No. 19602

SPAIN
and
CANADA

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital (with protocol). Signed at Ottawa on 23 November 1976

Authentic texts: Spanish, English and French.
Registered by Spain on 25 February 1981.

ESPAGNE
et
CANADA

Convention tendant à éviter les doubles impositions et à prévenir l'évasion fiscale en matière d'impôts sur le revenu et sur la fortune (avec protocole). Signée à Ottawa le 23 novembre 1976

Textes authentiques : espagnol, anglais et français.
Enregistrée par l'Espagne le 25 février 1981.

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

The Government of Spain and the Government of Canada,

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

Have agreed as follows:

I. SCOPE OF THE CONVENTION

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, 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.

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

(*a*) In the case of Canada: the income taxes imposed by the Government of Canada (hereinafter referred to as "Canadian tax");

(*b*) In the case of Spain:

- The income tax on individuals;
- The income tax on companies and other legal persons;
- The following prepayments: the tax on rural and on urban land; the tax on earned income; the tax on income from capital and the tax on business and industrial activities and profits;
- The "surface royalty" and the tax on business profits, regulated by the law of June 27, 1974, applicable to enterprises engaged in prospecting and exploiting hydrocarbons;

(hereinafter referred to as "Spanish tax").

4. The Convention shall apply also to any identical or substantially similar taxes and to 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.

[1] Came into force on 26 December 1980 by the exchange of the instruments of ratification, which took place at Madrid, in accordance with article XXIX.

II. DEFINITIONS

Article III. General Definitions

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

(*a*) (i) The term "Canada", used in a geographical sense, means the territory of Canada, including any area beyond the territorial waters of Canada which, under the laws of Canada, is an area within which Canada may exercise rights with respect to the sea-bed and sub-soil and their natural resources;

(ii) The term "Spain" means the Spanish State (Peninsular Spain, the Balearic and Canary Islands, the Spanish towns in Africa) and the areas adjacent to the territorial waters of Spain for which, in accordance with international law, Spain may exercise rights with respect to the sea-bed and sub-soil and their natural resources;

(*b*) The terms "a Contracting State" and "the other Contracting State" mean, as the context requires, Spain or Canada;

(*c*) The term "person" includes an individual, an estate, a trust, a company, a partnership and any other body of persons;

(*d*) The term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes; in French, the term "*société*" also means a "corporation" within the meaning of Canadian law;

(*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 Canada, the Minister of National Revenue or his authorized representative;

(ii) In the case of Spain, the Minister of Finance, the General Technical Secretary, or any other authority duly authorized by the Minister;

(*g*) The term "tax" means Spanish tax or Canadian tax, as the context requires;

(*h*) The term "national" means:

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

(ii) Any legal person, partnership and association deriving its status as such from the law in force in a Contracting State;

(*i*) 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.

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 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 law 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.

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

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

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

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

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

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

(*a*) It shall be deemed to be a resident of the Contracting State of which it is a national;

(*b*) If it is a national of neither of the Contracting States, it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

4. Where by reason of the provisions of paragraph 1 a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question and to determine the mode of application of the Convention to such person.

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, 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 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 (other than an agent of an independent status to whom paragraph 5 applies) acting in a Contracting State on behalf of an enterprise of the other Contracting State 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.

III. TAXATION OF INCOME

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. For the purposes of this Convention, 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 apply to income derived from the direct use, letting, or use in any other form of immovable property and to profits from the alienation of such 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 or has carried 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 those deductible expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses, whether incurred 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 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 derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1 and article VII, profits derived from the operation of ships or aircraft 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 in 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 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.

3. A Contracting State shall not change the profits of an enterprise in the circumstances referred to in paragraph 1 after the expiry of the time limits provided in its national laws and, in any case, after five years from the end of the year in which the profits which would be subject to such change would have accrued to an enterprise of that State.

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 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 provisions of this paragraph shall not affect the taxation of the company on 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 assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident.

