

1999 Income and Capital Tax Convention, Final Protocol, and Notes (English Translation)

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CONVENTION BETWEEN THE KINGDOM OF SPAIN AND THE REPUBLIC OF CUBA FOR THE AVOIDANCE OF DOUBLE TAXATION AND PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL

[TRANSLATION]

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 and capital imposed by a Contracting State, its political subdivisions or local entities, irrespective of the manner in which they are levied.
2. All taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on wages and salaries paid by enterprises as well as taxes on capital appreciation, shall be regarded as taxes on income and capital.
3. The existing taxes to which this Convention shall apply are in particular:
 - (a) in Cuba:
 - (i) Tax on Profits (el Impuesto sobre Utilidades);
 - (ii) Tax on Personal Income (el Impuesto sobre Ingresos Personales);
 - (iii) Tax on Ownership or Possession of specific Goods (el Impuesto sobre la Propiedad o Posesión de determinados Bienes), and
 - (iv) Tax on Ground Transportation (el Impuesto sobre el Transporte Terrestre), (hereinafter referred to as "Cuban tax");
 - (b) in Spain:
 - (i) Tax on the Income of Natural Persons (el Impuesto sobre la Renta de las Personas Físicas);
 - (ii) Corporation Tax (el Impuesto sobre Sociedades);
 - (iii) Capital Tax (el Impuesto sobre el Patrimonio);
 - (iv) local taxes on income and capital (los impuestos locales sobre la renta y sobre el patrimonio) (hereinafter referred to as "Spanish tax").
4. The Convention shall also apply to any identical or substantially similar taxes imposed after the date of signature of the Convention in addition to, or in place of, existing taxes. At the end of each year, the competent authorities of the Contracting States shall notify each other of and significant change made in their respective taxation laws.

Chapter II

Definitions

Article 3 General Definitions

1. For purposes of this Convention, unless the context implies a different interpretation:
 - (a) the term "Cuba" refers to the national territory formed by the island of Cuba, the Isla de la Juventud, the other adjacent islands and cays, inland waters and the territorial waters to the extent set forth by Law and the air space extending over same in which the Cuban state exercises its sovereignty or sovereign rights and jurisdiction, in conformity with international law and domestic legal regulations.
 - (b) The term "Spain" means the Spanish State, in its geographic sense designating the territory of the Spanish State, to include its inland bodies of water as well as territorial waters and the areas outside thereof with respect to which, in conformity with international law and its domestic laws, the Spanish State has jurisdiction or can exercise sovereign rights regarding the use of the sea bottom, subsoil and overlying waters, and its natural resources.
 - (c) the term "Contracting State" or "the other Contracting State" refers to Cuba or Spain according to the context herewith.

(d) the term "person" refers to any natural person, company or group of people.

(e) the term "company" means any body corporate or any entity 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:

(i) insofar as Cuba is concerned, any natural person having Cuban citizenship in accordance with its laws and who is a permanent resident in the national territory; insofar as Spain is concerned, any natural person having Spanish nationality.

(ii) all bodies corporate, companies, and associations constituted in conformity with the laws in effect in a Contracting State.

(h) the term "international commerce" means any transport by ship or aircraft operated by an enterprise whose place of managerial headquarters are situated in a Contracting State, except when the ship or aircraft is operated solely between points located in the other Contracting State;

(i) the term "Competent Authority" refers to:

(i) in the case of Cuba, the Minister of Finance and Pricing or his legal representative, and

(ii) in the case of Spain, the Minister of Economics and Finance or his legal representative.

2. As regards the application of the Convention by a Contracting State at any given time, any term not defined therein shall, unless the context otherwise implies, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies. The meaning of such term under tax legislation shall prevail over any meaning attributed to this term by other legal entities of that State.

Article 4 Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to taxation therein by reason of domicile, residence, management headquarters or any other criterion of a similar nature. This term, however, does not include persons liable to taxation in that State solely in regard to income from sources in said State situated therein, or to capital located therein.

