the application of this Convention by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of the Convention.

Article IV. FISCAL DOMICILE

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, but the term does not include any person who is liable to tax in that Contracting State in respect only of income from sources therein or capital situated in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his residence 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. Notwithstanding the provisions of paragraph 2, where by reason of the provisions of paragraph 1 an individual is a resident of Sweden on account of the so-called "three-years rule" contained in the Swedish tax laws and also a resident of Spain, then the competent authorities of the Contracting States shall determine his residence by mutual agreement.

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

Article V. PERMANENT ESTABLISHMENT

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

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

(*a*) a place of management;

(*b*) a branch;

(*c*) an office;

(*d*) a factory;

(*e*) a workshop;

(*f*) a mine, an oil well, 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. If in such facilities goods are sold directly to customers or representatives, the facilities shall be deemed to be 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. If goods are sold on the spot of such stock directly from the stock, then such stock shall be deemed to be 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 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 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 person is acting in the ordinary course of his 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 VI. INCOME FROM IMMOVABLE PROPERTY

1. Income from immovable property including income from agriculture and forestry may be taxed in the Contracting State in which such property is situated.

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

3. The provisions of paragraph 1 shall not 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 VII. BUSINESS PROFITS

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

5. 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.

6. 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 VIII. SHIPPING AND AIR TRANSPORT

1. Profits of an enterprise of a Contracting State from the operation of ships and aircraft in international traffic shall be taxable only in that 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.

3. With respect to profits derived by the Swedish, Danish and Norwegian air transport consortium, known as Scandinavian Airlines System (SAS), the provisions of this article shall apply, but only to such a part of the profits as corresponds to the shareholding in that consortium held by A.B. Aerotransport (ABA), the Swedish partner of Scandinavian Airlines System (SAS).

Article IX. ASSOCIATED ENTERPRISES

1. 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.

2. Where profits on which an enterprise of a Contracting State has been charged to tax in that State are also included in the profits of an enterprise of the other Contracting State and taxed accordingly, and the profits so included are profits which would have accrued to that enterprise of the other State if the conditions made between the enterprises had been those which would have been made between independent enterprises, then the first-mentioned State shall make an appropriate adjustment to the amount of tax charged on those profits in the first-mentioned State. In determining such an adjustment due regard shall be had to the other provisions of this Convention in relation to the nature of the income, and for this purpose the competent authorities of the Contracting States shall if necessary consult each other.

Article X. DIVIDENDS

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

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

(*a*) 10 per cent of the gross amount of the dividends if the recipient is a company (excluding partnership) which holds directly at least 50 per cent of the capital of the company paying the dividends; provided that this holding consists of shares which have been held at least one year before the date when the dividends become due and payable;

(*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" means income from shares, *jouissance* shares or *jouissance* rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation law of the 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 VII shall apply.

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

Article XI. INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State if such resident is the beneficial owner of the interest.

2. However, such interest may be taxed in the Contracting State in which it arises, and according to the law of that Contracting State, but the tax so charged shall not exceed 15 per cent of the gross amount of the interest. The competent authorities of the Contracting State shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, interest on Government securities issued by a Contracting State may be taxed in the debtor State.

4. The term "interest" means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and, in particular, income from government securities and income from bonds and debentures, including premiums and prizes attaching to bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this article.

5. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the interest, being a resident of a Contracting State, carries on in the other Contracting State in which the interest arises a trade or business through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of article VII or article XIV, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, an administrative subdivision, 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.

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

Article XII. ROYALTIES

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 if such resident is the beneficial owner of the royalties.

2. However, such royalties may be taxed in the Contracting State in which they arise, and in accordance with the law 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" 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 cinematographic films, video tapes for use in connection with television or tapes for use in connection with radio), 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, including payments for technical assistance.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the royalties, being a resident of a Contracting State, carries on in the other Contracting State in which the royalties arise a trade or business through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of article VII or article XIV, as the case may be, shall apply.

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

Article XIII. CAPITAL GAINS

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

2. Gains from the alienation of movable property which forms or has formed part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property which pertains or has pertained 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 fixed base, may be taxed in that other Contracting State.

3. Notwithstanding the provisions of paragraph 2, gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in that Contracting State. With respect to gains derived by the Swedish, Danish and Norwegian air transport consortium, known as Scandinavian Airlines System (SAS), the provisions of this paragraph shall apply, but only to such proportion of the gains as corresponds to the

shareholding in that consortium held by A.B. Aerotransport (ABA), the Swedish partner of Scandinavian Airlines System (SAS).