4. The provisions of paragraph 2 shall not apply if the recipient of the dividends, being a resident of a Contracting State, carries on in the other Contracting State of which the company paying the dividends is a resident, 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 holding by virtue of which the dividends 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. Where a company is a resident of a Contracting State, the other Contracting State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar 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 undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

6. Notwithstanding any provision of this Convention

(*a*) A company which is a resident of Spain and which has a permanent establishment in Canada shall, in accordance with the provisions of Canadian law,

remain subject to the additional tax on companies other than Canadian corporations, but the rate of such tax shall not exceed 15 per cent;

(*b*) A company which is a resident of Canada and which has a permanent establishment in Spain shall remain subject to the withholding tax in accordance with the provisions of Spanish law, but the rate of such tax shall not exceed 15 per cent.

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 be taxed in the Contracting State in which it arises, and according to the law of that State; but the tax so charged shall, provided that the interest is taxable in the other Contracting State, not exceed 15 per cent of the gross amount of the interest.

3. 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, as well as income assimilated to income from money lent by the taxation law of the State in which the income arises. However, the term "interest" does not include income dealt with in article X.

4. The provisions of paragraph 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.

5. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political 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 that interest is borne by that 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.

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

7. Notwithstanding the provisions of paragraph 2,

(*a*) Interest arising in Spain and paid to a resident of Canada shall be taxable only in Canada if it is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by the Export Development Corporation; and

(*b*) Interest arising in Canada and paid to a resident of Spain shall be taxable only in Spain if it is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by one of the Spanish Official Credit Institutions.

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 State.

2. However, such royalties may be taxed in the Contracting State in which they arise, and according to the law of that State; but the tax so charged shall, provided that the royalties are taxable in the other Contracting State, not exceed 10 per cent of the gross amount of the royalties.

3. Notwithstanding the provisions of paragraph 2, copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or artistic work (but not including royalties in respect of motion picture films and works on film or videotape for use in connection with television) arising in a Contracting State and paid to a resident of the other Contracting State who is subject to tax thereon shall be taxable only in that other State.

4. 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, 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, and includes payments of any kind in respect of motion picture films and works on film or videotape for use in connection with television.

5. The provisions of paragraphs 2 and 3 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.

6. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political 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 fixed base in connection with which the obligation to pay the royalties was incurred, and those royalties are borne by that 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.

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 royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

Article XIII. GAINS FROM THE ALIENATION OF PROPERTY

1. Gains from the alienation of immovable property 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 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 ships or aircraft operated in international traffic and movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which such property is taxable according to paragraph 3 of article XXII.

3. Gains from the alienation of

(*a*) Shares of a company, the property of which consists principally of immovable property situated in a Contracting State, or

(*b*) An interest in a partnership or a trust, the property of which consists principally of immovable property situated in a Contracting State,

may be taxed in that State. For the purposes of this paragraph the term "immovable property" shall not include property, other than rental property, in which the business of the company, partnership or trust is carried on; however, the term shall include shares of a company described in sub-paragraph (*a*) above and an interest in a partnership or a trust described in sub-paragraph (*b*) above.

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.

5. The provisions of paragraph 4 shall not affect the right of a Contracting State to tax, according to its law, gains derived by an individual resident in the other Contracting State from the alienation of any property, if the alienator:

(*a*) Is a national of the first-mentioned Contracting State or was a resident of that State for fifteen years or more prior to the alienaition of the property, and

(*b*) Was a resident of that first-mentioned Contracting State at any time during the five years immediately preceding such alienation.

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, in the following circumstances such income may be taxed in the other Contracting State, that is to say:

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

(*b*) If his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the fiscal year; or

(*c*) If the remuneration for his services in the other Contracting State derived in the fiscal year from residents of that other State exceeds,

(i) In the case of services performed in Spain, one hundred thousand pesetas (100,000 Pts), and

(ii) In the case of services performed in Canada, two thousand Canadian dollars ($2,000),

notwithstanding that his stay in that State is for a period or periods amounting to less than 183 days during the fiscal year.

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

Article XV. DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of articles XVI, XVIII and XIX, 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 the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned, and either

(*a*) The remuneration earned in the other Contracting State in the calendar year concerned does not exceed two thousand Canadian dollars ($2,000) if the employment is exercised in Canada or one hundred thousand pesetas (100,000 Pts) if the employment is exercised in Spain; or

(*b*) The remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and such 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 by an enterprise of a Contracting State, shall be taxable only in that State.

