No. 31360

SPAIN
and
MEXICO

Convention for the avoidance of double taxation and the prevention of fraud and fiscal evasion with respect to taxes on income and capital (with protocol). Signed at Madrid on 24 July 1992

Authentic text: Spanish.

Registered by Spain on 14 November 1994.

ESPAGNE
et
MEXIQUE

Convention tendant à éviter la double imposition en matière d'impôts sur le revenu et sur la fortune et à prévenir la fraude et l'évasion fiscale (avec protocole). Signée à Madrid le 24 juillet 1992

Texte authentique : espagnol.

Enregistrée par l'Espagne le 14 novembre 1994.

[TRANSLATION — TRADUCTION]

CONVENTION[1] BETWEEN THE KINGDOM OF SPAIN AND THE UNITED MEXICAN STATES FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FRAUD AND FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL

The Kingdom of Spain and the United Mexican States, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fraud and fiscal evasion with respect to taxes on income and capital, hereinafter referred to as "the Convention", 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 by each of the Contracting States, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income or total capital or on any part thereof, 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 Kingdom of Spain:

— The income tax on individuals;

— The corporation tax; and

— The capital tax

(hereinafter referred to as "Spanish tax");

(*b*) In the United Mexican States:

— The income tax; and

— The capital tax

(hereinafter referred to as "Mexican tax").

[1] Came into force on 6 October 1994 by the exchange of the instruments of ratification, which took place at Madrid, in accordance with article 28 (1).

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the 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 territory of the Spanish State, and in the geographical sense refers to the territory of the Spanish State, including any area outside its territorial sea over which, in accordance with international law and domestic legislation, the Spanish State may exercise jurisdiction or sovereign rights with respect to the seabed and its subsoil, the superjacent waters and their natural resources.

(*b*) The term "Mexico" means the territory of the United Mexican States, including the constituent parts of the Federation; islands, including coral reefs and keys in the adjacent waters; the islands of Guadalupe and Revillagigedo; the continental shelf and the undersea bases of the islands, keys and coral reefs; the waters of the territorial sea, to the extent and on the terms provided for by international law, and internal waters; and the airspace situated over the national territory, to the extent and on the terms provided for by international law.

(*c*) The terms "a Contracting State" and "the other Contracting State" mean the Kingdom of Spain or the United Mexican States, as the context requires.

(*d*) The term "person" includes individuals, companies and any other body of persons.

(*e*) The term "company" means any body corporate or legal or other entity which is treated as a body corporate or a legal entity for tax purposes.

(*f*) 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.

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

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

(ii) Any legal person, association or other entity deriving its status as such from the law in force in a Contracting State.

(*h*) The term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between two places in the other Contracting State.

(*i*) The term "competent authority" means:

(i) In the case of Spain, the Minister of Economic Affairs and Finance or his authorized representative; and

(ii) In the case of Mexico, the Ministry of Finance and Public Credit.

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 laws of that State concerning the taxes to which the Convention applies.

Article 4

RESIDENT

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, provided, however, that 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 of any capital which he owns in that State.

2. Where by reason of the provisions of paragraph 1 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 State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

(*b*) If the 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 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 States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

(*d*) If he is not a national of either of the Contracting States, the competent authorities of the two Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then that person shall be deemed to be a resident of the 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, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. The term "permanent establishment" likewise encompasses building sites; construction, assembly or installation projects; or supervisory activities in connection therewith, but only where such sites, projects or activities continue for a period of more than six months.

4. Notwithstanding the preceding provisions of this article, 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, for the preparation of loan activities or for similar activities which have a preparatory or auxiliary character, as long as such activities are carried out for the enterprise;

(*f*) The maintenance of a fixed place of business solely for any combination of the activities mentioned in subparagraphs (*a*) to (*e*), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person — other than an agent of an independent status to whom paragraph 7 applies — is acting on behalf of an enterprise and has and habitually exercises in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. Notwithstanding the provisions of this article, an insurance enterprise of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business 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 and that, in their commercial or financial relations with that enterprise, they are not bound by conditions made or imposed that differ from those generally agreed upon by independent agents.