4. Gains from the alienation of any property other than those mentioned in paragraphs 1, 2 and 3 shall be taxable only in the Contracting State of which the alienator is a resident.

In the application of this paragraph with respect to any right or property referred to in paragraph 3 of article XII, the alienation of such right or property shall not be considered as a sale unless, at the time of the establishment of the contract, the price is clearly put in, fixed and expressed in a currency unit, nor shall the alienation of such right or property be considered as a sale if the alienation has taken place under the condition that the buyer is obliged to resell the right or property to the alienator.

5. The provisions of the first subparagraph of paragraph 4 shall not affect the right of a Contracting State to tax, according to its own legislation, any gain from the alienation of shares in a company the main assets of which consist of immovable property, provided the alienator is an individual resident of the other Contracting State, who

(*a*) is a national of the first-mentioned Contracting State without being a national of the other Contracting State;

(*b*) has been a resident in the first-mentioned Contracting State during any part of a five-year period immediately preceding the alienation; and

(*c*) at the time of the alienation alone or together with a closely related person had a decisive influence on the company.

Article XIV. INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State. However, such income may be taxed in the other Contracting State, if:

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

(*b*) the recipient is present in that other State for a period or periods exceeding in the aggregate 183 days in the fiscal year of that other State; or

(*c*) the remuneration derived in the fiscal year from residents of that other State for services performed in that State exceeds:

(i) in the case of services performed in Spain 100,000 pesetas; and

(ii) in the case of services performed in Sweden 6,500 kroner.

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.

3. The provisions of subparagraphs (*b*) and (*c*) of paragraph 1 shall not apply to income derived by a broker, a general commission agent or any other agent of an independent status.

Article XV. EMPLOYMENTS

1. Subject to the provisions of articles XVI, XVIII, XIX, XX and XXI, 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 State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

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

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

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

3. Notwithstanding the provisions of paragraphs 1 and 2, remuneration in respect of employment exercised aboard a ship or aircraft in international traffic may be taxed in the Contracting State in which the place of effective management of the entereprise is situated. Where a resident of Sweden derives remuneration in respect of employment exercised aboard an aircraft operated in international traffic by the Swedish, Danish and Norwegian air transport consortium, known as Scandinavian Airlines System (SAS), such remuneration shall be taxable only in Sweden.

Article XVI. DIRECTORS' FEES

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

Article XVII. ARTISTES AND ATHLETES

1. Notwithstanding the provisions of articles XIV and XV, income derived by 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. Where income in respect of personal activities as such of an entertainer or athlete accrues not to that entertainer or athlete himself but to another person that income may, notwithstanding the provisions of articles VII, XIV and XV, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

Article XVIII. PENSIONS AND ANNUITIES

1. Subject to the provisions of paragraph 2 of article XIX, pensions and other similar remuneration in consideration of past employment and annuities paid to a resident of a Contracting State shall be taxable in that State.

2. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

3. Notwithstanding the provisions of paragraph 1, payments under the social security scheme of a Contracting State and payments on account of a pension insurance issued in a Contracting State may be taxed in that State.

The provisions of this paragraph shall apply only to individuals who are nationals of the Contracting State from which the payments are made.

Article XIX. GOVERNMENT SERVICE

1. (*a*) Remuneration, other than a pension, paid by a Contracting State or an administrative subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof shall be taxable only in that State.

(*b*) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the recipient is a resident of that other Contracting State who:

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of performing the services.

2. (*a*) Any person paid by, or out of funds created by, a Contracting State or an administrative subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof shall be taxable only in that State.

(*b*) However, such pension shall be taxable only in the other Contracting State if the pensioner is a national of and a resident of that State.

3. The provisions of articles XV, XVI and XVIII shall apply to remuneration and pensions in respect of services rendered in connection with any trade or business carried on by a Contracting State or an administrative subdivision or a local authority thereof.

Article XX. STUDENTS

1. A student or business apprentice who is or was immediately before making a visit to a Contracting State a resident of the other Contracting State and who visits the first-mentioned Contracting State solely for the purpose of his education or training shall be exempt from tax in that first-mentioned State on payments which he receives for the purposes of his maintenance, education or training, provided that such payments are made to him from sources outside that State.