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 or a similar organ of a company which is a resident of the other Contracting State, may be taxed in that other State.

Article XVII. ARTISTES AND ATHLETES

1. Notwithstanding the provisions of articles VII, 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.

3. The provisions of paragraph 2 shall not apply if it is established that neither the entertainer or the athlete, nor persons related thereto, participate directly or indirectly in the profits of the person referred to in that paragraph.

Article XVIII. PENSIONS AND ANNUITIES

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

2. Pensions arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the State in which they arise, and according to the law of that State. However, in the case of periodic pension payments, the tax so charged shall not exceed the lesser of

(*a*) 15 per cent of the gross amount of the payment, and

(*b*) The rate determined by reference to the amount of tax that the recipient of the payment would otherwise be required to pay for the year on the total amount of the periodic pension payments received by him in the year, if he were resident in the Contracting State in which the payment arises.

3. Annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the State in which they arise, and according to the law of that State; but the tax so charged shall not exceed 15 per cent of the portion thereof which is subject to tax in that State. However, this limitation does not apply to lump-sum payments arising on the surrender, cancellation, redemption, sale or other alienation of an annuity, or to payments of any kind under an income-averaging annuity contract.

4. Notwithstanding anything in this Convention:

(*a*) Periodic or non-periodic social security pensions and other similar allowances and war veterans' pensions paid by a Contracting State or a political subdivision, a local authority or a governmental instrumentality thereof (*personne morale ressortissant à son droit public*), shall, where a resident of the other Contracting State is the beneficial owner thereof, not be taxable in that other State so long as they are not subject to tax in the first-mentioned State;

(*b*) Alimony 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 XIX. GOVERNMENT SERVICE

1. (*a*) Remuneration, other than a pension, paid by a Contracting State or a political 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 Contracting State of which the recipient is a resident if the services are rendered in that State and the recipient did not become a resident of that State solely for the purpose of performing the services.

2. The provisions of paragraph 1 shall not apply to remuneration in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or a political subdivision or a local authority thereof.

Article XX. STUDENTS

Payments which a student, apprentice or business trainee who is, or was immediately before visiting one of the Contracting States, a resident of the other Contracting State and who is present in the first-mentioned Contracting 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 first-mentioned State, provided that such payments are made to him from sources outside that State.

Article XXI. INCOME NOT EXPRESSLY MENTIONED

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing articles of this Convention may be taxed in that Contracting State. However, such items of income may be taxed in the Contracting State in which they arise, and according to the law of that State.

IV. TAXATION OF CAPITAL

Article XXII. CAPITAL

1. Capital represented by immovable property 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 by an enterprise of a Contracting State in international traffic and movable property pertaining to the operation of such ships and aircraft, shall be taxable only in that State.

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

V. METHODS FOR PREVENTION OF DOUBLE TAXATION

Article XXIII. ELIMINATION OF DOUBLE TAXATION

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

(*a*) Subject to the existing provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada and to any subsequent modification of those provisions (which shall not affect the general principle hereof) and unless a greater deduction or relief is provided under the laws of Canada, tax payable in Spain on profits, income or gains arising in Spain shall be deducted from any Canadian tax payable in respect of such profits, income or gains.

(*b*) Subject to the existing provisions of the law of Canada regarding the determination of the exempt surplus of a foreign affiliate and to any subsequent modification of those provisions (which shall not affect the general principle hereof) for the purpose of computing Canadian tax, a company resident in Canada shall be allowed to deduct in computing its taxable income any dividend received by it out of the exempt surplus of a foreign affiliate resident in Spain.