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

(a) this person 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 only of the State with which his personal and economic relations are the closest (center of vital interests);

(b) if the State in which he has his center of vital interests cannot be determined, or if he has no permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has a habitual abode;

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

(d) in case the above criteria do not make it possible to determine the Contracting State in which the person is a resident, 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 a natural person is a resident of both Contracting States, such person shall be deemed to be a resident of the State in which its managerial headquarters are located.

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) management headquarters;

(b) branch offices;

(c) offices;

(d) factories;

(e) shops, and

(f) mines, oil or gas wells, quarries or any other place of exploration or extraction of natural resources.

3. A construction, installation or assembly site constitutes a permanent establishment only as long as its duration exceeds six months.

4. The term "permanent establishment" furthermore includes the provision of services by an enterprise, including consulting services, carried out by employees or other natural persons hired by the enterprise for that purpose, but only when such activities are carried out (in conjunction with the same project or a joint project) in the country for a period in excess of twelve months.

5. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall not include:

(a) the use of facilities solely for 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 storage, display or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for processing by another enterprise;

(d) the maintenance of a fixed place of business solely for purchasing goods or merchandise or of collecting information for the enterprise;

(e) the maintenance of a fixed place of business solely for engaging in any other activity of a preparatory or auxiliary character for the enterprise;

(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.

6. Notwithstanding the provisions of paragraphs 1 and 2, whenever a person - other than an independent agent to whom paragraph 7 applies - is acting on behalf of an enterprise and who holds and habitually exercises in a Contracting State the power to sign contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect to any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 and 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.

7. 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 independent agent, provided that such persons act in the ordinary course of their business.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company that 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 make 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 it has under the law of the Contracting State in which the property in question is situated. Said 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, springs and other natural resources; ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, leasing, 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 rendering 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 is carrying on or has carried on business in the other Contracting State through a permanent establishment situated therein. If the enterprise is carrying on or has carried on business as aforesaid, the profits of the enterprise may be taxed in the other State, but only that part of them such as is attributable to that permanent establishment.

2. Without prejudice to the provisions of paragraph 3, whenever an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, in each Contracting State the permanent establishment shall be attributed with 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 determining the profits of a permanent establishment, expenses incurred for the purposes of the permanent establishment shall be allowed as deductions, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.
4. Insofar as it is customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise among its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining taxable profits on such a basis; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment solely by the fact that it purchases goods or merchandise for the enterprise.
6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Whenever profits include items of income dealt with separately in other Articles of this Convention, the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8 Maritime and Air Transport

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international commerce shall be taxable only in that Contracting State in which the managerial headquarters of the enterprise is located.
2. If the managerial headquarters of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State where the home port of the ship is situated, or, if there is no such home port, 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 consortium or pool, a joint business or a company with international scope.

Article 9 Associated Enterprises

1. Whenever
 - 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 the two enterprises are linked in their commercial or financial relations by accepted or imposed conditions that differ from those which would be agreed on by independent enterprises, any profits which, were it not for these conditions, would have accrued to one of the enterprises, but which has failed to do so by reason of these conditions, may be included in the profits of that enterprise and taxed accordingly.
2. Whenever a Contracting State includes in the profits of an enterprise of that State, and accordingly taxes, profits on which an enterprise of the other Contracting State has been taxed 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 agreed upon by the two enterprises were those that would have been agreed upon by independent enterprises, then that other State shall correspondingly adjust the amount of the tax levied on those profits. In determining such adjustment, due regard shall be given 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. Nonetheless, such dividends may also be taxed in the Contracting State wherein the company paying the dividends resides and according to the laws of that State; however, if the recipient of the dividends is the beneficiary, the tax so charged shall not exceed:

a) 5 percent of the gross amount of the dividends if the beneficiary is a company (excluding partnerships) that holds directly at least 25 percent of the capital of the company paying the dividends;

b) 15 percent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall mutually agree on the method of application of these limits.

This paragraph does not affect taxation of the company with respect to profits out of which such dividends are paid.

