No. 31564

SPAIN
and
ARGENTINA

Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital (with protocol). Signed at Madrid on 21 July 1992

Authentic text: Spanish.

Registered by Spain on 30 January 1995.

ESPAGNE
et
ARGENTINE

Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu et sur la fortune (avec protocole). Signée à Madrid le 21 juillet 1992

Texte authentique : espagnol.

Enregistrée par l'Espagne le 30 janvier 1995.

[TRANSLATION — TRADUCTION]

AGREEMENT[1] BETWEEN THE KINGDOM OF SPAIN AND THE ARGENTINE REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

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

Article 1

PERSONAL SCOPE

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

Article 2

TAXES COVERED

1. This Agreement shall apply to taxes on income and on capital imposed on behalf of a Contracting State, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the Agreement shall apply are:

(*a*) In Spain:

I. The income tax on individuals;

II. The corporation tax;

III. The capital tax

hereinafter referred to as "Spanish tax".

(*b*) In the Argentine Republic:

I. The tax on profits;

II. The tax on assets;

III. The personal tax on property not involved in economic activity

hereinafter referred to as "Argentine tax".

[1] Came into force on 28 July 1994 by the exchange of the instruments of ratification, in accordance with article 28(2).

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

Article 3

GENERAL DEFINITIONS

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

(*a*) The terms "a Contracting State" and "the other Contracting State" mean the Kingdom of Spain or the Argentine Republic, as the case may be.

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

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

(*d*) The terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State.

(*e*) The terms "resident of a Contracting State" and "resident of the other Contracting State" mean respectively a person who is a resident of Spain or a person who is a resident of the Argentine Republic, as the context requires.

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

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

(ii) Any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;

(*g*) 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;

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

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

(ii) In the case of the Argentine Republic, the Minister of Economic Affairs and Public Works and Services (Department of Public Revenue).

Article 4

RESIDENT

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws 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 established by such laws. But this term does not include

any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

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

(*a*) He shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);

(*b*) If the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has a habitual abode;

(*c*) If he has a habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;

(*d*) If he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, 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:

(*a*) A building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than six months;

(*b*) The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected proj-

ect) within the country for a period or periods aggregating more than six months within any 12-month period;

(*c*) Prospecting activities aimed at the development of minerals, petroleum, gas or other natural resources, and ancillary activities in connection therewith, that are conducted in a Contracting State for a period of more than six months within any 12-month period.

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 or display 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 or display;

(*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 an auxiliary or preparatory 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 an auxiliary or preparatory 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, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State if such a person:

(*a*) Has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise;

(*b*) Has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

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

Article 6

INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property 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 therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

Accordingly, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall be attributed to that permanent establishment, in addition to the profits derived from the establishment's own sales or activities:

(*a*) Sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; and

(*b*) Earnings from business activities carried on in that other State of the same or similar kind as those effected through 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 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. Similarly, profits made by an enterprise of a Contracting State from insurance or reinsurance activities covering property situated in the other Contracting State or persons who are residents of that other State at the time of issue of the insurance coverage, shall be taxable in that other State, regardless of whether the enterprise carries on its business in that other State through a permanent establishment situated therein or otherwise, provided, in the latter case, that the person who pays the insurance premium is a resident of that other State. Where such profits are derived from reinsurance activities, the tax liability in that other State shall not exceed 2.5 per cent of the gross amount of the premium.

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 Agreement, 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 the participation in a pool, a joint business or an international operating agency.

4. In this article, the term "profits" includes:

(*a*) Earnings from the operation of ships or aircraft in international traffic;

(*b*) Interest earned on funds connected with the operation of ships and aircraft in international traffic; and

(*c*) Earnings from the hire of ships, aircraft, containers and equipment used by an enterprise in international traffic, provided that those earnings are incidental to such traffic.

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 an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of the Agreement 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 (other than a partnership) 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.

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, founders' shares and 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 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.

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 in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on 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 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 12.5 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall not be taxable in that State if:

(*a*) The person paying the interest is that State or a political or administrative subdivision or a local authority thereof;

(*b*) The interest is paid to the Government of the other Contracting State or a local authority thereof, or to an institution or other body (including financial institutions) that is wholly owned by that Contracting State or a local authority thereof; or

(*c*) The interest is paid to other institutions or bodies (including financial institutions) pursuant to financing contracts concluded between them within the framework of agreements between the Governments of the two Contracting States, provided that the term of such agreements is not less than five years;

(*d*) The interest is paid in connection with sales of industrial, commercial or scientific equipment.

