

No. 19760

**SPAIN
and
FEDERAL REPUBLIC OF GERMANY**

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital (with exchanges of notes). Signed at Bonn on 5 December 1966

Authentic texts: Spanish and German.

Registered by Spain on 29 April 1981.

**ESPAGNE
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE**

Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu et d'impôts sur la fortune (avec échanges de notes). Signée à Bonn le 5 décembre 1966

Textes authentiques : espagnol et allemand.

Enregistrée par l'Espagne le 29 avril 1981.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE SPANISH STATE AND THE FEDERAL REPUBLIC OF GERMANY FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Spanish State and the Federal Republic of Germany,

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:

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

Article 2. 1. This Convention shall apply to taxes on income and on capital imposed on behalf of each Contracting State or one of its *Länder*, political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital 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 (not including social security contributions), as well as taxes on capital appreciation.

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

(1) In the Federal Republic of Germany:

- (a) The income tax (*Einkommensteuer*);
 - (b) The corporation tax (*Körperschaftsteuer*);
 - (c) The tax on capital (*Vermögensteuer*);
 - (d) The business tax (*Gewerbesteuer*)
- (hereinafter referred to as "German tax");

(2) In Spain:

- (a) The general tax on the income of individuals (*impuesto general sobre la renta de las personas físicas*);
- (b) The general tax on the income of companies and other legal entities (*impuesto general sobre la renta de sociedades y demás entidades jurídicas*), including the special tax of 4 per cent instituted by article 104 of Act No. 41/1964 of 11 June 1964;
- (c) The following prepayments: the tax on rural property (*contribución territorial sobre la riqueza rústica y pecuaria*), the tax on urban property

¹ Came into force on 14 March 1968, i.e., one month after the date of the exchange of the instruments of ratification, which took place at Madrid on 14 February 1968, in accordance with article 29 (2).

(*contribución territorial sobre la riqueza urbana*), the tax on earnings from personal work (*impuesto sobre los rendimientos del trabajo personal*), the tax on income from capital (*impuesto sobre las rentas del capital*) and the tax on commercial and industrial activities and profits (*impuesto sobre actividades y beneficios comerciales e industriales*);

- (d) In Fernando Poo, Río Muni, Sahara and Ifni, the taxes on income (on earnings from work and from capital) and on the profits of enterprises (*impuestos sobre la renta (sobre los rendimientos del trabajo y del patrimonio) y sobre los beneficios de las empresas*);
- (e) In the case of enterprises governed by the Act of 26 December 1958 which are engaged in prospecting for and extracting oil, over and above the other taxes enumerated in this article, the tax on surface area (*canon de superficie*), the tax on gross earnings (*impuesto sobre el producto bruto*) and the special tax on the profits of such enterprises (*impuesto especial sobre los beneficios*);
- (f) The local taxes on income or capital (*impuestos locales sobre la renta o el patrimonio*)
(hereinafter referred to as “Spanish tax”).

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

5. The provisions of this Convention in respect of the taxation of income or profits shall likewise apply to the German business tax, which is not computed on the basis of income or capital.

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

(a) The term “Federal Republic” means the Federal Republic of Germany and, when used in a geographical sense, the territory in which the Basic Law for the Federal Republic of Germany is in force;

(b) The term “Spain” means the Spanish State and, when used in a geographical sense, peninsular Spain, the Balearic and Canary Islands, the Spanish towns and provinces in Africa, and Equatorial Guinea consisting of the Territories of Río Muni and Fernando Poo, both territories being in the process of self-determination;

(c) The terms “a Contracting State” and “the other Contracting State” mean the Federal Republic or Spain, as the context requires;

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

(e) The term “person” comprises an individual and a company;

(f) The term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;

(g) The terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of Spain and an enterprise carried on by a resident of the Federal Republic, as the context requires;

(h) The term “place of effective management of an enterprise” means the place where the centre of its general management is situated; if the place of effective management of a shipping enterprise is on board a ship, it shall be considered that it is situated in the Contracting State where the home port of the ship is situated or, if there is no such home port, in the Contracting State in which the person operating the ship resides;

(i) The term “competent authority” means, in the case of the Federal Republic, the Federal Minister of Finance and, in the case of Spain, the Minister of Finance, the Director-General for Direct Taxes or any other authority designated by the Minister.

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

Article 4. 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 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 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 a habitual abode;
- (c) If he has a 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 it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated. If the place of effective management cannot be determined, then the company shall be deemed to be a resident of the Contracting State in which it was established.

