

No. 21136

—

**SPAIN
and
POLAND**

Convention for the avoidance of double taxation with respect to taxes on income and on capital (with protocol). Signed at Madrid on 15 November 1979

Authentic texts: Spanish and Polish.

Registered by Spain on 30 June 1982.

—————

**ESPAGNE
et
POLOGNE**

Convention tendant à éviter la double imposition en matière d'impôts sur le revenu et sur le capital (avec protocole). Signée à Madrid le 15 novembre 1979

Textes authentiques : espagnol et polonais.

Enregistrée par l'Espagne le 30 juin 1982.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE GOVERNMENT OF SPAIN
AND THE GOVERNMENT OF THE POLISH PEOPLE'S REPUBLIC
FOR THE AVOIDANCE OF DOUBLE TAXATION WITH
RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of Spain and the Government of the Polish People's Republic, considering the principles and provisions of the Final Act of the Conference on Security and Co-operation in Europe² and desiring to develop further and facilitate their economic relations, have decided to conclude a convention for the avoidance of double taxation with respect to taxes on income and on capital and have agreed as follows:

Article 1. PERSONAL SCOPE

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

Article 2. TAXES COVERED

1. This Convention shall apply to taxes on income and on capital imposed on behalf of either 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, 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 Spain:

- (1) The tax on the income of individuals (*el impuesto sobre la renta de las personas físicas*);
- (2) The company tax (*el impuesto sobre sociedades*);
- (3) The property tax (*el impuesto sobre el patrimonio*) (hereinafter referred to as "Spanish tax");

(b) In the case of Poland:

- (1) The income tax (*podatek dochodowy*);
- (2) The tax on wages and salaries (*podatek od wynagrodzen*);
- (3) The surtax on income or on wages and salaries (*podatek wyrównawczy*) (hereinafter referred to as "Polish tax").

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of this Convention in addition

¹ Came into force on 6 May 1982 by the exchange of the instruments of ratification, which took place at Warsaw, in accordance with article 29 (2).

² *International Legal Materials*, vol. XIV, 1975, p. 1292.

to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any fundamental changes which have been made in their respective taxation laws.

Article 3. GENERAL DEFINITIONS

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

(a) The terms "a Contracting State" and "the other Contracting State" means Spain or the Polish People's Republic, as the context requires;

(b) The term "person" includes an individual, a company and any other body of persons;

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

(d) 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;

(e) The term "competent authority" means:

—In the case of Spain, the Minister of Finance or any other authority delegated by him;

—In the case of Poland, the Minister of Finance or his authorized representative;

(f) The term "national" means any individual possessing the nationality of a Contracting State, and any body corporate or other entity constituted in accordance with the law in force in a Contracting State;

(g) The term "international traffic" means any transport by ship, aircraft, railway or road vehicle operated by an enterprise which has its place of effective management in a Contracting State, except when the ship, aircraft or vehicle 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 defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State relating to the taxes which are the subject of this Convention.

Article 4. FISCAL DOMICILE

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

2. Where, by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, his status shall be determined 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 the question of residence cannot be settled in accordance with the provisions of subparagraph (c), 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 person other than an individual is a resident of both Contracting States, it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

Article 5. PERMANENT ESTABLISHMENT

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

2. The term "permanent establishment" includes especially:

- (a) A place of management;
- (b) A branch;
- (c) An office;
- (d) A factory;
- (e) A workshop;
- (f) A mine, a quarry, or any other place of extraction of natural resources;
- (g) A building site or construction or assembly project which exists for more than 12 months.

3. The term "permanent establishment" shall not include:

- (a) The use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
- (e) The maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

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 those mentioned in paragraph 3.

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

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

Article 6. INCOME FROM IMMOVABLE PROPERTY

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

2. The term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, 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. BUSINESS PROFITS

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

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

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of

the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

4. In so far as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in 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 purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

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

Article 8. INTERNATIONAL TRANSPORT

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated, whether such ships or aircraft are the property of the enterprise or are operated by it on lease.

2. If the place of effective management of a transport enterprise in international traffic is aboard a ship, it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

3. Profits from the operation of railway or road vehicles in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. The provisions of paragraphs 1 and 3 shall also apply to profits from participation in a pool, a joint business or an international operating agency.

Article 9. ASSOCIATED ENTERPRISES

1. Where (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

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

Article 10. DIVIDENDS

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but the tax so charged shall not exceed (a) five per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends; (b) fifteen per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of paragraph 2.

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

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

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such cases the provisions of article 7 or article 14, as the case may be, shall apply.

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

Article 11. INTEREST

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

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

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such cases, the provisions of article 7 or article 14, as the case may be, shall apply.