4. 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, as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises.

5. 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 in that other State, or performs independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with:

(*a*) Such permanent establishment or fixed base; or

(*b*) Business activities referred to under (*b*) of paragraph 1 of article 7.

In such cases the provisions of article 7 or article 14, as the case may be, shall apply.

6. 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 that 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 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 creditor 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 Agreement.

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:

(*a*) 3 per cent of the gross amount paid for the use of, or the right to use, news items;

(*b*) 5 per cent of the gross amount paid for the use of, or the right to use, any copyright of literary, theatrical, musical or artistic work;

(*c*) 10 per cent of the gross amount paid for the use of, or the right to use, any patent, design or model, plan, secret formula or process, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience, or for the provision of technical assistance services;

(*d*) 15 per cent of the gross amount of the royalties in all other cases.

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, news items, any copyright of literary, theatrical, musical, artistic or scientific work, including cinematograph films, or films or tapes used for radio or television broadcasting or any other medium for the projection, reproduction or broadcasting of images or sound, 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, or for the provision of technical assistance services.

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 therein, and the right or property in respect of which the royalties are paid is effectively connected with:

(*a*) Such permanent establishment or fixed base; or

(*b*) Business activities referred to under (*b*) of paragraph 1 of article 7.

In such cases 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 State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment 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 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, 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 in accordance with the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

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 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 fixed base, may be taxed in that other State.

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

4. Gains from the alienation of shares of the capital stock of a company which is a resident of a Contracting State may be taxed in that State. However, the tax so charged shall not exceed:

(*a*) 10 per cent of the gain in the case of a direct holding of capital stock of at least 25 per cent;

(*b*) 15 per cent of the gain in all other cases.

5. Capital gains other than those referred to in the preceding paragraphs may be taxed in both Contracting States, in accordance with their respective domestic laws.

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 performed in the other Contracting State shall be taxable in that other State, but the tax charged shall not exceed 10 per cent of the gross amount received for such services or activities, except where such resident has a fixed base available to him in the other Contracting State for the purpose of performing his activities. In that case, so much of the income as is attributable to that fixed base may be taxed in that other State in accordance with its domestic legislation.

2. The term "personal services" includes 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 and 19, salaries, wages and other remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. In that case, 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 during a period of twelve consecutive months;

(*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 may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16

DIRECTORS' FEES

1. 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.

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. The provisions of paragraph 1 shall not apply if a visit by entertainers or athletes to a Contracting State is wholly or substantially supported by public funds belonging to the other Contracting State or a province, political or administrative subdivision or local authority thereof.

Article 18

PENSIONS, ANNUITIES AND ALIMONY

1. Pensions paid to a resident of a Contracting State shall be taxable only in that State.

2. The provisions of the preceding article shall also apply to payments made to beneficiaries of pension funds or other alternative systems.

3. Annuities paid to a resident of a Contracting State shall be taxable only in that State.

The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time in return for adequate and full consideration in money or money's worth.

4. Alimony paid to a resident of a Contracting State shall be taxable only in that State. The term "alimony" as used in this paragraph means periodic payments made pursuant to a written separation agreement, a separation order or a divorce decree, or as compulsory support, which payments are taxable to the recipient under the laws of the State of which he is a resident.

5. Periodic payments for the support of a minor child made pursuant to a written separation agreement, a separation order or a divorce decree, or as compulsory support, paid by a resident of a Contracting State to a resident of the other Contracting State, shall be taxable only in the first-mentioned Contracting State.

Article 19

GOVERNMENT SERVICE

1. (*a*) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(*b*) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that 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 rendering the services.

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

(*b*) However, such pension shall be taxable only in the other Contracting State if the 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 division or a local authority thereof.

Article 20

TEACHERS AND STUDENTS

1. An individual who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who, at the invitation of a university, establishment of higher education, school or other officially recognized institution of the first-mentioned Contracting State, visits that Contracting State for the sole purpose of teaching or engaging in research at such institution for a period not exceeding one year, shall not be taxed in that first-mentioned Contracting State in respect of remuneration which he receives in consideration of such activities.

2. 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.

3. The provisions of paragraph 1 shall not apply to remuneration which a person receives for conducting research if such research is carried out primarily for the private benefit of a person or persons.

Article 21

OTHER INCOME

1. Income of a resident of a Contracting State not dealt with in the foregoing articles of this Agreement and arising in the other Contracting State may be taxed in that other State.

