No. 19472

SPAIN
and
ITALY

Convention for the avoidance of double taxation with respect to taxes on income and for the prevention of fiscal evasion (with protocol). Signed at Rome on 8 September 1977

Authentic texts: Spanish, Italian and French.

Registered by Spain on 19 December 1980.

ESPAGNE
et
ITALIE

Convention en vue d'éviter les doubles impositions en matière d'impôts sur le revenu et de prévenir les évasions fiscales (avec protocole). Signée à Rome le 8 septembre 1977

Textes authentiques : espagnol, italien et français.

Enregistrée par l'Espagne le 19 décembre 1980.

[TRANSLATION—TRADUCTION]

CONVENTION [1] BETWEEN SPAIN AND ITALY FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND FOR THE PREVENTION OF FISCAL EVASION

The Government of Spain and the Government of Italy, desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income and for the prevention of fiscal evasion have agreed upon the following provisions:

CHAPTER I. SCOPE OF THE CONVENTION

Article 1. PERSONAL SCOPE

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

Article 2. TAXES COVERED

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

2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, 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.

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

a) In the case of Italy:

(1) The personal income tax (*imposta sul reddito delle persone fisiche*);

(2) The corporate income tax (*imposta sul reddito delle persone giuridiche*);

(3) The local income tax (*imposta locale sui redditi*)
even if collected by withholding taxes at source
(hereinafter referred to as "Italian tax").

[1] Came into force on 14 November 1980 by the exchange of the instruments of ratification, which took place at Madrid, in accordance with article 28 (1) and (2).

b) In the case of Spain:

(1) The personal income tax (*impuesto sobre la renta de las personas físicas*);

(2) The corporate income tax (*impuesto sobre la renta de sociedades y demás entidades jurídicas*);

(3) The following prepayments: The rural and urban property taxes (*contribuciones territoriales rústica y urbana*); the tax on earned income (*impuesto sobre los rendimientos del trabajo personal*); the tax on income from capital (*impuesto sobre las rentas del capital*) and the tax on business and industrial activities and profits (*impuesto sobre las actividades y beneficios comerciales e industriales*);

(4) The "surface royalty" (*cánon de superficie*) and the tax on business profits (*impuesto sobre la renta de sociedades*) governed by the Act of 27 June 1974, applicable to enterprises engaged in prospecting for and extracting oil.

(5) The local income taxes (*impuestos locales sobre la renta*)

(hereinafter referred to as "Spanish tax").

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. At the end of each year, the competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

CHAPTER II. DEFINITIONS

Article 3. GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:

(a) The term "Spain" means the Spanish State (Peninsular Spain, the Balearic and Canary Islands and the Spanish territories in Africa) and the areas adjacent to the territorial waters of Spain over which, in accordance with Spanish law, Spain may exercise rights with respect to the sea-bed and subsoil and their natural resources;

(b) The term "Italy" means the Italian Republic and includes any area beyond Italy's territorial sea and in particular the sea-bed and subsoil of the sea adjacent to the territory of the Italian peninsula and the Italian islands and situated beyond the territorial sea up to the limit laid down by Italian law to permit the exploration and exploitation of the natural resources of such areas;

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

(d) 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;

(e) The term "person" includes an individual, 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 (including the State itself, its political or administrative subdivisions and its local authorities) and an enterprise carried on by a resident of the other Contracting State (including the State itself, its political or administrative subdivisions and its local authorities);

(h) The term "national" means:

(1) Any individual possessing the nationality of a Contracting State;

(2) Any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;

(i) The term "competent authority" means:

(1) In Spain: The Minister of Finance, or any other authority duly authorized by the Minister;

(2) In Italy: The Ministry of Finance.

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

Article 4. 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. However, this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is

a resident of both Contracting States, then his status shall be determined as follows:

(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 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 no permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he 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 two 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 he shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

Article 5. PERMANENT ESTABLISHMENT

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

2. The term "permanent establishment" includes 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 12 months.

3. The term "permanent establishment" shall be deemed not 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 collecting information, for the enterprise;

(e) The maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom paragraph 5 applies—shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises, in that State an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

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

CHAPTER III. TAXATION OF INCOME

Article 6. INCOME FROM IMMOVABLE PROPERTY

1. Income from immovable property including income from agriculture or 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 and 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 shall also be considered as "immovable property". 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, alienation or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

Article 7. BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

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

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

Article 8. SHIPPING AND AIR TRANSPORT

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which

the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

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

Article 9. ASSOCIATED ENTERPRISES

Where:

(a) An enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

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

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued may be included in the profits of that enterprise and taxed accordingly.

Article 10. DIVIDENDS

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

2. However, such dividends may also 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 if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

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

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

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

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or

performs in that other State professional services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such cases the dividends may be taxed in that other Contracting State in accordance with its own law.

