

No. 32426

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**SPAIN  
and  
PORTUGAL**

**Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (with protocol). Signed at Madrid on 26 October 1993**

*Authentic texts: Spanish and Portuguese.*

*Registered by Spain on 27 December 1995.*

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**ESPAGNE  
et  
PORTUGAL**

**Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu (avec protocole). Signée à Madrid le 26 octobre 1993**

*Textes authentiques : espagnol et portugais.*

*Enregistrée par l'Espagne le 27 décembre 1995.*

## [TRANSLATION — TRADUCTION]

CONVENTION<sup>1</sup> BETWEEN THE KINGDOM OF SPAIN AND THE  
PORTUGUESE REPUBLIC FOR THE AVOIDANCE OF DOUBLE  
TAXATION AND THE PREVENTION OF FISCAL EVASION  
WITH RESPECT TO TAXES ON INCOME

The Kingdom of Spain and the Portuguese Republic, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

## CHAPTER I

## SCOPE OF THE CONVENTION

*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 imposed on behalf of a Contracting State, its political or administrative subdivisions or its local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, 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 Spain:

The income tax on individuals;

The corporation tax; and

Total taxes on income

(hereinafter referred to as “Spanish tax”);

<sup>1</sup> Came into force on 28 June 1995 by the exchange of the instruments of ratification, which took place at Lisbon, in accordance with article 28 (2).

(b) In Portugal:

The income tax on individuals;

The corporation tax; and

The special assessment

(hereinafter referred to as “Portuguese tax”).

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

## CHAPTER II

### DEFINITIONS

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

(b) The term “Portugal” includes the territory of the Portuguese Republic situated in the European continent and the Azores and Madeira archipelagos, and their territorial sea and other areas over which, in accordance with Portuguese legislation and international law, the Portuguese Republic exercises jurisdiction or sovereign rights with respect to the prospecting, search and exploration for the natural resources of the seabed, its subsoil and superjacent waters;

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

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

(e) The term “company” means any body corporate or any entity which is treated as a body corporate 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:

Any individual possessing the nationality of a Contracting State; and

Any body corporate, association or entity established in accordance with the legislation 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 places in the other Contracting State;

(i) The term “competent authority” means:

In the case of Spain, the Minister of Economy and Finance or his authorized representative; and

In the case of Portugal, the Minister of Finance, the Director-General of Taxation or their authorized representative.

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

#### *Article 4*

##### RESIDENT

1. For the purpose of this Convention, the term “resident of a Contracting State” means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. It does not, however, include persons who are liable to tax in that State only in respect of income derived from sources therein.

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 in accordance with the following rules:

(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 State in which he has an habitual abode;

(c) If he has an 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 a national of both States or of neither of them, the competent authorities of the two 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 States, then it 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. A building site or a construction, assembly or installation project constitutes a permanent establishment only if it continues for a period of more than 12 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 carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) The maintenance of a fixed place of business solely for any combination of 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 6 applies — is acting in a Contracting State on behalf of an enterprise of the other Contracting State and has and habitually exercises an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in the first-mentioned 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. An enterprise shall not be deemed to have a permanent establishment in a 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.

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.

### CHAPTER III

#### TAXATION OF INCOME

##### *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 apply to income derived from the direct use, letting, or use in any other form of immovable property.

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

##### *Article 7*

#### BUSINESS PROFITS

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

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

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

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

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

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

### *Article 8*

#### SHIPPING, INLAND WATERWAYS TRANSPORT 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. Profits from the operation of boats engaged in inland waterways transport shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

3. If the place of effective management of a shipping enterprise or of an inland waterways transport enterprise is aboard a ship or a boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated or, if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.

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

### *Article 9*

#### ASSOCIATED ENTERPRISES

1. Where

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

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

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

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

### *Article 10*

#### DIVIDENDS

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

(a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25 per cent of the capital of the company paying the dividends;

(b) 15 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

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

3. The term “dividends” as used in this article means income from “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.

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

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company’s undistributed profits to

a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

### *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 also 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 15 per cent of the gross amount of the interest.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

3. The term “interest” as used in this article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, as well as any other income subject under the laws of the Contracting State in which it arises to the same treatment as income from money lent.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated in that other State, 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.

5. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political or 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 or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. 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, 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.

*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 also 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 5 per cent of the gross amount of the royalties.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

3. The term “royalties” as used in this article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematographic films and films or tapes for radio or television, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated in that State, 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 case the provisions of article 7 or article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State, a political or 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.

6. 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 for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

*Article 13*

## CAPITAL GAINS

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

2. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in the Contracting State in which the immovable property is situated.