8. 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. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other 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. 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 also apply to income derived from the direct use, letting or sharecropping, 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 independent work.

5. Where direct or indirect participation in the capital or assets of a company or other entity entitles the owner to the enjoyment in any form, direct use, letting or use in any other form of immovable property held by the company or entity, the income derived from such enjoyment, direct use, letting or use in any other form of such rights may be taxed in the Contracting State in which the immovable property is situated.

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 or has carried on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on or has carried on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that 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. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, of amounts charged (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. Insofar 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 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, then 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 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.

2. If the place of effective management of a shipping enterprise is aboard a ship, then 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 shall also apply to profits from participation in a pool or an international operating agency.

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, may be included in the profits of that enterprise and taxed accordingly.

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:

(*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.

3. The provisions of paragraphs 1 and 2 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

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

5. 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 or has carried 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 or has performed independent work 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 case the provisions of article 7 or article 14, as the case may be, 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, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 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.

2. However, such interest may be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed:

(*a*) Ten per cent of the gross amount of the interest if the recipient is a bank which is the beneficial owner of the interest;

(*b*) Fifteen per cent of the gross amount of the interest in all other cases.

3. Notwithstanding the provisions of the preceding paragraph, for a period of five years after the entry into force of the provisions of this Convention, the rate of 15 per cent shall be applied instead of the rate provided for in paragraph 2 (*a*) of this article.

4. Notwithstanding the provisions of paragraph 2, the interest referred to in paragraph 1 may be taxed in the Contracting State of which the beneficial owner of the interest is a resident only if any of the following conditions are met:

(*a*) The beneficial owner is one of the Contracting States or a political subdivision or local authority thereof;

(*b*) The interest is paid by one of the persons mentioned in subparagraph (*a*) above;

(*c*) The interest is paid on loans of three years or more granted or underwritten by public financing or underwriting entities of that Contracting State for the purpose of promoting exports through the granting of credits or guarantees on preferential terms.

5. The term "interest" as used in this article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as all other income that is treated as income from money lent by the taxation law of the Contracting State in which the interest arises.

6. The provisions of paragraphs 1, 2, 3 and 4 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on or has carried on business in the other Contracting State, in which the interest arises,

through a permanent establishment situated therein, or performs or has performed 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 case the provisions of article 7 or article 14, as the case may be, shall apply.

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

8. 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 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 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.

9. The provisions of this article shall not apply if the debt-claim for which the interest is paid was agreed upon or assigned for the sole purpose of taking advantage of this article and not for legitimate business reasons.

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.

2. However, such royalties may be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. Notwithstanding the provisions of paragraph 2, royalties paid by virtue of a copyright and other similar payments for the production or reproduction of a literary, dramatic, musical or artistic work (except in the case of royalties for cinematographic films and works recorded on film or video tapes intended for television, and records or cassette tapes) originating in a Contracting State and paid to a resident of the other Contracting State who is thereby subject to taxation may only be taxed 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 cinematographic 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. The term "royalties" also includes

gains derived from the alienation of the rights or property referred to in this paragraph, to the extent that the amount obtained through such alienation is contingent upon the productivity or use of such rights or property.

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 or has carried on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs or has performed in that other State professional services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such cases, the provisions of article 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 or a political subdivision or local authority of that State or a person who is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the 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.

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.

8. The provisions of this article shall not apply if the right or property for which the royalties are paid was agreed upon or assigned for the sole purpose of taking advantage of this article and not for legitimate business reasons.

Article 13

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property, as defined in article 6, situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of stock, partners' shares or other rights in a company or other legal person the property of which consists, directly or indirectly, mainly of immovable property situated in a Contracting State or of rights related to such immovable property may be taxed in that State. Immovable property which such company or other legal person uses for its industrial, commercial or agricultural activity or for the performance of professional services shall not be taken into consideration for the purposes of this paragraph.