2. A student of a university, school or other educational institution in a Contracting State who is temporarily present in the other Contracting State and employed there for a period or periods not exceeding a total of 100 days during the calendar year shall, if the employment is related to his studies, be exempt from tax in that other State on his remuneration from such employment.

Article XXI. PROFESSORS AND RESEARCHERS

An individual who is or was immediately before making a visit to a Contracting State a resident of the other Contracting State and who, at the invitation of a university, college, school or other educational institution in the first-mentioned Contracting State, visits that Contracting State solely for the purpose of teaching or scientific research at such an institution for a period less than one year shall be exempt from tax in that first-mentioned Contracting State on his remuneration for such teaching or research.

Article XXII. OTHER INCOME

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply if the recipient of the income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of article 7 or article 14, as the case may be, shall apply.

Article XXIII. CAPITAL

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

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

3. Ships and aircraft operated in international traffic by an enterprise of a Contracting State and movable property pertaining to the operation of such ships and aircraft shall be taxable only in that Contracting State.

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Article XXIV. ELIMINATION OF DOUBLE TAXATION

1. Where a resident of a Contracting State derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in the other Contracting State, the first-mentioned State shall allow:

(*a*) as a deduction from the tax on the income of that person, an amount equal to the income tax paid in that other Contracting State;

(*b*) as a deduction from the tax on the capital of that person, an amount equal to the capital tax paid in that other Contracting State.

The deduction in either case shall not, however, exceed that part of the income or capital tax, respectively, as computed before the deduction is given,

which is appropriate, as the case may be, to the income or capital which may be taxed in the other Contracting State.

2. Where a resident of a Contracting State derives income which, in accordance with article XIX, shall be taxable only in the other Contracting State, the first-mentioned Contracting State shall allow as a deduction from the income tax that part of the tax which is appropriate to the income derived from that other Contracting State.

3. Notwithstanding the provisions of paragraph 1, dividends paid by a company being a resident of Spain to a company which is a resident of Sweden shall be exempt from the tax in Sweden to the extent that the dividends would have been exempt under Swedish law if both companies had been Swedish companies. This exemption shall not apply unless the profits out of which the dividends are paid have been subjected in Spain to the normal income tax which applies at the date of signature of this Convention or an income tax comparable thereto, or the principal part of the profits of the company paying the dividends arises, directly or indirectly, from business activities other than the management of securities and other similar property and such activities are carried on within Spain by the company paying the dividends or by a company in which it owns at least 25 per cent of the voting power.

4. In the application of paragraph 1, where exemption from or reduction of Spanish tax on dividends, interest or royalties, received by a resident of Sweden, has been granted for a limited period of time, the credit against Swedish tax shall be allowed in an amount equal to the tax which would have been levied in Spain if no such exemption or reduction had been granted.

5. When a resident of a Contracting State derives a gain, referred to in paragraph 5 of article XIII, or receives a payment, as mentioned in paragraph 2 of article XVIII, which may be taxed in the other Contracting State, that other State shall allow as a deduction from the income tax of that person an amount equal to the tax paid on the gain or the payment, respectively, in the first-mentioned State. The deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is appropriate to the gain or payment, respectively, which may be taxed in the other Contracting State.

6. When in the profits of a company which is a resident of Spain are included dividends from a company which is a resident of Sweden, then the first-mentioned company is entitled to same relief as would have been applicable if both companies had been residents of Spain.

Article XXV. NON-DISCRIMINATION

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

2. Stateless persons resident in a Contracting State shall not be subjected in either 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 State concerned in the same circumstances are or may be subjected.

3. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other 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, nor as conferring any exemption from tax in a Contracting State in respect of dividends or other payments paid to a company which is a resident of the other Contracting State.

4. Except where article IX, article XI, paragraph 6, and article XII, paragraph 4, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible as if they had been paid to a resident of the first-mentioned State.

Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible as if they had been contracted to a resident of the first-mentioned State.

5. 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.

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

Article XXVI. MUTUAL AGREEMENT PROCEDURE

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those Contracting States, present his case to the competent authority of the Contracting State of which he is a resident. This case must be presented within three years of the first notification of the action which gives rise to taxation not in accordance with the Convention.

2. The competent authority shall endeavour, if the objection appears to be justified and if it is not able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with this Convention. Any agreement reached shall be implemented notwithstanding any time limits in the national laws of the Contracting States.