4. For the purposes of articles 5 to 22, as regards the taxation of income derived from, or capital owned through, partnerships, members of partnerships shall be deemed to be residents of the Contracting State in which the place of effective management of the partnership is situated. Such income or capital, to the extent that it is not taxed in that State, may be taxed in the other State.

Article 5. 1. 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” includes especially:

- (a) A place of management;
- (b) A branch;
- (c) An office;
- (d) A factory;
- (e) A workshop;
- (f) A mine, quarry or other place of extraction of natural resources;
- (g) A building site on 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 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, provided that such activities are carried out by the enterprise.

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

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

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

Article 6. 1. Income from immovable property may be taxed in the Contracting State in which such property is situated.

2. The term “immovable property” shall be defined in accordance with the 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.

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

Article 7. 1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other 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. Where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

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

4. 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 laid down in this article.

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

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

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

Article 8. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

Article 9. Where

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

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

Article 10. 1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other 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 the tax so charged shall not exceed:

- (a) 10 per cent of the gross amount of the dividends if the recipient is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends, or if the dividends consist of the distribution of the profits of a partnership;
- (b) 15 per cent of the gross amount of the dividends in all other cases.

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

3. Notwithstanding the provisions of paragraph 2, German tax on dividends paid to a company being a resident of Spain by a company being a resident of the Federal Republic, provided that the former company owns directly or indirectly at least 25 per cent of the capital of the latter, shall not exceed 25 per cent of the gross amount of such dividends as long as the rate of German corporation tax on distributed profits is lower than that on undistributed profits and the difference between those two rates is at least 20 percentage points. When the difference between those two rates is at least 10 percentage points and less than 20 percentage points, the German tax on such dividends shall not exceed 15 per cent of their gross amount.

4. 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 assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident. It also includes income derived by a sleeping partner (who does not participate in the capital of the enterprise), distributions of profits by a partnership to its members and distributions in respect of the share certificates of an investment trust.

5. The provisions of paragraphs 1 to 3 shall not apply if the recipient of the dividends, being a resident of a Contracting State, has in the other Contracting State, of which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case the provisions of article 7 shall apply.

6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company to persons who are not residents of that other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11. 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 not exceed 10 per cent of the gross amount of the interest.

3. Interest arising in Spain and paid to the Deutsche Bundesbank or to the Kreditanstalt für Wiederaufbau of the Federal Republic shall be exempt from Spanish tax.

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

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

6. 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 in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

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

Article 12. 1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 not exceed 5 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 of literary, artistic or scientific work, including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraph 1 shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise a permanent establishment with which the right or property giving rise to the royalties is effectively connected. In such a case, the provisions of article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that 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 in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In that case, the excess part of the payments may be taxed according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13. 1. Gains from the alienation of immovable property, as defined in article 6, paragraph 2, 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 movable property of the kind referred to in article 22, paragraph 3, shall be taxable only in the Contracting State in which such movable 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 14. 1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar

character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in that other State but only so much of it as is attributable to that fixed base.

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

Article 15. 1. Subject to the provisions of articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

- (a) The recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned, and
- (b) The remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) The remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

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

Article 16. 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 17. Notwithstanding the provisions of articles 14 and 15, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

Article 18. 1. Remuneration paid by, or out of funds created by, the Federal Republic or by a *Land* or by an autonomous public agency or a local authority thereof to any individual in respect of services rendered may be taxed in the Federal Republic. Such remuneration shall be exempt from Spanish tax unless it is paid to a Spanish national who does not at the same time have German nationality.

2. Remuneration paid by, or out of funds created by, the Spanish State or by an autonomous public agency or a local authority thereof to any individual in respect of services rendered may be taxed in Spain. Such remuneration shall be exempt from German tax unless it is paid to a German national who does not at the same time have Spanish nationality.

3. The provisions of articles 15, 16 and 17 shall apply to remuneration in respect of services rendered in connection with any trade or business carried on by a Contracting State or a *Land* or by an autonomous public agency or a local authority thereof.

4. The provisions of paragraphs 1 and 2 shall also apply to remuneration paid, in the case of the Federal Republic, by the Deutsche Bundesbank, the Deutsche Bundesbahn and the Deutsche Bundespost, and, in the case of Spain, by the Red Nacional de los Ferrocarriles Españoles (R.E.N.F.E.).

Article 19. 1. 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. Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a *Land* or by autonomous public agency or a local authority thereof in consideration of past employment shall be exempt from taxes in the other Contracting State.