2. Other income of a resident of a Contracting State not dealt with in the foregoing articles of this Agreement shall be taxable only in that State.

3. The provisions of paragraph 2 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 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.

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 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 available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

3. Capital represented by ships or aircraft operated in international traffic and by movable property pertaining to the operation of such ships and aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Capital represented by shares of the capital stock of a company shall be taxable only in the Contracting State of which the owner of the capital is a resident.

5. Elements of capital not dealt with in the foregoing paragraphs may be taxed by both States in accordance with their respective domestic laws.

Article 23

METHODS FOR ELIMINATION OF DOUBLE TAXATION

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

(*a*) (i) Where a resident of Spain derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in the Argentine Republic, 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 the Argentine Republic.

(ii) In respect of the royalties referred to under (*c*) of paragraph 2 of article 12, for the purposes of this subparagraph, a tax of 15 per cent of the gross amount of such royalties shall be deemed to have been imposed in the Argentine Republic, provided that the royalties in question are paid by a company which is a resident of the Argentine Republic and neither holds, directly or indirectly, more than 50 per cent of the capital of a company which is a resident of a third State, nor is controlled in that same manner by a company which is a resident of a third State.

(iii) For the purposes of this paragraph, the tax actually paid in the Argentine Republic shall be that which would have been paid under the Agreement, subject to any reductions or exemptions pursuant to specific measures aimed at fostering industrial development which the Argentine Republic may introduce into its tax laws, following agreement to that effect between the Governments.

The deduction allowable under this paragraph shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given, which is attributable to income arising in the Argentine Republic.

(*b*) In the case of a dividend paid by a company which is a resident of the Argentine Republic 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, the allowable credit shall be determined taking into consideration, in addition to the amount deductible under (*a*) of this paragraph, that part of the tax actually paid by the first-mentioned company on the profits out of which the dividends are paid, proportionate to such dividends, provided that such amount of tax is included, for this purpose, in the tax base of the receiving company.

Such deduction, together with the deduction allowable on dividends under (*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 taxed in the Argentine Republic.

The provisions of this subparagraph shall apply only where the capital of the company paying the dividends has been held without interruption during the two-year period preceding the date at which the dividends are paid.

2. In the Argentine Republic, double taxation will be avoided, in accordance with the relevant provisions of the law, as follows:

The Argentine Republic shall allow to a resident of the country, as a credit against his national income tax, the appropriate amount of the tax actually paid in Spain. The appropriate amount shall be based on the amount of tax actually paid in Spain, but the credit shall not exceed the sum specified in Argentine law as the maximum income-tax credit that may be claimed in the Argentine Republic in respect of income from sources outside the Argentine Republic for the current fiscal year.

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, in particular with respect to resi-

dence, are or may be subjected. This provision shall, notwithstanding the provisions of article 1, also apply to nationals of either of the Contracting States who are not residents of either of them.

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 article 9, paragraph 7 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. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting 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 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.

Article 25

MUTUAL AGREEMENT PROCEDURES

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 Agreement, 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 three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

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 Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpreta-

tion or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

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

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 Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement, insofar as the taxation thereunder is not contrary to the Agreement. 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 Agreement. 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 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 Agreement 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 Agreement shall be ratified, and the instruments of ratification shall be exchanged as soon as possible.

2. The Agreement shall enter into force upon the exchange of instruments of ratification, and its provisions shall have effect:

(*a*) In respect of taxes withheld at source on payments made to non-residents, on or after 1 January next following the date on which the Agreement enters into force;

(*b*) In respect of other taxes, in fiscal years beginning on or after 1 January next following the date on which the Agreement enters into force.

Article 29

TERMINATION

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

(*a*) In respect of taxes withheld at source on payments made to non-residents, on or after 1 January next following the date on which the notice of termination is given;

(*b*) In respect of other taxes, in fiscal years beginning on or after 1 January next following the date on which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Agreement.

DONE at Madrid on 21 July 1992 in duplicate in the Spanish language, both texts being equally authentic.

For the Kingdom of Spain:

JAVIER SOLANA MADARIAGA
Minister for Foreign Affairs

For the Argentine Republic:

GUIDO DI TELLA
Minister for Foreign Affairs
and Worship

PROTOCOL

At the time of signing the Agreement between the Kingdom of Spain and the Argentine Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, the signatories have agreed upon the following provisions, which shall form an integral part of the Agreement.