2. For the purposes of paragraph 1 (*a*), tax payable in Spain by a resident of Canada

(*a*) In respect of profits attributable to a trade or business carried on by it in Spain, or

(*b*) In respect of dividends, interests or royalties received by it from a company which is a resident of Spain,

shall be deemed to include any amount which would have been payable as Spanish tax for any year but for an exemption from, or reduction of, tax granted for that year or any part thereof under:

(*c*) Any of the following provisions, that is to say: paragraphs 2 and 3 of article 6, paragraphs 1, 2, 3, 4 and 5 of article 7, paragraph 2A of article 20 and articles 29, 31 and 32 of the Decree 3357/1967 of December 23, 1967, so far as they were in force on, and have not been modified since, the date of signature of this Convention, or have been modified only in minor respects so as not to affect their general character; and except to the extent that any of the said provisions (other than articles 7, 29 and 31 of the Decree 3357/1967) has the effect of exempting or relieving a source of income for a period in excess of ten years;

(*d*) Any other provision which may subsequently be made granting an exemption or reduction of tax which is agreed by the competent authorities of the Contracting States to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.

3. 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 Canada, Spain shall allow as a deduction from the tax on the income of that person an amount equal to the tax paid in Canada. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is appropriate to the income derived from Canada and such deduction from the Spanish tax shall apply to both the general taxes as to the prepayments. The provisions of this paragraph shall not apply to an income tax paid in Canada in accordance with the provisions of paragraph 5 of article XIII.

(*b*) Where the income of a company resident in Spain includes dividends received from a company resident in Canada, the first-mentioned company is entitled to a relief identical to that which would be applicable if both companies were resident in Spain.

4. For the purposes 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.

VI. SPECIAL PROVISIONS

Article XXIV. NON-DISCRIMINATION

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirements 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.

3. Nothing in this article shall 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.

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 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, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State, are or may be subjected.

5. In this article, the term "taxation" means taxes which are the subject of this Convention.

Article XXV. 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, without prejudice to the remedies provided by the national laws of those States, address to the competent authority of the Contracting State of which he is a resident an application in writing stating the grounds for claiming the revision of such taxation. To be admissible, the said application must be submitted within two years from the first notification of the action which gives rise to taxation not in accordance with the Convention.

2. The competent authority referred to in paragraph 1 shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve 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 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. In particular, the competent authorities of the Contracting States may consult together to endeavour to agree:

(*a*) To the same attribution of profits to a resident of a Contracting State and its permanent establishment situated in the other Contracting State;

(*b*) To the same allocation of income between a resident of a Contracting State and any associated person provided for in article IX.

4. The competent authorities of the Contracting States may consult together for the elimination of double taxation in cases not provided for in the Convention.

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

2. In no case shall the provisions of paragraph 1 be construed so as to impose on one of the Contracting States 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 (*ordre public*).

Article XXVII. DIPLOMATIC AND CONSULAR OFFICIALS

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

2. Notwithstanding article IV of this Convention, an individual who is a member of a diplomatic, consular or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed for the purposes of this Convention to be a resident of the sending State if he is liable in the sending State to the same obligations in relation to tax on his total world income as are residents of that sending State.

3. This Convention shall not apply to International Organizations, to organs or officials thereof and to persons who are members of a diplomatic, consular or permanent mission of a third State, being present in a Contracting State and who are not liable in either Contracting State to the same obligations in relation to tax on their total world income as are residents thereof.

Article XXVIII. MISCELLANEOUS RULES

1. The provisions of this Convention shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded

(*a*) By the laws of one of the Contracting States in the determination of the tax imposed by that Contracting State, or

(*b*) By any other agreement entered into by a Contracting State.

2. The competent authorities of the Contracting States may communicate with each other directly for the purpose of applying this Convention.

VII. FINAL PROVISIONS

Article XXIX. ENTRY INTO FORCE

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

2. The Convention shall enter into force upon the exchange of 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 calendar year in which the exchange of instruments of ratification takes place; and

(*b*) In respect of other taxes, for taxation years beginning on or after the first day of January in the calendar year in which the exchange of instruments of ratification takes place.

Article XXX. TERMINATION

This Convention shall continue in effect indefinitely but either Contracting State may, on or before June 30 in any calendar year after the year of the exchange of instruments of ratification, 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 calendar year next following that in which the notice is given; and

(*b*) In respect of other taxes, for taxation years beginning on or after the first day of January in the calendar year next following that in which the notice is given.