3. Without prejudice to the provisions of paragraph 2, gains from the alienation of shares representing a substantial participation in a company which is a resident of one Contracting State may be taxed in that State. Substantial participation shall be deemed to exist where the alienator, either alone or in association with others, at any time during the twelve months prior to the alienation, directly or indirectly held at least 25 per cent of the capital of that company.

4. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of one 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 together with the whole enterprise) or of such fixed base, may be taxed in that other State.

5. Gains from the alienation of ships or aircraft operated in international traffic, boats engaged in inland waterways transport or movable property pertaining to the operation of such ships, aircraft or boats, 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 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 PERSONAL 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 Contracting State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If such a fixed base is available to him, the income may be taxed in the other State, but only so much of it as is attributable to the fixed base.

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

*Article 15*

## DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of articles 16, 18, 19, 20 and 21, 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 12-month period beginning or ending in the fiscal year concerned;

(b) The remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and

(c) The remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

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

4. Notwithstanding the provisions of paragraphs 1 and 2, remuneration derived in respect of an employment exercised in one Contracting State by a frontier worker, that is to say, a worker whose habitual abode, to which he normally returns each day, is situated in the other Contracting State, may be taxed only in that other State.

*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 of a company which is a resident of the other Contracting State may be taxed in that other State, provided that the company determines and pays such remuneration on the basis of his participation in the activities of the Board of Directors. If such is not the case, the provisions of article 15 shall apply.

*Article 17*

## ENTERTAINERS 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. 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, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply where the activities exercised in a Contracting State are substantially supported by public funds of the other Contracting State or of a political or administrative subdivision or a local authority thereof. In such case, the income derived from such activities may be taxed only in that other State.

### *Article 18*

#### PENSIONS

Subject to the provisions of paragraph 2 of article 19, 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 or administrative 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 individual is a resident of that State who:

Is a national of that State, or

Did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political or administrative 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 a resident of, 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 or administrative subdivision or a local authority thereof.

*Article 20*

## TEACHERS

Teachers who are or were residents of a Contracting State immediately before arriving in the other Contracting State and who receive remuneration for teaching in a university, college, school or other educational institution of that other State for a period not exceeding two years, shall be exempt from taxation in the last-mentioned State in respect of such remuneration, provided that such institutions are owned by the State or by a non-profit body corporate and that the remuneration is not taxable in the first-mentioned State.

*Article 21*

## STUDENTS

1. Payments which a student or business apprentice who is or was immediately before arriving in 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 outside that State.

2. The persons referred to in the preceding paragraph shall also not be taxed in the State they are visiting for the aforementioned purposes in respect of payments which they receive as remuneration for part-time activities undertaken in that State in order to finance their education or vocational training, provided that such payments do not exceed 7000 ECUs per year.

*Article 22*

## OTHER INCOME

1. Items of income derived by a resident of a Contracting State which is of a type or arises from a source not dealt with in other 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 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, or performs independent personal services in that other Contracting State 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.

## CHAPTER IV

## ELIMINATION OF DOUBLE TAXATION

*Article 23*

## METHODS

1. In the case of a resident of Spain, double taxation shall be avoided, in accordance with the applicable provisions of the laws of Spain (provided that they are not at variance with the general principles established in this paragraph) in the following manner:

(a) Where a resident of Spain derives income which, in accordance with the provisions of this Convention, may be taxed in Portugal, Spain shall allow as a deduction from the tax on the income of that resident an amount equal to the tax effectively paid in Portugal.

Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to such items of income as may be taxed in Portugal.

(b) In the case of a dividend paid by a company which is a resident of Portugal 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 calculating the deduction, account shall be taken, in addition to the amount deductible under subparagraph (a) of this paragraph, of the tax effectively paid by the first-mentioned company in respect of the profits out of which the dividend is paid, 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 applicable to the dividend in accordance with 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 such items of income as may be taxed in Portugal.

In order for the provisions of this subparagraph to be applicable, the company receiving the dividend must have held at least 25 per cent of the capital of the company paying the dividend for two years, without interruption, prior to the date on which the dividend was paid.

2. In the case of a resident of Portugal, double taxation shall be avoided, in accordance with the applicable provisions of the laws of Portugal (provided that they do not affect the general principles established in this paragraph) in the following manner:

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

Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to such items of income as may be taxed in Spain.

(b) Where a company which is a resident of Portugal receives a dividend from a company which is a resident of Spain and of which it holds directly at least 25 per

cent of the capital, Portugal shall, in calculating the amount of the profit subject to the income tax on bodies corporate, deduct 95 per cent of the dividend included in the taxable base, in accordance with the terms and conditions established in the laws of Portugal.