3. Gains from the alienation of shares representing a participation of at least 25 per cent in the capital of a company which is a resident of a Contracting State and held for a period of at least 12 months prior to their alienation may be taxed in that State.

4. 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 independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other State.

5. Gains from the alienation of ships or aircraft operated in international traffic or movable 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.

6. Gains from the alienation of the property or rights referred to in article 12 of this Convention shall be taxable in accordance with the provisions of that article.

7. Gains from the alienation of any property other than that referred to in the preceding paragraphs of this article shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

INDEPENDENT SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:

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

(*b*) If his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any continuous 12-month period; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

DEPENDENT SERVICES

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 any continuous 12-month period;

(*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 fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic 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 other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or board of trustees 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, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State may be taxed in that other State.

2. Notwithstanding the provisions of articles 7, 14 and 15, 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 be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by a resident of a Contracting State as an entertainer or athlete shall be exempt from tax by the other Contracting State if the visit to that other State is substantially supported by public funds of the first-mentioned State or a political subdivision or local authority thereof.

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 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 individual 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 performing the services.

2. (*a*) Any pension paid by or out of funds created by a Contracting State or a political subdivision or 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 pensions shall be taxable only in the other Contracting State if the individual is both a resident and a national of that 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 local authority thereof.

Article 20

STUDENTS

Payments which a student or business 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 that State, provided that such payments arise from sources outside that State.

Article 21

OTHER INCOME

1. Items of income of a resident of a Contracting State 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 professional services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of article 7 or article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing articles and arising in the other Contracting State may also be taxed in that other State.

Article 22

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 stock, partners' shares or other rights in a company or other legal person the property of which consists, directly or indirectly, mainly of immovable property situated in a Contracting State or of rights related to such immovable property may be taxed in that State. Immovable property which such company or other legal person uses for its industrial, commercial or agricultural activity or for the performance of professional services shall not be taken into consideration for the purposes of this paragraph.

3. Capital represented by shares representing a participation of at least 25 per cent in the capital of a company which is a resident of a Contracting State may be taxed in that State.

4. 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, or by movable property pertaining to a fixed base owned by a resident of a Contracting State in the other Contracting State for the performance of independent services, may be taxed in that other State.

5. Capital represented by ships or aircraft operated in international traffic or movable 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.

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

Article 23

METHOD FOR THE ELIMINATION OF DOUBLE TAXATION

1. In Spain, double taxation shall be avoided, in accordance with the relevant provisions of the law of Spain, as follows:

(*a*) (i) Where a resident of Spain derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Mexico, Spain shall allow, as a deduction from the tax on the income or capital of that resident, an amount equal to the tax actually paid in Mexico.

(ii) In the case of dividends paid to a company which is a resident of Spain, and which is the beneficial owner of the dividends, by a company which is a resident of Mexico and which neither controls, directly or indirectly, nor is controlled by, a company which is a resident of a third State, a tax of 5 per cent under article 10, paragraph 2 (*a*), shall be considered to have been paid in Mexico.

However, deductions under the foregoing subparagraphs of this paragraph shall not exceed that part of the tax on income or capital, as computed before the deduction is given, which is attributable to the income derived from Mexico.

(*b*) In the case of a dividend paid by a company which is a resident of Mexico to a company which is a resident of Spain and which holds directly at least 25 per cent of the capital of the company paying the dividend, in the computation of the credit there shall be taken into account, in addition to the tax creditable under subparagraph (*a*) of this paragraph, that part of the tax effectively paid by the first-mentioned company on the profits out of which the dividend is paid which relates to such dividend, provided that such amount of tax is included, for this purpose, in the taxable base of the receiving company.

Such deduction, together with the deduction allowable in respect of the dividend under subparagraph (*a*) of this paragraph, shall not exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income subject to tax in Mexico.

