

No. 19179

**SPAIN
and
ROMANIA**

**Convention for the avoidance of double taxation with
respect to taxes on income and on capital. Signed at
Madrid on 24 May 1979**

*Authentic texts: Spanish and Romanian.
Registered by Spain on 22 October 1980.*

**ESPAGNE
et
ROUMANIE**

**Convention tendant à éviter la double imposition en matière
d'impôts sur le revenu et d'impôts sur la fortune. Signée
à Madrid le 24 mai 1979**

*Textes authentiques : espagnol et roumain.
Enregistrée par l'Espagne le 22 octobre 1980.*

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE GOVERNMENT OF THE KINGDOM OF SPAIN AND THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF ROMANIA FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the Kingdom of Spain and the Government of the Socialist Republic of Romania, desiring to promote and strengthen economic relations between the two countries, on the basis of respect for national sovereignty and independence, equal rights, mutual advantages and non-interference in internal affairs, have agreed on the following provisions for the avoidance of double taxation with respect to taxes on income and on capital:

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 by each of the Contracting States, 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.

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

(a) In the case of Romania:

- The tax on incomes derived by individuals and corporate bodies;
- The tax on the income of joint companies constituted with the participation of some Romanian economic organizations and some foreign partners;
- The tax on income realized from agricultural activities (hereinafter referred to as “Romanian tax”);

(b) In the case of Spain:

- The general income tax on individuals;
- The general corporation tax;
- The following prepayments: the tax on rural and urban land; the tax on earned income; the tax on income from capital; and the tax on business and industrial activities;
- The “surface royalty” and the tax on corporation profits, regulated by the Act of 27 June 1974 applicable to enterprises engaged in prospecting and exploiting oil wells;

¹ Came into force on 28 June 1980 by the exchange of the instruments of ratification, which took place at Bucharest, in accordance with article XXX.

- The special tax on the capital of individuals and the special tax on certain earned income, regulated by Act 50/1977 of 14 November concerning urgent tax reform measures

(hereinafter referred to as “Spanish tax”).

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

Article III. GENERAL DEFINITIONS

1. (a) (i) The term “Romania” means the territory of the Socialist Republic of Romania, including any areas beyond the territorial waters of Romania where, in accordance with international law and with its own law, Romania may exercise rights with respect to the sea-bed and subsoil and their natural resources;

(ii) The term “Spain” means the Spanish State and the areas adjacent to the territorial waters of Spain where, in accordance with international law and with its own law, Spain may exercise rights with respect to the sea-bed and subsoil and their natural resources;

(b) The terms “a Contracting State” and “the other Contracting State” means Spain or Romania, as the context requires;

(c) The term “person” includes an individual, a company and any other body of persons;

(d) The term “company” means any body corporate, including a joint company constituted in accordance with Romanian law, or any entity which is treated as a body corporate for tax purposes;

(e) 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;

(f) The term “competent authority” means:

- (i) In the case of Romania, the Minister of Finance or his authorized representative;
- (ii) In the case of Spain, the Minister of Finance or his authorized representative;

(g) The term “tax” means Romanian tax or Spanish tax, as the context requires;

(h) The term “national” means:

- (i) Any individual possessing Spanish nationality or Romanian citizenship, as the case requires;
- (ii) Any legal person, partnership or association constituted in accordance with the law in force in a Contracting State;

(i) The term “international traffic” means any transport by a ship, aircraft or land vehicle operated by an enterprise which has its place of effective management in a Contracting State, except when the ship, aircraft or land vehicle is operated solely between places in the other Contracting State;

(j) The term “a territorial administrative subdivision” is used with reference to Romania.

2. As regards the application of the Convention by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the law of that State relating to the taxes which are the subject of this 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 tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But 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 or capital situated therein.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, 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 to which his personal and economic relations are closer (centre of vital interests);
- (b) If the Contracting State in which he has his centre of vital interests cannot be determined, or if he does not have 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 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, 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 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, a quarry or any 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 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 of 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;
- (f) The maintenance of a stock of goods or merchandise belonging to the enterprise and displayed at a trade fair or exhibition, if the goods or merchandise are sold by the enterprise by reason of the said fair or exhibition.

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, provided that such persons are acting in the ordinary course of their business.

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

Article VI. 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 have the meaning which it has under 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 and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any 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 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 Contracting State in which the permanent establishment is situated or elsewhere.