3. Paragraph 2 shall also apply to pensions and other remuneration, whether periodic or not, paid to an individual by a Contracting State or a *Land* or by an autonomous public agency or a local authority thereof as compensation for injury or damage sustained as a result of hostilities or political persecution.

Article 20. Payments which a student or an apprentice (including a *Volontär* or *Praktikant*) who is or was formerly a resident of a Contracting State and who is present in the other 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 other State, provided that such payments are made to him from sources outside that other State.

Article 21. Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing articles shall be taxable only in that State.

Article 22. 1. Capital represented by immovable property, as defined in article 6, paragraph 2, may be taxed in the Contracting State in which such property is situated.

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

3. Ships and aircraft operated in international traffic and business property, other than immovable property, pertaining to the operation of such ships or aircraft 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 23. 1. In the case of a resident of the Federal Republic, tax shall be determined as follows:

(a) Unless the provisions of subparagraph (b) apply, there shall be excluded from the basis upon which German tax is imposed any item of income arising in

Spain and any element of capital situated in Spain which, in accordance with this Convention, may be taxed in Spain. The Federal Republic, however, retains the right to take into account in the determination of the applicable rate of tax the items of income and elements of capital so excluded. In the case of dividends, the exclusion shall apply only to such dividends as:

- (aa) Are paid to a joint-stock company (*Kapitalgesellschaft*) being a resident of the Federal Republic by a joint-stock company being a resident of Spain, provided that the first-mentioned joint-stock company owns at least 25 per cent of the capital of the last-mentioned joint-stock company, or
- (bb) Consist of a distribution of profits by a partnership within the meaning of article 10, paragraph 4, of this Convention.

There shall also be excluded from the basis upon which German tax is imposed any shareholding the dividends of which, if paid, would be excluded from the basis upon which tax is imposed according to the immediately foregoing sentence.

- (b) Spanish tax paid in accordance with this Convention on income derived from Spain or on property situated in Spain shall be allowed as a credit against German tax payable in respect of such income or property in the following cases:
 - (aa) Dividends to which subparagraph (a) above does not apply;
 - (bb) Interest; where such interest is received by a banking institution and, by application of Decree-Law 19/1961 of 19 October, it is taxable in Spain at a rate of less than 10 per cent of its gross amount, 10 per cent of the gross amount of such interest shall be allowed as a credit against the tax;
 - (cc) Royalties;
 - (dd) Remuneration included in article 18, paragraph 2, paid to a German national who does not at the same time have Spanish nationality;
 - (ee) Income derived from immovable property or capital represented by such property, where such income or capital is not effectively connected with a permanent establishment situated in Spain.

2. In the case of a resident of Spain, tax shall be determined as follows:

- (a) Items of interest or capital which, in accordance with the provisions of this Convention, may be taxed in the Federal Republic, shall, notwithstanding the provisions of paragraph (b), be exempt from Spanish tax, but in determining the tax on the remaining income or capital of that person, Spain may apply the rate of tax which would have been applicable if the income or capital had not been so exempted.
- (b) The German tax imposed on income which, in accordance with the provisions of article 10, paragraphs 2 and 3, article 11, paragraph 2, article 12, paragraph 2, and article 18, paragraph 1, may be taxed in the Federal Republic and is not exempt from Spanish tax, shall be allowed as a deduction from Spanish tax. The German tax imposed on income derived from immovable property situated in the Federal Republic which is not effectively connected with a permanent establishment situated therein, and on capital represented

by such immovable property, shall be allowed as a deduction from the Spanish tax corresponding to such income or property. However, in all these cases, the deduction may not exceed that part of the tax, as computed before the deduction is given, which is appropriate to the income derived from, or property situated in, the Federal Republic. The tax paid in the Federal Republic shall also be allowed as a credit against the respective Spanish taxes, in accordance with the provisions of this paragraph.

Article 24. 1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. In particular, nationals of a Contracting State who are subjected to taxation in the other Contracting State shall be entitled to any exemptions, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which are granted to nationals of the other Contracting State in the same circumstances.

3. The term "nationals" means:

- (a) In the case of the Federal Republic, all Germans within the meaning of article 116, paragraph 1, of the Basic Law for the Federal Republic of Germany and all companies deriving their status as such from the law in force in the Federal Republic;
- (b) In the case of Spain, all individuals who, in accordance with the Civil Code, possess Spanish nationality and all companies deriving their status as such from the law in force in Spain.

4. Stateless persons shall not be subjected in a 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 State in the same circumstances are or may be subjected.

5. 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.