For the application of the provisions of this subparagraph it shall be required that a 25 per cent or greater participation in the company paying the dividend is held on a continuous basis for the two years preceding the date on which the dividend is paid.

2. With respect to Mexico, double taxation shall be avoided, in accordance with the relevant provisions of the law of Mexico, as follows:

(*a*) Residents of Mexico may take a credit for the income tax paid in Spain up to an amount not exceeding the tax payable in Mexico for the same income;

(*b*) Companies which are resident in Mexico may take, as a credit against income tax for which they are liable as a result of dividends they have received, the income tax paid in Spain in respect of the profits out of which the company residing in Spain paid the dividends.

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

Article 24

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, particularly with respect to residence.

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 allow-

ances, 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 8, 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 with 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. The provisions of this article shall, notwithstanding the provisions of article 2, apply to taxes of every kind and description imposed by the Contracting States.

Article 25

MUTUAL AGREEMENT PROCEDURE

1. Where a person 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 24, 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 provisions of this 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 the Convention. In particular, the competent authorities shall endeavour to reach an agreement for the purposes of article 9 of 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. The competent authorities, through consultations, may develop appropriate unilateral procedures, conditions, methods and techniques for the implementation of the Convention and of the mutual agreement procedure. 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

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not 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 imposed by the Contracting States. Such persons or authorities shall use the information only for such purposes. These persons or authorities 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 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 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

ENTRY INTO FORCE

1. This Convention shall be ratified in accordance with the domestic laws of the two countries and shall enter into force upon the exchange of the instruments of ratification.

2. The provisions of this Convention shall have effect:

(*a*) In relation to taxes deducted at source, on amounts paid or attributed on or after 1 January following the date on which the Convention enters into force;

(*b*) In relation to other taxes, in respect of taxable periods beginning on or after 1 January following the date on which the Convention enters into force.

Article 29

TERMINATION

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

(*a*) In relation to taxes deducted at source, on amounts paid or attributed on or after 1 January following the expiration of the above-mentioned six-month period;

(*b*) In relation to other taxes, in respect of taxable periods beginning on or after 1 January following the expiration of the above-mentioned six-month period.

DONE at Madrid on 24 July 1992 in two originals in the Spanish language, both texts being equally authentic.

For the Kingdom of Spain:

CARLOS SOLCHAGA CATALÁN
Minister of Economic Affairs and Finance

For the United Mexican States:

PEDRO ASPE ARMELLA
Minister of Finance and Public Credit

PROTOCOL

1. The profits referred to in article 8, paragraph 1, are understood to exclude profits derived from the operation of hotels or from transport activities other than the operation of ships or aircraft in international traffic, unless such activities are carried on by a third party other than the enterprise.

The profits referred to in article 8, paragraph 1, shall include profits derived from the leasing of containers and unladen ships or aircraft, provided that such income is supplementary or incidental to the principal business.

2. For the purposes of article 7, paragraph 1, if an enterprise which is a resident of a Contracting State has a permanent establishment in the other Contracting State and alienates, to persons in that other State, merchandise which is identical or similar to the merchandise it alienates through such permanent establishment, the profits derived from such alienation shall be attributable to such permanent establishment unless the enterprise demonstrates that such alienation was carried out in that manner for sound economic reasons and not for the sole purpose of taking advantage of the Convention. For the implementation of the provisions of this paragraph, the competent authorities shall consult with each other concerning the identical or similar nature of such merchandise.

3. For the purposes of article 11, paragraph 2 (*a*), the term "bank" shall be understood to include savings banks, in the case of Spain.

4. If, in the five years following the entry into force of this Convention, Mexico concludes for the first time, with a country which is a member of the European Communities, a convention for the avoidance of double taxation which limits taxes deducted at source on interest or royalties, or on specific categories of such income, to a rate which is lower than the rate established, respectively, in article 11, paragraph 2, or in article 12, paragraph 2, of this Convention, including exemption from tax, then such reduced rate or exemption shall automatically apply, with respect to the corresponding items, to interest and royalties as from the date of entry into force of the Convention containing it, provided that the higher rate provided for in such Convention is identical to the corresponding rate established in this Convention.