3. The term "dividends" as used in this Article refers to income from shares, enjoyment shares or rights, mining shares, founders' shares or other rights, except for creditor's rights, that allow for profit-sharing, as well as income from other corporate sharing subject to the same taxation treatment as income from shares based on the laws of the State wherein the distributing company is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficiary 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 provides in this other State independent personal services from a fixed base situated therein, and the shareholding in respect of which the dividends are paid is actually connected to the permanent establishment or fixed base. In such instances the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Whenever a company that 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 dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the shareholding 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 may it levy a tax on 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 that 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 in case the recipient of the interest is the beneficiary, the tax so charged shall not exceed 10 percent of the gross amount of the interest. The competent authorities of the Contracting States shall mutually agree on the method for applying these limits.

3. Notwithstanding the provisions of paragraph 2, the interest to which paragraph 1 refers may be taxed only in the State in which the beneficiary thereof resides if the interest is paid:

(a) by the Contracting State, one of its political subdivisions, or a local entity;

(b) by an enterprise of a Contracting State to an enterprise of the other Contracting State and pertaining to a sale on deferred terms of goods or commercial, industrial, or scientific equipment;

(c) for long-term loans (5 years or more) granted by a credit or banking institution residing in the other Contracting State.

4. The term "interest" as used in this Article refers to 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 from bonds or debentures, including premiums and shares attached to such securities, bonds or debentures, as well as any other income which the laws of the Contracting State in which the interest arises treat similarly to amounts loaned. Surcharges for late payments shall not be considered interest for the purposes of this Article.

5. The provisions of paragraphs 1, 2, and 3 shall not apply if the beneficiary of the interest, resident of a Contracting State, carries on business activity in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or provides independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is actually connected to that permanent establishment or fixed base. In such instances 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 debtor is the State itself or one of its political subdivisions or local entities or a resident of that State. Whenever, however, the person paying the interest, whether a resident of a Contracting State or not, maintains in a Contracting State a permanent establishment or fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

7. Whenever, by reason of a special relationship between the debtor and the beneficiary or between both of them and some other person, the amount of the interest, taking into account the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the debtor and the beneficiary in the absence of such relationship, the provisions of this Article shall apply only to the latter amount. In such case, the excess may be taxable according to the laws of each Contracting State, taking into account the other provisions of this Convention.

Article 12 Royalty Payments or Royalties

1. Royalty payments or royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxable in that other State.

2. These royalty payments or royalties, however, may also be taxable in the Contracting State in which they arise and in accordance with the laws of this State; however, in case the recipient of the royalty payments or royalties is the beneficiary, the tax thus levied may not exceed 5 percent of the gross amount of the royalty payments or royalties.

3. Notwithstanding the provisions of paragraph 2, royalty payments or royalties paid for copyrights and other similar remuneration for the production of a literary, dramatic, musical or artistic work, except for royalty payments or royalties pertaining to cinematographic films, work recorded on film, videotapes intended for television or records, or sound-recording tapes originating in a Contracting State and paid to a resident of the other Contracting State who is liable to taxation for the preceding items, and provided the recipient of such royalty payments or royalties is their beneficiary, can only be taxed in this other State.

4. The term "royalty payments or royalties" as used in this Article means payments of any kind received as 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 and television, for the use or the right to use any patent, trade mark, design or model, plan, secret formula or process, as well as for the use or the right to use any industrial, commercial, or scientific equipment or for information concerning industrial, commercial or scientific know-how.

5. The provisions of paragraphs 1, 2, and 3 shall not apply if the beneficiary of the royalty payments or royalties, resident of a Contracting State, carries on business activity in the other Contracting State in which the royalty payments or royalties arise, through a permanent establishment situated therein, or provides independent personal services from a fixed base situated therein, and the property or right or in respect of which the royalty payments or royalties are paid is actually connected to such a permanent establishment or fixed base. In such instances the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Royalty payments or royalties are deemed to arise in a Contracting State whenever the payer is a resident of that State. In case the payer of the royalty payments or royalties, whether a resident of a Contracting State or not, however, has a permanent establishment or a fixed base in a Contracting State which as such incurs the charge thereof, these royalty payments or royalties are deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

7. Whenever, by reason of a special relationship between the payer and the beneficial owner of the royalty payments or royalties or between both of them and an outside party, the amount of the royalty payments or royalties, taking into account the service for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficiary in the absence of such relationship, the provisions of this Article shall apply only to the latter amount. In such case, the excess may remain taxable according to the laws of each Contracting State, taking into account 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, as defined 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 assets of a permanent establishment which an enterprise of a Contracting State maintains in the other Contracting State, or of movable property pertaining to a fixed base maintained by a resident of a Contracting State in the other Contracting State for the purpose of providing independent personal services, including gains from the alienation of such 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 commerce or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the managerial headquarters of the enterprise is located.