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. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

Article XXVII. EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention. The competent authorities shall also exchange such information as is necessary for the carrying out 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. In the last-mentioned case, however, the competent authorities are not obliged to exchange information which is not obtainable from documents kept by the tax authorities but which require special investigation. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities, including a court, concerned with the assessment or collection of 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;

(*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 XXVIII. DIPLOMATIC AND CONSULAR OFFICIALS

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

Article XXIX. ENTRY INTO FORCE

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

2. This Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

(*a*) in the case of Sweden, in respect of coupon tax on dividends payable on or after 1st January 1975, in respect of taxes on other income derived on or after 1st January 1975, and in respect of capital tax which is assessed in or after the year 1975;

(*b*) in the case of Spain, in respect of income attributable to the calendar year 1975 or subsequent years.

Article XXX. TERMINATION

This Convention shall remain in force indefinitely, but either of the Contracting States may, on or before 30th 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 diplomatic channels, written notice of termination.

In such event, the Convention shall cease to have effect in respect of income derived on or after 1st January of the year next following the year in which such notice is given; and, as regards the Swedish capital tax, in respect of capital which is assessed in or after the second calendar year following the year in which such notice is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Convention.

DONE at Madrid this 16th day of June 1976, in duplicate in the Spanish, the Swedish and the English languages, all texts being equally authentic. In the case of doubt, however, the English text shall prevail.

For the Government of Spain:

[*Signed — Signé*]

JOSÉ M. DE AREILZA

For the Government of Sweden:

[*Signed — Signé*]

KNUT BERNSTROM

PROTOCOL

At the time of signing the Convention between the Government of Sweden and the Government of Spain for the avoidance of double taxation with respect to taxes on income and capital, the undersigned have agreed that the following provisions shall form an integral part of the Convention.

I. Ad *paragraph 3* (b) *(ii) of article II.* For the period January 1st–April 8th 1975, the Convention shall also apply to "*El gravamen especial del 4 por ciento establecido por el artículo 104 de la Ley 41/1964, de 11 de junio*" (The special charge of 4 per cent established by article 104 of Law 41/1964 of June 11th).

II. Ad *paragraph 3 of article IV.* The provisions of paragraph 3 of article IV shall apply only to Swedish nationals moving from Sweden and are limited to the first three years counted from the day of departure.

The provisions in the Swedish tax laws referred to in paragraph 3 of article IV are contained in paragraph 53 of the Communal Income Tax Law.

III. Ad *paragraph 2* (g) *of article V.* Where an enterprise of a Contracting State has in the other Contracting State several simultaneous building sites or construction or assembly projects and the length of any of such undertakings exceeds a period of twelve months, then the competent authorities shall endeavour to decide by mutual agreement if all the undertakings constitute a permanent establishment in the other Contracting State.

The same shall apply if an enterprise of a Contracting State has in the other Contracting State several consecutive building sites or construction or assembly projects and the aggregate length of such undertakings exceeds a period of twelve months.

IV. Ad *paragraph 4 of article XXIV.* The competent authorities of the Contracting States shall mutually agree on the Spanish tax legislation to which the provisions of this paragraph shall apply.

V. Ad *paragraph 3 of article XXV.* The provisions of the first subparagraph of paragraph 3 shall not be construed as obliging Sweden, when taxing a permanent establishment of a Spanish company, to grant such deduction for dividends distributed by that company as is granted Swedish companies under Royal Decree No. 94/1967. At the time of signature of the Convention, the Decree prescribes that such deduction may not exceed five per cent a year of the paid-in share capital, provided the share capital has been paid in after the 30th June 1966, and the deduction is granted for not more than ten calendar years but in no case later than the 15th year of assessment after the year when the capital for the shares was paid in.

The competent authorities shall consult each other in order to decide whether the provisions of the first subparagraph shall continue to apply if the Swedish legislation referred to is amended as to the maximum amount of deduction allowed or in other similar respects.

VI. Ad *paragraph 1 of article XXVII.* The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Convention.

DONE at Madrid this 16th day of June 1976, in duplicate in the Spanish, the Swedish and the English languages, all texts being equally authentic. In the case of doubt, however, the English text shall prevail.

For the Government of Spain:

[*Signed — Signé*]

JOSÉ M. DE AREILZA

For the Government of Sweden:

[*Signed — Signé*]

KNUT BERNSTROM