

**No. 30011**

---

**SPAIN  
and  
ECUADOR**

**Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital. Signed at Quito on 20 May 1991**

*Authentic text: Spanish.*

*Registered by Spain on 20 May 1993.*

---

**ESPAGNE  
et  
ÉQUATEUR**

**Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu et sur la fortune. Signée à Quito le 20 mai 1991**

*Texte authentique : espagnol.*

*Enregistrée par l'Espagne le 20 mai 1993.*

## [TRANSLATION — TRADUCTION]

CONVENTION<sup>1</sup> FOR THE AVOIDANCE OF DOUBLE TAXATION  
AND THE PREVENTION OF FISCAL EVASION WITH RESPECT  
TO TAXES ON INCOME AND ON CAPITAL

The Government of the Kingdom of Spain, represented by its Minister for Foreign Affairs, Francisco Fernández Ordóñez, and the Government of the Republic of Ecuador, represented by its Minister for Foreign Affairs, Diego Cordovez, agree to enter into the following convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, on the basis of the following provisions:

*Article 1*

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 a Contracting State, irrespective of the manner in which they are levied.

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

(a) In Spain:

- (i) The income tax on individuals;
- (ii) The corporation tax;
- (iii) The capital tax,  
(hereinafter referred to as “Spanish tax”);

(b) In Ecuador:

- (i) The income tax on individuals;
- (ii) The corporation tax,  
(hereinafter referred to as “Ecuadorian tax”).

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

*Article 3. GENERAL DEFINITIONS*

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

(a) The term “Spain” means the Spanish State and, when used geographically, means the territory of the Spanish State including any area outside its territorial sea

<sup>1</sup> Came into force on 19 April 1993 by the exchange of the instruments of ratification, which took place at Madrid, in accordance with article 29 (1).

in which, in accordance with international law and its domestic legislation, the Spanish State exercises or may exercise jurisdiction or sovereign rights with respect to the seabed, its subsoil, and superjacent waters and their natural resources;

(b) The term “Ecuador” means the Republic of Ecuador in the form and with the territorial components defined by its Constitution and laws;

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

(d) The terms “residence” and “resident” used in this Convention mean, when referring to Ecuador, “domicile” and “domiciled”, respectively;

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

(f) The term “individual” used in this Convention means, when referring to Ecuador, “natural person”;

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

(h) 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;

(i) The term “national” means:

- (i) Any individual possessing the nationality of a Contracting State;
- (ii) Any legal person, partnership or association deriving its status as such from the law in force in a Contracting State;

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

(k) The term “competent authority” means:

- (i) In the case of Spain: the Minister of Economy and Finance or his authorized representative;
- (ii) In the case of Ecuador: the Minister of Finance and Public Credit, the Director-General for Public Revenues or any other delegated authority.

2. As regards the application of this 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 Contracting State concerning the taxes to which this Convention applies.

#### *Article 4. RESIDENCE OR 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 effective management or administration or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 of this article an individual is a resident of both Contracting States, then his status shall be determined as follows:

(a) He shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both 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 does not have a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has 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 residence cannot be determined by any of the foregoing criteria, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 of this article a company 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 or administration 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 of the business;

(b) A branch, agency or office;

(c) A factory, plant or industrial or assembly workshop;

(d) A mine, quarry or any other place of extraction or exploitation of natural resources.

3. A building site or installation project constitutes a permanent establishment only where such site or project continues for more than 12 months.

4. 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 carrying on, for the enterprise, any similar activity of a preparatory or auxiliary character.

5. Where a person — other than an agent of an independent status to whom paragraph 6 of this article applies — is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned State if such a person has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 of this article.

6. 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 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, without prejudice to the tax liabilities of such broker, general commission agent or agent.

7. 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. INCOME FROM IMMOVABLE PROPERTY*

1. Any income derived from immovable property may be taxed in the Contracting State in which such property is situated in accordance with the law of that Contracting State.

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. Ships, boats and aircraft shall not be regarded as immovable property.

#### *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. 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 business 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. Such expenses shall be justified, in accordance with the laws of the Contracting State in which the permanent establishment is situated.