4. Gains from the alienation of any property other than that referred to in the preceding paragraphs 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 natural person resident of a Contracting State from the providing of professional services or other activities of an independent character shall be taxable only in that State, unless he habitually maintains a fixed base in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, such income may be taxed in the other State but only so much of it as is attributable to that fixed base.

2. The term "professional services" includes in particular independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, attorneys, engineers, architects, dentists, accountants, and auditors.

Article 15 Dependent Personal Services

1. Without prejudice to the provisions of Articles 16, 18, 19, 20, and 21, salaries, wages and other remuneration derived from employment by a resident of a Contracting State 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 from 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 a total of 183 days during any twelve-month period, and

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 does not proceed from 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 from employment exercised aboard a ship or aircraft operated in international commerce may be taxed in the Contracting State in which the place of managerial headquarters of the enterprise is situated.

Article 16 Directors' Fees

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

Article 17 Artists and Sportsmen

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 performer, or a musician or sportsman, from personal activities 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 derived from personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply if the activities carried out in a Contracting State are financed mainly by public funds of the other Contracting State or one of its political subdivisions or local entities. In this case, the income derived from such activities can only be taxed in that other State.

Article 18 Pensions

Without prejudice to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State for prior employment shall be taxable only in that State.

Article 19 Government Service

1. a) Remuneration, other than pensions, paid by a Contracting State or a political subdivision or a local authority thereof to a natural person concerning services rendered to that State or subdivision or entity thereof 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 natural person 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 pensions paid by a Contracting State or one of its political subdivisions or local entities, whether directly or by drawing on funds created for that purpose, to a natural person for services rendered to that State, subdivision or entity thereof shall be taxable only in that State.
- b) However, such pensions shall only be taxable in the other Contracting State if the natural person is a resident and national of that State.
3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions paid for services rendered in connection with business activity carried on by a Contracting State or one of its political subdivisions or local entities.

Article 20 Students

Payments for the purpose of upkeep, education or training, made to a student or apprentice who, immediately before coming to a Contracting State, is or was a resident of the other Contracting State and who is present in the first-mentioned State solely for reasons of education or training, shall not be taxed in that State, provided that such payments arise from sources outside that State.

Article 21 Teachers

1. A natural person who is or was a resident of a Contracting State immediately prior to traveling to the other Contracting State and who, upon invitation of a school, university or another similar, not-for-profit institution of higher studies remains in that other State for a period not exceeding two years from the date of his first arrival in that State for the sole purpose of teaching, research, or both in such educational institutions shall be exempt from tax in respect to the remuneration received for such teaching or research.
2. The provisions of paragraph 1 of this Article shall not apply to income resulting from research work if such work is not undertaken in the public interest, but instead mainly for the private benefit of a specific person or persons.

Article 22 Other Income

1. Items of income of a resident of a Contracting State, irrespective of their origin, whose type or sources are not dealt with in the foregoing Articles of this present Convention shall be taxable only in that State.
2. The provisions of paragraph 1 above shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the beneficiary of such income, being a resident of a Contracting State, carries on a business activity in the other Contracting State through a permanent establishment situated therein, or provides in that other State independent personal services from a fixed base situated in that other State, and the right or property in respect of which the income is paid is actually connected to the permanent establishment or fixed base. In such instances the provisions of Article 7 or Article 14, as the case may be, shall apply.