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

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

Article 25. 1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in

taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the domestic laws of those States, present his case to the competent authority of the Contracting State of which he is a resident.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve 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 establish by mutual agreement the manner in which the taxation limits set forth in articles 10, 11 and 12 are to be applied.

4. 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.

5. 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 26. 1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention and of the domestic laws of the Contracting States concerning taxes covered by this Convention in so far 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 the 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 or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

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

Article 28. This Convention shall also apply to *Land Berlin*, provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Government of Spain within three months from the date of entry into force of this Convention.

Article 29. 1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Madrid as soon as possible.

2. This Convention shall enter into force one month after the date of exchange of the instruments of ratification and shall thereupon have effect in respect of taxes levied in the calendar year in which it enters into force and subsequent calendar years.

3. Notwithstanding the provisions of paragraph 2, the provisions of article 8 and article 22, paragraph 3, shall apply to taxes levied in the calendar year 1963 and subsequent calendar years.

Article 30. This Convention shall remain in force indefinitely, but either Contracting State may, on or before 30 June in any year beginning after a period of three years from the date of its entry into force, give written notice of termination through the diplomatic channel. In such event, the Convention shall cease to have effect in respect of taxes levied in calendar years following the year in which notice of termination is given.

DONE at Bonn on 5 December 1966 in duplicate in the Spanish and German languages, both texts being equally authentic.

For the Spanish State:

[Signed]

JOSÉ DE ERICE
Ambassador of Spain

For the Federal Republic of Germany:

[Signed]

Professor KARL CARSTENS
Under-Secretary of State
Federal Ministry of Foreign Affairs

[Signed]

Dr. LUDWIG FALK
Director
Ministry of Finance

EXCHANGE OF NOTES

I a

UNDER-SECRETARY OF STATE
FEDERAL MINISTRY OF FOREIGN AFFAIRS

Bonn, 5 December 1966

Sir,

With reference to the Convention signed today between the Federal Republic of Germany and the Spanish State for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, I have the honour to inform you on behalf of the Government of the Federal Republic of Germany that the two Contracting States have agreed that the provisions of article 23, paragraph 1 (a), concerning dividends and shareholdings, shall apply

only when the company being a resident of Spain derives its income exclusively or almost exclusively from:

- (a) The production or sale of goods or merchandise, letting or leasing, services rendered or banking or insurance activities, or
- (b) Dividends paid by one or more companies resident in Spain, whose income is derived exclusively or almost exclusively from the production or sale of goods or merchandise, letting or leasing, services rendered or banking or insurance activities, provided that the first-mentioned company owns at least 25 per cent of the capital of the company or companies resident in Spain.

If these conditions are not satisfied, the provisions of article 23, paragraph 1 (b), and article 22, paragraph 4, respectively, shall apply.

I should be grateful if you would confirm to me your agreement with the foregoing; in such case, this note and your reply shall be regarded as forming part of the Convention.

Accept, Sir, etc.

[CARSTENS]

His Excellency José de Erice
Ambassador of Spain

II a

EMBASSY OF SPAIN

Bonn, 5 December 1966

Sir,

I have the honour to acknowledge receipt of your letter of today's date, which reads, in translation, as follows:

[See note I a]

I have the honour to convey to you my Government's agreement with the foregoing text.

Accept, Sir, etc.

His Excellency Professor Carstens
Under-Secretary of State
Federal Ministry of Foreign Affairs

197
1516

I b

UNDER-SECRETARY OF STATE
FEDERAL MINISTRY OF FOREIGN AFFAIRS

Bonn, 5 December 1966

Sir,

With reference to the Convention signed today between the Federal Republic of Germany and the Spanish State for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, I have the honour to inform you on behalf of the Government of the Federal Republic of Germany that the two Contracting States have agreed that the provisions of article 24 shall also apply to the Spanish tax payable for the issue of work permits to persons of German nationality or their dependants and to any similar German tax which may become payable by persons who are not of German nationality or their dependants.

I should be grateful if you would confirm to me your agreement with the foregoing; in such case, this note and your reply shall be regarded as forming part of the Convention.

Accept, Sir, etc.

[CARSTENS]

His Excellency José de Erice
Ambassador of Spain

II b

EMBASSY OF SPAIN

Bonn, 5 December 1966

Sir,

I have the honour to acknowledge receipt of your letter of today's date, which reads, in translation, as follows:

[*See note I b*]

I have the honour to convey to you my Government's agreement with the foregoing text.

Accept, Sir, etc.

His Excellency Professor Carstens
Under-Secretary of State
Federal Ministry of Foreign Affairs