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, except in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject to the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11. INTEREST

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

2. However, such interest may be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 12 per cent of the amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State if:

(a) The payer of the interest is the Government of that Contracting State or a local authority thereof; or

(b) The interest is paid to the Government of the other Contracting State or local authority thereof or any agency or instrumentality (including a financial institution) wholly owned by that other Contracting State or local authority thereof; or

(c) The interest is paid to any other agency or instrumentality (including a financial institution) in relation to loans made in application of an agreement concluded between the Governments of the Contracting States.

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

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, 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 cases the interest may be taxed in that other Contracting State, in accordance with its own law.

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

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

Article 12. ROYALTIES

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

2. However, such royalties may be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed:

(a) Four per cent of the gross amount of payments of any kind received as consideration for the use of, or the right to use, any copyright of literary, dramatic, musical or artistic work (except in the case of royalties for cinematographic films and works recorded on film or video tapes intended for television);

(b) Eight per cent of the gross amount of royalties in all other cases.

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 cinematographic 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, carries on business in the other Contracting State in which the royalties arise, 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 cases, the royalties may be taxed in that other State, in accordance with its own law.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political or administrative subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment with which the use, right or information giving rise to the royalties is connected, 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, by reason of a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties, having regard to the use, right of 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 such 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. CAPITAL GAINS

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

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the complete alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other State. However, gains from the alienation of ships and aircraft operated in international traffic and of movable property pertaining to their operation shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

3. Gains from the alienation of any property other than that referred to in paragraphs 1 and 2 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14. INDEPENDENT PROFESSIONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.

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

Article 15. DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

(a) The recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned, and

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

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

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

Article 16. DIRECTORS' FEES

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

Article 17. ARTISTES AND ATHLETES

1. Notwithstanding the provisions of articles 14 and 15, 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 exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

Article 18. PENSIONS

Subject to the provisions of article 19, paragraph 2, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

Article 19. GOVERNMENT SERVICE

1. *(a)* Remuneration, other than a pension, paid by a Contracting State or a political or administrative subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision, or authority 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 other State and the recipient is a resident of that 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 pension paid by, or out of funds created by, a Contracting State or a political or administrative subdivision or local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such pensions shall be taxable only in the Contracting State of which the recipient is a resident if he is a national of that State.

3. The provisions of articles 15, 16 and 18 shall apply to remuneration or pensions in respect of services rendered in connexion with a business carried on by a Contracting State or a political or administrative subdivision or a local authority thereof.

Article 20. TEACHERS AND STUDENTS

1. A resident of a Contracting State who, at the invitation of a university, college or other higher educational or scientific research institution of the other Contracting State, visits that other State solely for the purpose of teaching or carrying out scientific research at such institutions for a period not exceeding two years shall not be taxed in that other State in respect of remuneration received for such teaching or research activities.

2. Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

Article 21. 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 such 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 case, the items of income may be taxed in that other Contracting State in accordance with its own law.

CHAPTER IV. PROVISIONS FOR THE ELIMINATION OF DOUBLE TAXATION

Article 22

1. It is agreed that double taxation shall be avoided in accordance with the following paragraphs of this article.

2. In the case of Italy:

If a resident of Italy owns items of income which are taxable in Spain, Italy, in determining its income taxes specified in article 2 of this Convention, may include in the basis upon which such taxes are imposed the said items of income, unless specific provisions of this Convention otherwise provide.

In such case, Italy shall deduct from the taxes so calculated the income tax paid in Spain, but in an amount not exceeding that proportion of the aforesaid Italian tax which such items of income bear to the entire income.

However, no deduction shall be granted if the item of income is subjected in Italy to a final withholding tax at the request of the recipient of the aforesaid income in accordance with Italian law.

3. In the case of Spain:

If a resident of Spain receives income which, in accordance with the Convention, may be taxed in Italy, Spain shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Italy. Such deduction shall not, however, exceed that proportion of the tax, as computed before the deduction is made, corresponding to the income derived

from Italy, and such deduction from the Spanish tax shall apply both to the general taxes and to the prepayments.

4. Where, in accordance with any provision of the Convention, income derived by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income of such resident, and in accordance with its own law, take into account the exempted income.

CHAPTER V. SPECIAL PROVISIONS

Article 23. NON-DISCRIMINATION

1. Nationals of a Contracting State, whether or not they are residents of a Contracting State, shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other 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 State than the taxation levied on enterprises of that other State carrying on the same activities.

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

3. Except where the provisions of article 9, article 11, paragraph 7, or article 12, paragraph 6, 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 under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

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

Article 24. 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 the provisions of this Convention, he may, notwithstanding the remedies provided by the domestic law of those States, present

his case to the competent authority of the Contracting State of which he is a resident. This procedure may not be applied after a period of two years has elapsed from the date of notification or of deduction at source of the tax.

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 a satisfactory 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 which is not in accordance with the Convention.