EN FE DE LO CUAL, los infrascritos, debidamente autorizados para ello, han firmado el presente Convenio.

HECHO en doble ejemplar en Ottawa, el 23 de noviembre de 1976, en lenguas española, inglesa y francesa, siendo igualmente fehacientes todos los textos.

IN WITNESS WHEREOF the undersigned, duly authorized to that effect, have signed this Convention.

DONE in duplicate at Ottawa, this 23rd day of November, 1976, in the English, French and Spanish languages, each version being equally authentic.

EN FOI DE QUOI les soussignés, dûment autorisés à cet effet, ont signé la présente Convention.

FAIT en double exemplaire à Ottawa le 23e jour de novembre 1976, en langues française, anglaise et espagnole, chaque version faisant également foi.

Por el Gobierno de España:
For the Government of Spain:
Pour le Gouvernement de l'Espagne :

[*Signed – Signé*]

MARCELINO OREJA AGUIRRE
Ministro de Asuntos Exteriores[1]

Por el Gobierno del Canadá:
For the Government of Canada:
Pour le Gouvernement du Canada :

[*Signed – Signé*]

DON JAMIESON
Secretario de Estado de Asuntos Exteriores[2]

[1] Minister for Foreign Affairs – Ministre des affaires étrangères.
[2] Secretary of State for Foreign Affairs – Secrétaire d'Etat aux affaires étrangères.

PROTOCOL

At the moment of signing the Convention between Spain and Canada, for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, the undersigned have agreed upon the following provisions which shall be an integral part of the Convention.

1. With respect to paragraph 3 of article IX, it is understood that a Contracting State is not obliged to apply the provisions of this paragraph in the case of fraud, wilful default or neglect.

2. With respect to article XI, the Spanish Official Credit Institutions referred to in paragraph 7(*b*) of that article are the following:

— The External Bank of Spain;

— The Industrial Credit Bank;

— The Credit Bank for Construction.

It is also understood that the provisions of paragraph 7 of article XI shall also apply to any other financial institution as is specified and agreed in letters exchanged between the competent authorities of the Contracting States.

3. With respect to article XIV, it is understood that 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.

4. With respect to articles XVIII and XIX, it is understood that pensions paid by, or out of funds created by, the Spanish State or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or authority thereof, shall be taxable only in Spain.

5. With respect to article XXI, it is understood that income derived by a resident of Spain from a trust or an estate which is a resident of Canada may be taxed in Canada in accordance with its law; however, provided that the income is taxable in Spain, the tax so charged shall not exceed 15 per cent of the gross amount of the income.

6. It is understood that nothing in this Convention shall be construed as preventing Canada from imposing a tax on amounts included in the income of a resident of Canada according to section 91 of the Canadian Income Tax Act.

EN FE DE LO CUAL, los infrascritos, debidamente autorizados para ello, han firmado el presente Protocolo.

HECHO en doble ejemplar en Ottawa, el 23 de noviembre de 1976, en lenguas española, inglesa y francesa, siendo igualmente fehacientes todos los textos.

IN WITNESS WHEREOF the undersigned, duly authorized to that effect, have signed this Protocol.

DONE in duplicate at Ottawa, this 23rd day of November, 1976, in the English, French and Spanish languages, each version being equally authentic.

EN FOI DE QUOI les soussignés, dûment autorisés à cet effet, ont signé le présent Protocole.

FAIT en double exemplaire à Ottawa le 23e jour de novembre 1976, en langues française, anglaise et espagnole, chaque version faisant également foi.

Por el Gobierno de España:
For the Government of Spain:
Pour le Gouvernement de l'Espagne :

[*Signed — Signé*]

MARCELINO OREJA AGUIRRE
Ministro de Asuntos Exteriores[1]

Por el Gobierno del Canadá:
For the Government of Canada:
Pour le Gouvernement du Canada :

[*Signed — Signé*]

DON JAMIESON
Secretario de Estado de Asuntos Exteriores[2]

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[1] Minister for Foreign Affairs — Ministre des affaires étrangères.
[2] Secretary of State for Foreign Affairs — Secrétaire d'Etat aux affaires étrangères.