Chapter IV

Taxation of Capital

Article 23 Capital

1. Capital represented by immovable property as defined in Article 6 owned by a resident of a Contracting State and located in the other Contracting State may be taxed in that Contracting State.
2. Capital represented by movable property forming part of the assets 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 consisting of ships or aircraft operated in international commerce as well as movable property pertaining to the operation of such ships or aircraft shall be taxable only in that Contracting State in which the managerial headquarters of the company are located.
4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Chapter V

Methods for Elimination of Double Taxation

Article 24 Elimination of Double Taxation

1. In the case of a resident of Cuba, double taxation shall, in accordance with the applicable provisions of Cuban laws, be avoided as follows:
Whenever a resident of Cuba derives income or holds capital which, in accordance with the provisions of this Convention, may be taxed in Spain, Cuba shall permit the deduction of the tax on income and capital of such resident in an amount equivalent to the tax actually paid in Spain. Such deduction, however, shall not exceed that part of the tax on income and capital, calculated prior to the deduction, that corresponds to the taxable income or capital in Spain.

2. In the case of a resident of Spain, double taxation shall be avoided as follows, in accordance with applicable Spanish laws:

(a) where a resident of Spain derives income or owns capital items that, in accordance with the provisions of this Convention, may be taxed in Cuba, Spain shall permit the deduction of the tax on income and capital of such resident in an amount equivalent to that actually paid in Cuba. Such deduction, however, shall not exceed that part of the tax on income or capital, calculated prior to the deduction, which corresponds to the taxable income or capital in Cuba.

(b) in the case of dividends paid by a company residing in Cuba to a company residing in Spain that directly holds at least 25 percent of the capital of the company paying the dividends, or the percentage set forth by domestic Spanish laws, in case the latter is lower, the deduction shall be calculated taking into account, in addition to the deductible as per letter a) of this paragraph, the tax actually paid by the first-mentioned company concerning the profits out of which dividends are paid, in an amount corresponding to such dividends, provided that said amount is included, for this purpose, in the tax base of the company receiving such dividends.

The above deduction, together with the deduction applicable with respect to dividends under letter a) of this paragraph, may not exceed that part of the tax on income, calculated prior to the deduction, corresponding to taxable income in the Contracting State of the company paying the dividends.

The application of the provisions set forth in this letter requires that the interest in the company paying the dividends be held without interruption during the year preceding the day on which the dividends distributed become due.

3. Whenever, in conformity with any provision of this Convention, income obtained by a resident of a Contracting State or the capital held by him is exempt from taxes in that State, said State can nonetheless include the exempt income or capital in determining the tax on the remaining income or capital of said resident.

4. Whenever a resident of Spain receives income as referred to in Articles 7, 10, 11, and 12 of this Convention which, in accordance with its provisions, can be subject to tax in Cuba, Spain shall allow a deduction of the tax rate, in the form of a tax credit, in the amount that would have to be paid in Cuba for a similar tax for the same tax period in case no exemptions, bonuses, deductions or other types of exemptions or reductions had been granted for a limited period time in accordance with the Cuban tax laws in effect for the promotion of foreign investment and economic development.

Chapter VI

Special Provisions

Article 25 Non-Discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any obligation thereto related that is not required or more burdensome than the taxation and related obligations to which nationals of that other State in the same circumstances are or may be subjected, especially in terms of residence.

2. Taxation levied on permanent establishments such as an enterprise of a Contracting State may maintain in the other Contracting State shall not be less favorable in that other State than 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 tax deductions, reliefs and reductions 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 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalty payments or 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. By the same token, liabilities assumed by an enterprise of a Contracting State with respect to a resident of the other Contracting State shall be deductible for determining the capital subject to tax of such company under the same conditions as if such liabilities had been assumed in regard to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, whose capital 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 obligation thereto related that is not required of other similar enterprises of this State or that is more burdensome than the taxation and related obligations to which these enterprises 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 26 Mutual Agreement Procedure

1. Where a person considers that the actions of one or both Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.
2. The competent authority shall endeavor, if it deems the objection to be justified and it is unable to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, for the purpose of avoiding taxation that is not in accordance with the Convention. 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 endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also reach a mutual agreement in an attempt to eliminate double taxation in cases not provided for in the Convention.
4. The competent authorities of the Contracting States may communicate directly with each other for the purpose of reaching an agreement in the sense of the preceding paragraphs of this Article. In the event that it is believed that such agreement can be facilitated by personal contacts, the exchange of opinions can take place within the scope of a commission consisting of representatives of the competent authorities of the Contracting States.