1. With reference to article 7:

(*a*) Where activities pertaining to natural resource exploitation or extraction are carried out in the territory and exclusive economic zone of a Contracting State by a resident of the other Contracting State, the first-mentioned Contracting State may tax income generated by such activities in accordance with its domestic legislation, or, where appropriate, may tax rights, licences or the like, as stipulated by the specific agreement or contract relating thereto.

(*b*) For the purpose of applying the second subparagraph of paragraph 1, the competent authorities shall consult each other concerning the similarity of goods or merchandise or business activities.

(*c*) For the purposes of paragraph 3, it shall be understood that expenses which are deductible in determining the profits of the permanent establishment shall be those which are necessary to obtain the income attributed to the permanent establishment in question.

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.

2. Notwithstanding the provisions of paragraph 4 (*d*) of article 5 and paragraph 4 of article 7, the exporting of goods or merchandise purchased for the enterprise shall be subject to domestic rules in effect relating to exporting.

Nevertheless, if, subsequent to the signing of this Agreement, Argentina concludes an Agreement on double taxation that does not include a provision in the sense of the foregoing paragraph, the provisions of that paragraph shall cease to apply for the purposes of the present Agreement as from the date of entry into force of such other Agreement on double taxation.

3. With reference to article 8:

In the case of the Argentine Republic, on condition of reciprocity, the Municipality of the City of Buenos Aires shall not apply its tax on gross revenue to the international air transport and shipping activities of Spanish enterprises so long as this Agreement continues in force. Similarly, the Government of the Argentine

Republic shall ensure that such activities are exempted from the corresponding provincial taxes in the event that the provinces themselves should fail so to exempt them under their respective laws.

In the case of the Kingdom of Spain, the provisions of this Agreement shall apply, on condition of reciprocity, to non-State taxes or levies on the exercise of the activities referred to in the article, where such activities are exercised by enterprises liable to taxation in Argentina.

4. With reference to article 12:

(*a*) The limitation on withholding at source shall apply provided that all requirements relating to registration, verification and authorization for which provision is made in the domestic law of each of the Contracting States have been duly met.

(*b*) The limitation on tax liability in the State in which the royalties arise established in paragraph 2 (*b*) shall apply only where such royalties are paid to the author in person or his heirs and assigns.

(*c*) In the case of payments for technical assistance services, the tax liability under paragraph 2 (*c*) shall be determined after deduction only of expenditures relating to the personnel involved in the provision of the services in question in the Contracting State in which they are provided, and of costs and expenditures relating to equipment furnished by the provider of the services expressly in connection with their provision.

(*d*) It shall be understood that payments made for the use of or the right to use computer software are included among the concepts to which the provisions of paragraph 2 (*c*) apply.

5. With reference to article 13:

A mere transfer of assets by a resident of a Contracting State in the context of the reorganization of a firm shall have no fiscal effects, in accordance with the domestic laws of each of the Contracting States.

6. With reference to article 25:

The competent authorities of the Contracting States may establish by mutual agreement the method of applying the limits on taxes withheld at source of the State in which the income arises.

7. With reference to article 28:

The Convention between the Kingdom of Spain and the Argentine Republic signed on 30 November 1978 for the avoidance of international double taxation relating to the operation of maritime and air transport[1] shall cease to be applicable with respect to taxes covered in this Agreement as from the date of its entry into force.

8. The provisions of this Agreement shall not be construed in any way that is incompatible with the application by either Contracting State of the rules contained in its domestic laws relating to undercapitalization or inadequate capitalization.

9. If, subsequent to the signing of this Agreement, the Argentine Republic concludes an Agreement on double taxation with another State member of the

[1] United Nations, *Treaty Series*, vol. 1349, p. 91.

Organisation for Economic Cooperation and Development, in which its withholding of tax at source on interest, royalties, specific categories of interest or royalty income, capital gains or independent personal services is set at a lower rate, including exemption from taxation, than the rates set forth in paragraph 2 of article 11, paragraph 2 of article 12, paragraph 4 of article 13 or paragraph 1 of article 14 respectively, such lower rates or exemption as set forth in such future Agreement shall automatically be applicable, as from the date of signing of such future Agreement, to residents of both Contracting States in respect of the corresponding type or category of income.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Protocol.

DONE at Madrid on 21 July 1992 in duplicate in the Spanish language, both texts being equally authentic.

For the Kingdom of Spain:

JAVIER SOLANA MADARIAGA
Minister for Foreign Affairs

For the Argentine Republic:

GUIDO DI TELLA
Minister for Foreign Affairs
and Worship