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. 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. SHIPPING AND AIR TRANSPORT

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

2. If the place of effective management or administration of a maritime shipping enterprise 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. The provisions of paragraph 1 of this article shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

4. The provisions of paragraphs 1 and 3 of this article shall apply *mutatis mutandis* to profits derived by an enterprise of a Contracting State from the operation of aircraft in international traffic, provided there is international reciprocity. It is understood that should Ecuador accept, pursuant to an agreement with a third country, following the entry into force of this instrument, a provision concerning the taxation of profits arising from the operation of aircraft in international traffic that does not include an international reciprocity clause, the phrase “provided there is international reciprocity” shall be automatically deleted.

#### Article 9. ASSOCIATED ENTERPRISES

Where:

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

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

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

#### 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 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.

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

4. The provisions of paragraph 2 of this article shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

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

6. The provisions of paragraph 2 of this article 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, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of article 7 shall apply.

7. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on those profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

8. In the case of Ecuador, the limitations established in paragraph 2 of this article shall apply to the overall tax affecting the profits or dividends referred to in article 39 of Act No. 56 of the domestic system of taxation. The debt-claim referred to in article 38 of the same legal text shall apply only up to the amount of tax established in paragraph 2 of this article.

9. Paragraph 2 of this article shall not apply, in the case of Spain, to distributed or undistributed profits attributed to shareholders of the companies and entities mentioned in article 12.2 of Act No. 44/1978 of 8 September and article 19 of Act No. 61/1978 of 27 December, provided that such profits are not subject to Spanish corporation tax. Such profits shall be taxed in Spain in accordance with the provisions of its domestic law.

## *Article 11. INTEREST*

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

2. Such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. However, the tax charged in accordance with the preceding paragraph shall not exceed 5 per cent where such interest is paid under the terms of a loan arising from:

- (a) (1). The sale of industrial, commercial or scientific equipment; or
- (a) (2). The sale of merchandise delivered by an enterprise to another enterprise; or
- (a) (3). The financing of construction, installation or assembly works.

4. The interest on loans granted for a minimum term of five years paid to a resident of a Contracting State and arising in the other Contracting State shall not be taxed in that other Contracting State.

5. Interest arising in a Contracting State and paid to the other Contracting State or to one of its political subdivisions or to any financial institution wholly owned by that State or by one of its political subdivisions may be taxed only in that last-mentioned State.

6. The provisions of paragraphs 2, 3 and 4 of this article shall apply only if the recipient of the interest is the beneficial owner thereof.

7. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of the preceding paragraphs.

8. The term “interest” as used in this article includes 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, or income from bonds or debentures, including premiums or prizes attaching to such securities, bonds or debentures.

9. The provisions of paragraphs 2, 3 and 4 shall not apply if the recipient 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 with which the debt-claim from which the interest arises is effectively connected. In such a case, the provisions of article 7 shall apply.

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

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

*Article 12. ROYALTIES*

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State and according to the laws of that 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 in that case, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. Notwithstanding the provisions of paragraph 2 of this article, in the case of royalties received as a consideration for copyrights and other similar remuneration for the production or reproduction of a literary, dramatic, musical or artistic work (except for royalties in connection with cinematographic films and works recorded on film or tapes for television), the tax charged in the Contracting State in which they arise shall not exceed 5 per cent of the gross amount of such royalties.

4. The provisions of paragraphs 2 and 3 of this article shall apply only if the recipient of the royalties is the beneficial owner thereof.

5. 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; this term also includes amounts of any kind received in connection with cinematographic films and works recorded on film and tape for television.

6. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of paragraphs 2 and 3 of this article.

7. The provisions of paragraphs 2 and 3 of this article 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 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.

8. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself or a political subdivision, an administrative subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

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

*Article 13. CAPITAL GAINS*

1. Gains derived by a resident of a Contracting State from the alienation of the immovable property referred to in article 6 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, including gains from the alienation of such permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

3. Gains from the alienation of ships operated in international traffic or movable property pertaining to the operation of such ships shall be taxable only in the Contracting State in which the place of effective management or administration of the enterprise is situated.

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

*Article 14. INDEPENDENT PERSONAL SERVICES*

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or similar activities of an independent character shall be taxable only in that State unless he is present in the other Contracting State for 183 days or more in the calendar year concerned for the purpose of performing such activities. In that case, the income may be taxed in that other Contracting State but only so much of it as is derived from his activities performed therein.

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

*Article 15. DEPENDENT PERSONAL SERVICES*

1. Subject to the provisions of articles 16, 18 and 19 of this Convention, 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, in which case such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1 of this article, 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 calendar 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 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 operated in international

traffic may be taxed in the Contracting State in which the place of effective management or administration of the enterprise is situated.