5. The provisions of this Convention shall not prevent the Contracting States from implementing the provisions of their domestic laws relating to undercapitalization.

6. The Contracting States agree to implement the provisions of article 11, paragraph 7, and article 12, paragraph 6, in accordance with the Commentaries on the 1977 Model Convention for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital, prepared by the Committee on Fiscal Affairs of the Organization for Economic Cooperation and Development, extending their application to the assumption provided for in paragraph 25, subparagraph (*c*), of the Commentary on article 11, insofar as the corresponding items are deductible for the determination of the profits of the permanent establishment.

7. For the purposes of article 13, paragraph 2, and article 22, paragraph 2, "rights related to such immovable property" shall be defined as those rights which include the power to dispose of such property.

8. (*a*) With respect to article 13, paragraph 3, gains from the alienation of shares in companies which are resident in Mexico shall be determined without including capital paid in during the period of ownership of the shares or the profits generated during that same period in respect of which the issuing company has already paid income tax.

(*b*) The tax applicable under article 13, paragraph 3, in the State of residence of the company whose shares are alienated may not exceed 25 per cent of taxable gains.

(*c*) When, because of a reorganization of companies which are owned by a single group of shareholders, a resident of a Contracting State alienates property for the purpose of merging or splitting companies, or of exchanging shares, the gains derived from the alienation of such property shall be deferred for income tax purposes in the other Contracting State until a subsequent alienation takes place which does not meet the requirements laid down in this paragraph for the deferral of gains.

9. The provisions of article 16 shall also apply, in the case of Mexico, to directors' fees and other similar payments derived by a resident of Spain in his capacity as a member of the board of directors or as *comisario* (auditor) of a company which is a resident of Mexico.

10. The income referred to in article 17, paragraph 1, shall include supplementary income derived from services related to the personal celebrity of an artiste or athlete who is a resident of a Contracting State, provided that such income is obtained as a result of his presence in the other Contracting State and has its source in that other State.

11. The provisions of article 22 shall apply, in the case of Mexico, only to taxes on capital which may eventually be imposed after the date of signature of the Convention.

12. (*a*) For the purposes of article 23, paragraph 1 (*a*), subparagraph (ii), if an agreement concluded by Mexico with a third State belonging to the European Communities after the date of signature of the present Convention and containing a provision similar to the one in paragraph 4 of the present Protocol does not establish a constructive credit regime, or establishes such a regime for a limited time only, said regime shall automatically be cancelled or applied under the same more restrictive conditions with respect to the income covered by the present Convention, as from the date of entry into force of the agreement concluded by Mexico with that third State.

(*b*) For the application of constructive credit, direct or indirect control shall be considered to exist when the participation exceeds, directly or indirectly, 50 per cent of the capital. Direct control shall not be considered to exist when a company which is a resident of Mexico holds directly more than 50 per cent of the capital of a company that is a resident of a third State and that engages in an economic activity which is preparatory or complementary to the principal activity of the company residing in Mexico.

13. The provisions of article 24 shall be understood to be without prejudice to the application, by each Contracting State, of its laws on tax havens.

The provisions contained in this Protocol form an integral part of the Convention between the Kingdom of Spain and the United Mexican States for the avoidance of double taxation and the prevention of fraud and fiscal evasion with respect to taxes on income and capital.

IN WITNESS WHEREOF, the signatories, being duly authorized thereto, have signed the present Protocol.

DONE at Madrid on 24 July 1992 in two originals in the Spanish language, both texts being equally authentic.

For the Kingdom of Spain:
CARLOS SOLCHAGA CATALÁN

For the United Mexican States:
PEDRO ASPE ARMELLA