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

## CHAPTER V

### SPECIAL PROVISIONS

#### *Article 24*

### NON-DISCRIMINATION

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected, in particular with respect to residence. This provision shall, notwithstanding the provisions of article 1, also apply to persons who are not residents of one or both of the Contracting States.

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 tax purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of article 9, paragraph 6 of article 11 or paragraph 6 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.

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 requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

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

*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 paragraph 1 of article 24, to that of the Contracting State of which he is a national. The case must be presented within two 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 the provisions of the Convention.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in this 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 of this article. 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 carrying out 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 this 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 covered by 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 so as to impose on a Contracting State the obligation:

(a) To carry out administrative measures at variance with the laws and the 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 administrative practice 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.

### *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.

## CHAPTER VI

### FINAL PROVISIONS

### *Article 28*

#### ENTRY INTO FORCE

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

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

(a) In Spain:

In respect of taxes withheld at source, to taxes which become payable on 1 January of the calendar year following the year in which the Convention entered into force;

In respect of other taxes, to taxes on income derived during tax periods beginning on 1 January of the year following the year in which the Convention entered into force;

(b) In Portugal:

In respect of taxes withheld at source, to taxes which become payable on 1 January of the year immediately following the year in which the Convention entered into force;

In respect of other taxes, to taxes on income derived during tax periods beginning on 1 January of the year immediately following the year in which the Convention entered into force.

3. The provisions of the Convention between Spain and Portugal for the avoidance of double taxation with respect to taxes on income, signed in Madrid on 29 May 1968,<sup>1</sup> shall cease to have effect once the provisions of this Convention have entered into force.

<sup>1</sup>United Nations, *Treaty Series*, vol. 1650, No. I-28374.

*Article 29*

## TERMINATION

This Convention shall remain in force until it is denounced by one of the Contracting States. Either Contracting State may denounce the Convention, through the diplomatic channel, by giving written notice of termination at least six months before the end of any calendar year. In such event, the Convention shall cease to have effect:

*(a) In Spain:*

In respect of taxes withheld at source, to taxes which become payable on 1 January of the calendar year following the year in which notification of termination was given;

In respect of other taxes, to taxes on income derived during tax periods beginning on 1 January of the year following the year in which notification of termination was given;

*(b) In Portugal:*

In respect of taxes withheld at source, to taxes which become payable on 1 January of the calendar year immediately following the date on which the period of notification of termination expired;

In respect of other taxes, to taxes on income derived during tax periods beginning on 1 January of the year immediately following the date on which the period of notification of termination expired.

IN WITNESS WHEREOF the undersigned, duly authorized for this purpose by their respective Governments, have signed this Convention.

DONE at Madrid on 26 October 1993, in duplicate in the Spanish and Portuguese languages, both texts being equally authentic.

For the Government  
of the Kingdom of Spain:

PEDRO SOLBES MIRA  
Minister of the Economy and Finance

For the Government  
of the Portuguese Republic:

JORGE BRAGA DE MACEDO  
Minister of Finance

## PROTOCOL

At the time of signing the Convention between the Kingdom of Spain and the Portuguese Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed upon the following provisions which shall constitute an integral part of the Convention:

1. With reference to article 6, its provisions also shall apply to income derived from movable property which is assimilated to income from immovable property in accordance with the tax laws of the Contracting State in which the property is situated.

2. (a) With reference to paragraph 3 of article 10, it is understood that the term “dividends” includes profits on a liquidation of a company.

(b) It is understood that the term “dividends” includes income from joint accounts or joint ventures.

3. With reference to articles 10, 11, 12 and 13, the tax reductions or exemptions envisaged in the Convention in respect of dividends, interest, royalties and capital gains shall not apply where such income is derived in a Contracting State from a company resident in the other Contracting State of which companies which are not residents of that other State hold, directly or indirectly, more than 50 per cent of the capital. The provisions of this paragraph shall not apply where the said company carries out in the Contracting State of which it is a resident substantive commercial or industrial activities other than the simple management of securities or other assets.

4. With reference to article 24, it is understood that the provisions of this Convention shall not prevent a Contracting State from applying its domestic regulations concerning under-capitalization or over-indebtedness.

5. With reference to article 28, the provisions of article 11 shall apply as from 1 January 1993.

DONE at Madrid on 26 October 1993, in duplicate in the Spanish and Portuguese languages, both texts being equally authentic.

For the Government  
of the Kingdom of Spain:

PEDRO SOLBES MIRA  
Minister of the Economy and Finance

For the Government  
of the Portuguese Republic:

JORGE BRAGA DE MACEDO  
Minister of Finance