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

Article 12. ROYALTIES

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

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State but the tax so charged shall not exceed 10 percent of the gross amount of the royalties, if such royalties are taxable in the other Contracting State.

3. Irrespective of the provisions of paragraph 2, royalties paid in respect of copyrights, and other similar sums related to the production or reproduction of any literary, dramatic, musical or artistic work (excluding royalties paid in respect of cinematograph films or works filmed or recorded on videotape for use in television) which arise in a Contracting State and are paid to a resident of the other Contracting State, 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 of literary, artistic or scientific work, including cinematograph films, or films or tapes used for radio or television broadcasting, 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.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs professional services from a fixed

base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such cases, the provisions of article 7 or article 14, 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 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.

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

Article 13. CAPITAL GAINS

1. Gains from the alienation of immovable property, as defined in article 6, paragraph 2, or from the alienation of shares or similar rights in a company whose assets consist principally of immovable property, may be taxed in the Contracting State in which such immovable 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 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. INDEPENDENT PERSONAL SERVICES

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

Article 15. DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of article 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;
- (b) The remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) The remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

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

Article 16. DIRECTORS' FEES

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

Article 17. ARTISTS AND ATHLETES

1. Notwithstanding the provisions of articles 14 and 15, income derived by entertainers, such as theatre, motion picture, radio or television artists, 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 7, 14, and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

Article 18. PENSIONS

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

Article 19. GOVERNMENT SERVICE

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of

services rendered to that State or subdivision or authority shall be taxable only in that State.

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

- (i) Is a national of that State; or
- (ii) Did not become a resident of that State solely for the purpose of rendering the services.

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

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

3. The provisions of articles 15, 16 and 21 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 20. TEACHERS AND STUDENTS

1. A teacher or professor who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State for the purpose of teaching or conducting research at a university, college, high school or other teaching institution for a period not exceeding two years shall not be taxed in the first-mentioned Contracting State on any remuneration in respect of such teaching or research.

2. The provisions of paragraph 1 shall not apply to income derived from research, if such research is conducted not in the public interest, but primarily for the private benefit of a specific person or persons.

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

4. A student at a university or other centre of higher education in one Contracting State, or a student at a business, technical, agricultural or forestry school who is employed in the other Contracting State for a period or periods not exceeding 183 days in a given calendar year and who is or was immediately before such visit a resident of one of the Contracting States shall not be taxed in the other Contracting State in respect of remuneration derived in that State, provided that the services rendered are related to his course of study or training and that the remuneration constitutes a source of his maintenance.

Article 21. OTHER INCOME

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

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in article 6, paragraph 2, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such cases, the provisions of article 7 or article 14, as the case may be, shall apply.

Article 22. CAPITAL

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, aircraft and railway or road vehicles operated in international traffic and movable property pertaining to the operation of such ships, aircraft and vehicles 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. ELIMINATION OF DOUBLE TAXATION

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

- (a) Where a resident of Spain derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Poland, Spain shall, subject to the provisions of subparagraph (b) of this paragraph, exempt such income or capital from tax but may, in calculating the tax on the remaining income or capital of that resident, apply the rate of tax which would have been applicable if the income or capital in question had not been exempted from taxation;
- (b) When levying taxes on residents of Spain, Spain shall include in the tax base income which, in accordance with the provisions of articles 10 and 12 of this Convention, may be taxed in Poland, and shall allow as a deduction from the tax calculated from that base an amount equal to the tax paid in Poland. Such deduction shall not, however, exceed that part of Spanish tax, as computed before the deduction is given, which is attributable to income which was taxed in Poland in accordance with the provisions of articles 10 and 12 of this Convention.

2. In the case of the Polish People's Republic, double taxation shall be avoided as follows:

- (a) Where a resident of Poland derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Spain, Poland shall, subject to the provisions of subparagraph (b), exempt such income or capital from tax but may, in calculating the tax on the remaining income or

capital of that resident, apply the rate of tax which would have been applicable if the income or capital in question had not been exempted from taxation;

- (b) Where a resident of Poland derives income which, in accordance with the provisions of articles 10 and 12, may be taxed in Spain, Poland shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Spain. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to income which may be taxed in Spain.

Article 24. NON-DISCRIMINATION

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

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

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

3. Except where the provisions of article 9, article 11, paragraph 4, or article 12, paragraph 7, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

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

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

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

6. It is stipulated that the differential levying of taxes on income, profits and capital which is applied in the Polish People's Republic to nationalized enterprises shall not affect the provisions of this article.

7. The provisions of this article shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State benefits granted to residents of another State on the basis of agreements concluded with that other State.

Article 25. MUTUAL AGREEMENT PROCEDURE

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under article 23, paragraph 1, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention.