*Article 16. MEMBERS OF BOARDS OF DIRECTORS*

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

*Article 17. ARTISTES AND ATHLETES*

1. Notwithstanding the provisions of articles 14 and 15 of this Convention, income derived by entertainers such as theatre, motion picture, radio or television artistes, or musicians, or by athletes, from their personal activities as such may be taxed in the Contracting State in which they exercise such activity.

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

*Article 18. PENSIONS*

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 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 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) Subject to the provisions of article 18, any 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 pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other State.

3. The provisions of articles 15, 16 and 18 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. STUDENTS*

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

*Article 21. TEACHERS*

1. Any remuneration other than the remuneration referred to in paragraph 2 of article 14 received by teachers and other members of the teaching profession who are residents of a Contracting State at the beginning of their stay in the other Contracting State, and who are temporarily present in the last-mentioned State to teach or carry out scientific research at a university or other accredited educational institution for a period not exceeding two years, shall be taxed only in the first-mentioned Contracting State.

2. The provisions of paragraph 1 of this article shall not apply to income from research if such research is undertaken mainly for the private benefit of a person or persons.

*Article 22. 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 of this article shall not apply to income, other than income from immovable property as defined in paragraph 2 of article 6, 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, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such a case, the provisions of article 7 shall apply.

*Article 23. CAPITAL*

1. Capital represented by immovable property referred to in article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by 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 may be taxed in that other State.

3. Capital represented by ships operated in international traffic and by movable property pertaining to the operation of such ships shall be taxable only in the Contracting State in which the place of effective management or administration 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 24. METHODS FOR THE ELIMINATION OF DOUBLE TAXATION*

1. Where a resident of Spain derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Ecuador, Spain shall deduct:

(a) From the tax on the income of that resident, an amount equal to the income tax paid in Ecuador; and,

(b) From the tax on the capital of that resident, an amount equal to the capital tax paid in Ecuador.

2. Where a resident of Ecuador derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Spain, Ecuador shall deduct:

(a) From the tax on the income of that resident, an amount equal to the income tax paid in Spain; and,

(b) From the tax on the capital of that resident, an amount equal to the capital tax paid in Spain.

3. Such deduction in either case shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in that other State.

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

*Article 25. NON-DISCRIMINATION*

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

4. Except where the provisions of article 9, paragraph 11 of article 11, or paragraph 9 of article 12 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.

5. The provisions of this article shall, notwithstanding the provisions of article 2, apply to taxes of every kind and description.

#### *Article 26. 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 paragraph 1 of article 25, 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 provisions of 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 this 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 this Convention. When both competent authorities deem it advisable, in order to facilitate the application of the Convention, they may consult together in a commission established for that purpose by the competent authorities or their authorized representatives.

#### *Article 27. EXCHANGE OF INFORMATION*

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

(a) To carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(b) To supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

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

#### Article 28. DIPLOMATIC AGENTS AND CONSULAR OFFICERS

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

#### Article 29. ENTRY INTO FORCE

1. The Convention shall be ratified in accordance with the respective domestic laws and shall enter into force upon the exchange of instruments of ratification, and its provisions shall apply in both Contracting States:

(a) In respect of taxes withheld at the source, to income paid or credited as from 1 January of the calendar year following that in which the exchange of instruments of ratification takes place; and

(b) In respect of other taxes, as from the tax year beginning on 1 January of the calendar year following that in which the exchange of instruments of ratification takes place.

#### Article 30. TERMINATION

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through the diplomatic channel, by giving notice of termination at least six months before the end of any calendar year following a period of five years from the date on which the Convention enters into force. In such event, the Convention shall cease to have effect in both Contracting States:

(a) In respect of taxes withheld at the source, to income paid or credited as from 1 January of the calendar year following that in which the notice is given; and,

(b) In respect of other taxes, as from the tax year beginning on 1 January of the calendar year following that in which the notice is given.

IN WITNESS WHEREOF, the undersigned have signed this Convention in two equally authentic texts in Spanish, at Quito, on 20 May 1991.

For the Government  
of Spain:

FRANCISCO FERNÁNDEZ ORDÓÑEZ  
Minister for Foreign Affairs

For the Government  
of Ecuador:

DIEGO CORDOVEZ  
Minister for Foreign Affairs