Article 27 Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities, including courts and administrative bodies, entrusted with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes, and 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 adopt administrative measures at variance with its laws and administrative practices, of those of the other Contracting State;
 - b) to supply information not obtainable under its laws or in its normal course of administration, of those of the other Contracting State;
 - c) to supply information that would disclose any trade, business, industrial, commercial or professional secrets or trade processes or information, the disclosure of which would be contrary to public order.

Article 28 Members of Diplomatic Missions and Consular Posts

The provisions of this Convention shall not affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or by virtue of the provisions of special agreements.

Chapter VII

Final Provisions

Article 29 Entry Into Force

1. Governments of the Contracting States shall notify each other as soon as the constitutional formalities that are necessary for the Convention to enter into force have been finalized.
2. This Convention shall enter into effect thirty (30) calendar days after the date of the last of the notifications referred to in paragraph 1, and its provisions shall apply to tax levied on or after the first day of January of the calendar year following the calendar year during which the Convention entered into effect.

Article 30 Termination

This Convention shall remain in force unless terminated by one of the Contracting States. Five years after the effective date of this present Convention, either Contracting State can terminate this Convention by providing written notice of termination through diplomatic channels at least six months

prior to the end of each calendar year. In such case, the Convention shall cease to apply to taxes levied on or after the first day of January of the calendar year following the calendar year during which the notice of termination is communicated.

In witness whereof the undersigned, duly authorized to that effect by their respective Governments, have signed this Convention.

Executed in Madrid on the third day of the month of February of nineteen hundred and ninety-nine, in two copies in the Spanish language, each version being equally authentic.

PROTOCOL

During the signing of the Convention between the Kingdom of Spain and the Republic of Cuba concerning avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income and capital, the undersigned have agreed to the following provisions, which shall be an integral part of this present Convention:

1. With respect to the provisions of this Convention:

(a) Insofar as Cuba is concerned, it is understood that the term "political subdivisions or local entities" refers to the provinces and the municipalities as defined in the Cuban Constitution approved on February 24, 1976, and reformed on July 12, 1992, as well as other divisions such as may be established by Law.

(b) Insofar as Spain is concerned, it is understood that the term "political subdivisions" refers to the "Autonomous Communities", and the term "local entities" refers to "Local Entities" as defined in the Spanish Constitution of December 27, 1978, and in the applicable laws.

2. With respect to paragraph 1 of Article 4, in the case of Cuba, for natural persons, it is understood that the term "resident of Cuba" refers to any natural person having Cuban citizenship in accordance with its laws and who is a permanent resident in its national territory.

3. With respect to paragraph 3 of Article 10, it is understood that the term "dividends" includes profits derived from the liquidation of a company.

4. Notwithstanding the provisions of paragraph 2 of Article 12, royalty payments or royalties paid for the assignment of the use of containers or empty ships or aircraft operated in international commerce can only be subject to tax in the State in which the beneficial owner resides.

5. With respect to paragraph 4 of Article 24, the term "Cuban laws" refers to the following: -- Final Rule No. Five, Letter a), of Law No. Seventy-Three of the Tax System dated August 4, 1994; -- Articles 38, 39, and 43 and the Transitional Rule No. One of Act No. Seven, Ley de la Inversión Extranjera (Foreign Investment Act), dated September 5, 1995; -- Articles 35 (12) 36, and 37 (12) of Decree-Law No. 165 regarding Free Zones and Industrial Parks, dated June 3, 1996. The competent authorities of the Contracting States may determine, through mutual agreement, that any changes to the aforementioned Cuban laws shall come within the field of application of paragraph 4 of Article 24 of this Convention as long as they are similar in nature to those provided for under the aforementioned Cuban laws and do not contravene the general principle established in the foresaid paragraph 4 of Article 24. In the event that Cuba should in the future sign a Convention with a third State that incorporates a clause similar to that established in paragraph 4 of Article 24 and that includes a time limit regarding application, or that contains terms that are less favorable for Cuba (including the non-existence of said clause), Cuba shall inform the Kingdom of Spain thereof in writing without delay through diplomatic channels and shall initiate negotiations with the latter in order to ensure for the Kingdom of Spain the same treatment provided for such third State.