4. In so far as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in the article.

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

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

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

Article VIII. TRANSPORT ENTERPRISES

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

2. Notwithstanding the provisions of paragraph 1 and of article VII, profits derived from the operation of ships, aircraft or land vehicles used principally to transport passengers or goods exclusively between places in a Contracting State may be taxed in that State.

3. The provisions of paragraphs 1 and 2 shall also apply to profits referred to in those paragraphs derived by an enterprise of a Contracting State from its participation in a pool, a joint business or an international operating agency.

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 a Contracting State includes in the profits of an enterprise of that State—and taxes accordingly—profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between two independent enterprises, then the first-mentioned State shall make an appropriate adjustment to the amount of the tax charged therein on those profits.

In determining such adjustment, due regard shall be had to the other provisions of this Convention in relation to the nature of the income.

3. A Contracting State shall not adjust the profits of an enterprise in the circumstances referred to in paragraph 1, after the expiry of the time-limits provided in its domestic laws.

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.

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 laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

- (a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25 per cent of the capital of the company paying the dividends;
- (b) 15 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

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 taxation laws of the State of which the company making the distribution is a resident. This term also means income distributed to partners by joint companies constituted in accordance with Romanian law.

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 provisions of article VII or article XV, as the case may be, 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, 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 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 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.

2. However, such interest may also 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 10 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 above, interest on loans directly granted or guaranteed by a Contracting State shall be taxable only in that State.

4. The term "interest" as used in this article 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 or debentures, including premiums and prizes attaching to such securities, 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 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 provisions of article VII or article XV, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a territorial 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 or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to

arise in the Contracting State in which the permanent establishment or fixed base is situated.

7. 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 interest, 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 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 XII. ROYALTIES

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

2. However, such royalties may also 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 10 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this article means payments of any kind received as a consideration for the use of, or the right to use, any copyright, patent, trademark, 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; this term also includes payments of any kind for cinematographic films and works recorded on film and tape for television broadcasting.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner 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 provisions of article VII or article XV, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a territorial 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 or a fixed base in connection with which the contract under which the royalties are paid was concluded, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base 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 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 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 XIII. COMMISSION

1. Commission 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 commission may also 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 commission, the tax so charged shall not exceed 5 per cent of the gross amount of the commission.

3. The term "commission" as used in this article means payments received by any person as a consideration for services rendered by him as an intermediary; this term does not include income derived from independent activities within the meaning of article XV or income from dependent personal services within the meaning of article XVI.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the commission, being a resident of a Contracting State, carries on business in the other Contracting State in which the commission arises, through a permanent establishment, as defined in article V, situated therein, or performs in that other State professional services from a fixed base situated therein, and the commission is effectively connected with such permanent establishment or fixed base. In such cases the provisions of article VII or article XV, as the case may be, shall apply.

5. Commission shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a territorial administrative subdivision, a local authority or a resident of that State. Where, however, the person paying the commission, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the commission was incurred, and such commission is borne by such permanent establishment or fixed base, then such commission shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base 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 commission, having regard to the services for which it is paid, exceeds the normal 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 commission shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article XIV. 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 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 total alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State.

However, gains from the alienation of movable property of the kind referred to in paragraph 3 of article XXIV shall be taxable only in the Contracting State in which such property is taxable according to the said article.

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 XV. INDEPENDENT PERSONAL SERVICES

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

1. Subject to the provisions of articles XVII, XIX and XX, 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;
- (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 derived in respect of an employment exercised aboard a ship, aircraft or land vehicle operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article XVII. 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 State.

Article XVIII. ARTISTES AND ATHLETES

1. Notwithstanding the provisions of articles XV and XVI, 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, XV and XVI, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. Income derived by entertainers or athletes who are residents of a Contracting State in respect of activities exercised in the other Contracting State within the framework of cultural exchanges established under cultural agreements between the two Contracting States¹ shall be taxable only in the first-mentioned Contracting State.

Article XIX. PENSIONS

1. Subject to the provisions of paragraph 1 of article XX, 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.

2. Maintenance and other similar payments arising in a Contracting State and paid to a resident of the other Contracting State who is the beneficial owner thereof shall be taxable only in that other State.

Article XX. PUBLIC SERVANTS

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a territorial administration 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 of the remuneration 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 rendering the services.

2. (a) Any pension paid directly by, or out of funds created by, a Contracting State or a political subdivision or a territorial 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 pension shall be taxable only in the other Contracting State if the recipient is a resident of, and a national of, that other State.

3. The provisions of articles XVI, XVII and XIX shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a territorial administrative subdivision or a local authority thereof.