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

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

Article 25. EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention, in so far as the taxation thereunder is not contrary to the Convention, and for the prevention of fiscal evasion. The exchange of information is not restricted by article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State, and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Convention. Such persons or authorities shall use the information only for such purposes. These persons or authorities may disclose the information in public court proceedings or in judicial decisions.

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 and administrative practice of that or of the other Contracting State;

(b) To supply information which is 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, indus-

trial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

Article 26. 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 27. REQUESTS FOR REFUNDS

1. Taxes withheld at source in a Contracting State will be refunded at the request of the person concerned or of the State of which he is a resident, if the right to collect such taxes is limited by the provisions of this Convention.

2. Claims for refunds, which shall be produced within the time-limit established by the law of the Contracting State which is obliged to make such refund, shall be accompanied by an official certificate of the Contracting State of which the taxpayer is a resident certifying the existence of the conditions required for entitlement to the exemptions or reductions provided for in this Convention.

3. The competent authorities of the Contracting States shall, by mutual agreement, settle the mode of application of this article in accordance with the provisions of article 24. They may also, by mutual agreement, establish other procedures for the application of the tax limitations provided for in this Convention.

CHAPTER VI. FINAL PROVISIONS

Article 28. ENTRY INTO FORCE

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

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

(*a*) To taxes deducted at source on income paid on or after 1 January 1977;

(*b*) To other taxes in respect of taxable periods ending on or after 1 January 1977.

3. The provisions of the Spanish-Italian Agreement regulating the Fiscal Treatment of Companies of 28 November 1927 [1] shall cease to have effect as from the date of application of this Convention.

Article 29. TERMINATION

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplo-

[1] League of Nations, *Treaty Series*, vol. LXXXII, p. 27.

matic channels, by giving notice of termination at least six months before the end of any calendar year. In such event, the Convention shall cease to apply:

(*a*) To taxes deducted at sources on income paid on or after 1 January of the year next following the year in which notice of termination is given;

(*b*) To other taxes in respect of taxable periods ending on or after 1 January of the year next following the year in which notice of termination is given.

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

DONE at Rome on 8 September 1977, in duplicate in the Spanish, Italian and French languages, the three texts being equally authentic, except in the case of doubt when the French text shall prevail.

For the Government of Spain:

[*Signed*]

CARLOS ROBLES PIQUER
Ambassador of Spain in Rome

For the Government of Italy:

[*Signed*]

RAIMONDO MANZINI
Secretary-General
of the Ministry of Foreign Trade

PROTOCOL OF AGREEMENT TO THE CONVENTION BETWEEN SPAIN AND ITALY FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND FOR THE PREVENTION OF FISCAL EVASION

At the signing of the Convention concluded today between Spain and Italy for the avoidance of double taxation with respect to taxes on income and for the prevention of fiscal evasion, the undersigned plenipotentiaries have agreed upon the following additional provisions which shall form an integral part of the Convention.

It is understood that:

(*a*) With respect to article 6 of the Convention, the provisions which are set forth in the records of the second session (Rome, 29 May to 3 June 1957) of the Mixed Italian-Spanish Commission, and which were the subject of an Exchange of Notes between Italy and Spain of 28 March 1958 and constitute annexes to the Italian-Spanish cultural agreement of 11 August 1955 [1] are hereby confirmed for all legal purposes. In particular, the tax exemptions agreed upon in the aforesaid agreements, including those for the benefit of the property of the Spanish College of St. Clement (Albornoz) in Bologna, shall take full effect as from the dates specified therein;

(*b*) With respect to article 7, paragraph 3, the expression "expenses which are incurred for the purposes of the permanent establishment" means the expenses directly connected with the activities of the permanent establishment;

(*c*) With respect to article 12, the expression "royalties" shall include payments owed for technical and economic studies of an industrial or commercial nature;

(*d*) With respect to article 24, paragraph 1, the expression "notwithstanding the

[1] United Nations, *Treaty Series*, vol. 267, p. 125.

remedies provided by the domestic law" means that the mutual agreement procedure cannot replace the contentious proceedings provided for in the domestic law, which proceedings shall, in any case, be instituted first, if the controversy concerns an assessment of taxes not in accordance with the Convention;

(*e*) With respect to article 28, requests for refunds made under this Convention by a resident of a Contracting State with regard to taxes due before the entry into force of this Convention may be presented during the two years following the date of its entry into force;

(*f*) Notwithstanding the provisions of article 28, paragraph 2, the provisions of article 8 shall apply to taxes due on or after 1 January 1969.

DONE at Rome on 8 September 1977, in duplicate in the Spanish, Italian and French languages, the three texts being equally authentic, except in the case of doubt when the French text shall prevail.

For the Government
of Spain:

[*Signed*]

CARLOS ROBLES PIQUER
Ambassador of Spain in Rome

For the Government
of Italy:

[*Signed*]

RAIMONDO MANZINI
Secretary-General
of the Ministry of Foreign Trade