6. With respect to Article 25, it is understood that the provisions of the Convention do not preclude the application by a Contracting State of its domestic rules regarding undercapitalization or excessive indebtedness.

7. With respect to paragraph 1 of Article 27, information that is obtained can not be used for any other purposes without the express authorization of the competent authority of the Contracting State providing such information. The information may only be used in the territories of the Contracting States. In the event that it is necessary to use the information during public hearings, in courts, or in court sentences, the competent authorities of the Contracting State which has sent such information shall be informed thereof, in case the competent authority of the Contracting State that requested such information is aware of this circumstance.

8. Tax reductions or exemptions provided for by the Convention in terms of dividends, interest, royalty payments and capital gains shall not apply whenever such income is obtained in a Contracting State by a company which is a resident of the other Contracting State and when more than 50 percent of whose capital is held, directly or indirectly, by partners who are not residents of that other State. The provisions contained hereunder shall not be applicable if said company carries out, in the Contracting

State of which it is a resident, substantial commercial or industrial activities other than the mere management of funds or other assets.

9. Without prejudice to the provisions of paragraph 8, insofar as the provisions of this Convention are concerned, the competent authorities of the Contracting States can, by mutual agreement, not grant the benefits referred to under this Convention, including those provided for in paragraph 4 of Article 24, to a specific person or a specific transaction whenever these authorities believe that under the given circumstances, the objective of said person or transaction is mainly to take advantage of the provisions of this Convention.

In witness whereof the undersigned, duly authorized to that effect by their respective Governments, have signed this Protocol.

Executed in two copies in Madrid on the third day of February of nineteen hundred and ninety-nine, in the Spanish language; each version being equally authentic.

SIGNED NOTE

I

Dear Sir:

I am honored to address you with reference to the Convention entered into by the Kingdom of Spain and the Republic of Cuba for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital, signed ad referendum on Madrid on February 3, 1999. Insofar as the foresaid Convention is concerned, and after the signing of the same, two items were found to be missing from the text, which were discussed by the tax authorities of Spain and Cuba, and in this regard, a preliminary agreement has been reached between the parties on how to resolve said omissions. Accordingly, I am honored to propose to the Republic of Cuba, on behalf of the Kingdom of Spain, the two following items for incorporation into the text of the Convention, which shall constitute an integral part thereof:

(1) In Article 2 of paragraph 3.b) of the Convention, which contains the list of Spanish taxes to which the Convention applies, the following new tax shall be added:

"v) the tax on the Income on Non-Residents;"

(2) A new number 10 is added to the Protocol, with the following wording:

"With respect to Article 27, whenever a resident of Spain receives income that, in accordance with the provisions of paragraph 4 of Article 24, can benefit in Spain from the deduction system provided for therein, Cuba shall inform the competent Spanish Authority of this circumstance on a regular basis in order to identify the person or entity entitled to its application as well as the income affected thereby. Said information shall be supplied every three, six, or twelve months, at the discretion of the Cuban Tax Authorities."

If you concur, this Signed Note, and the one that you would be so kind as to send in response to this communication, shall form an integral part of the referenced Convention and shall enter into effect at the same time as such Convention. Let me take this opportunity to assure you once again of my highest respect.

Havana, November 9, 1999.

The Minister of Foreign Relations, Havana

II

Havana, December 30, 1999

Esteemed Mr. Ambassador,

I am honored to refer to your Signed Note # 472 dated November 9, 1999, transcribed below:

[see Note I]

In this context, I am honored to inform you that the Government of the Republic of Cuba agrees with the proposal transcribed above which, together with this present communication, shall constitute an integral part of the Convention mentioned above and shall come into effect on the same time as the Convention. I would also like to take this opportunity to once again express my highest regards.

The Ambassador of Spain in Cuba.

Havana.