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

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

5. The competent authorities shall determine, through a separate mutual agreement, the methods of applying this Convention and, in particular, the formalities to be completed by residents of a Contracting State for the purpose of obtaining in the other Contracting State exemptions from, or reductions of, tax on income arising in that other State and referred to in articles 10, 11 and 12.

Article 26. EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for implementing this Convention, as well as information regarding the domestic laws of the Contracting States concerning taxes covered by this Convention in so far as the taxation thereunder is in accordance with the Convention. Any information so exchanged shall be treated as secret and shall be disclosed only to persons or authorities (including Courts and administrative bodies) involved in the assessment or collection of the taxes which are the subject of this Convention, or in proceedings, appeals or remedies related to taxation cases. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

- (a) To carry out administrative measures at variance with the laws or administrative practice of that or of the other Contracting State;
- (b) To supply particulars which would not be obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

- (c) To supply information which would disclose any commercial, business, industrial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*).

Article 27. DIPLOMATIC AGENTS AND CONSULAR OFFICERS

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

Article 28. TERRITORIAL SCOPE

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

(1) The term "Spain" means the Spanish State, including any areas beyond the territorial waters of Spain which, in accordance with international law, have been or may in the future be designated under Spanish law concerning the continental shelf as areas where Spain may exercise rights with respect to the sea-bed and subsoil and their natural resources.

(2) The term "Poland" means the Polish People's Republic, including any areas beyond the territorial waters of Poland which, in accordance with international law, have been or may in the future be designated under Polish law concerning the continental shelf, as areas where Poland may exercise rights with respect to the sea-bed and subsoil and their natural resources.

Article 29. ENTRY INTO FORCE

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

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

- (a) In respect of tax withheld at the source—to amounts collected on or after the first day of January of the calendar year following the year in which the Convention entered into force;
- (b) In respect of other taxes on income and on capital—to amounts taxable levied for the fiscal year beginning on or after the first day of January of the calendar year immediately following the year in which the Convention entered into force.

Article 30. TERMINATION

This Convention shall remain in force until it is denounced by either of the Contracting States. Either Contracting State may, after the expiry of five years from the date of entry into force of the Convention, denounce it in writing, through the diplomatic channel, giving written notice at least six months before the end of the calendar year. In such event, the Convention shall cease to apply:

- (a) In respect of tax withheld at the source—to amounts to be collected on or after the first day of January of the calendar year immediately following the year in which notice was given;
- (b) In respect of other taxes on income and on capital—to amounts taxable for the fiscal year beginning on or after the first day of January of the calendar year immediately following the year in which notice was given.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Convention and have affixed their seals thereto.

DONE at Madrid on 15 November 1979, in duplicate in the Spanish and Polish languages, both texts being equally authentic.

For the Government
of Spain:

[Signed]

MARCELINO OREJA AGUIRRE
Minister for Foreign Affairs

For the Government
of the Polish People's Republic:

[Signed]

EMIL WOJTASZEK
Minister for Foreign Affairs

PROTOCOL

At the time of signing the Convention between the Government of Spain and the Government of the Polish People's Republic for the avoidance of double taxation with respect to taxes on income and on capital, the undersigned, being duly authorized thereto, agreed that the following provisions should constitute an integral part of the Convention.

Addendum to article 2

I. It is understood that the Convention shall apply to taxes on income and on capital, regardless of the level of the authority of the respective Contracting Party on whose behalf the taxes are imposed.

Addendum to article 8

II. It is understood that the provisions of this article shall be deemed to apply to profits from the operation in international traffic of containers in maritime, rail, road and air transport, as well as other equipment used directly in international transport.

Addendum to article 12

III. Notwithstanding the provisions of paragraphs 2 and 3, royalties paid in respect of copyrights, and other similar sums in respect of cinematograph films or works filmed or recorded on videotape for use in television, which arise in a Contracting State and are paid to a resident of the other Contracting State, shall be taxable only in that other State, provided that such cinematograph films or works filmed or recorded on videotape for use in television are supplied to the other Contracting State under cultural agreements between the Contracting States.

Addendum to article 17

IV. Notwithstanding the provisions of paragraphs 1 and 2, income derived from the activities referred to in paragraph 1, performed under cultural agreements between the Contracting States, shall be exempted from taxation in the Contracting State in which such activities are performed.

Addendum to article 24

V. The provisions of paragraph 5 shall not apply to Polish fees charged for a licence to open an enterprise.

For the Government
of Spain:

[Signed]

MARCELINO OREJA AGUIRRE
Minister for Foreign Affairs

For the Government
of the Polish People's Republic:

[Signed]

EMIL WOJTASZEK
Minister for Foreign Affairs