Article XXI. STUDENTS AND APPRENTICES

1. Payments which a student, apprentice or staff trainee 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.

¹ United Nations, *Treaty Series*, vol. 1177, p. 199.

2. If a student described in paragraph 1 engages in gainful activity in the State in which he is pursuing his training, the remuneration so derived shall not be taxable in that State, provided that the activity does not extend beyond 5 years and that the amount earned annually does not exceed 170,000 pesetas or its equivalent in lei.

Article XXII. TEACHERS

1. Any remuneration received by professors or other members of a teaching staff, with the exception of remuneration covered by paragraph 2 of article XV, who are residents of a Contracting State at the beginning of their visit to the other Contracting State and who are temporarily present in that other State for the purpose of teaching or conducting scientific research, for a period not exceeding two years, at a university or other officially recognized teaching institution shall be taxable only in the first-mentioned Contracting State.

2. The provisions of paragraph 1 shall not apply to remuneration received in respect of research if such research is conducted primarily for the private benefit of a specific person or persons.

Article XXIII. 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 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 cases the provisions of article VII or article XV, as the case may be, shall apply.

Article XXIV. 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, aircraft and land vehicles operated in international traffic and 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.

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

Article XXV. ELIMINATION OF DOUBLE TAXATION

1. In the case of Romania, double taxation shall be avoided as follows:

- (a) Tax paid by a Romanian resident on income taxable in Spain shall, in accordance with this Convention, be deducted from any Romanian tax payable under Romanian taxation law;
- (b) Profits paid by Romanian State enterprises to the State budget shall be deemed to be Romanian tax.

2. In the case of Spain, double taxation shall be avoided as follows:

- (a) Where a resident of Spain derives income which, in accordance with this Convention, may be taxed in Romania, Spain shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Romania. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to the income derived from Romania. The deduction shall be applied both to general taxes and to prepayment taxes;
- (b) Where the profits of a company which is a resident of Spain include dividends from a company which is a resident of Romania, the first-mentioned company shall be entitled to the same relief as would have been applicable if both companies were residents of Spain.

3. Where in accordance with any provision of this Convention income derived or capital owned 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 or capital of such resident, take into account the exempted income or capital.

4. For the purpose of this article, profits, income or gains of a resident of a Contracting State which are taxed in the other Contracting State in accordance with this Convention shall be deemed to arise from sources in that other State.

Article XXVI. NON-DISCRIMINATION

1. Nationals of a Contracting State, whether or not they are residents of either 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 reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of article IX, paragraph 6 of article XI, or paragraph 4 of article XII 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. The taxes on income, profits and capital and the payments from profits to the State budget which, under Romanian law, are chargeable on socialist units shall apply only to those units.

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

Article XXVII. 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, irrespective of 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. The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the Convention.

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 elimination of double taxation in cases not provided for in the Convention.

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

Article XXVIII. EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out 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 in accordance with the Convention. Any information so exchanged shall be treated as secret and shall be disclosed only to persons or authorities involved in the assessment or collection of the taxes which are the subject of the Convention.

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

- (a) To carry out administrative measures at variance with the laws or 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 commercial, industrial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*).

Article XXIX. DIPLOMATIC AGENTS AND CONSULAR OFFICERS

Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements signed by the two Contracting States.

Article XXX. ENTRY INTO FORCE

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Bucharest.

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

- (a) In respect of tax withheld at the source on amounts paid or credited to non-residents, on or after the first day of January in the year in which the instruments of ratification are exchanged; and
- (b) In respect of other taxes, for any fiscal year beginning on or after the first day of January in the year in which the instruments of ratification are exchanged.

Article XXXI. TERMINATION

This Convention shall remain in force indefinitely; however, beginning with the fifth year from that of its entry into force, either Contracting State may, on or before the thirtieth day of June in any calendar year, give notice of termination to the other Contracting State and, in such event, the Convention shall cease to have effect:

- (a) In respect of tax withheld at the source on amounts paid or credited to non-residents, on or after the first day of January in the year immediately following that in which the notice is given; and
- (b) In respect of other taxes, for any fiscal year beginning on the first day of January in the year immediately following that in which the notice is given.

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

DONE in duplicate at Madrid on 24 May 1979 in the Spanish and Romanian languages, both texts being equally authoritative.

For the Government
of the Kingdom of Spain:

[Signed]

MARCELINO OREJA AGUIRRE
Minister for Foreign Affairs

For the Government
of the Socialist Republic of Romania:

[Signed]

STEFAN ANDREI
Minister for Foreign Affairs