

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

Jamaica and the Kingdom of Spain desiring to conclude a Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, have agreed as follows:

CHAPTER I
SCOPE OF THE CONVENTION

Article 1

PERSONS COVERED

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

Article 2

TAXES COVERED

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

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

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

a) in Jamaica:

i) the income tax;

(hereinafter referred to as "Jamaican tax");

b) in Spain

i) the income tax on individuals;

ii) the corporation tax;

iii) the income tax on non residents; and

iv) local taxes on income;

(hereinafter referred to as "Spanish Tax").

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

CHAPTER II

DEFINITIONS

Article 3

GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:
 - a) the term "Jamaica" means the island of Jamaica, the Morant Cays, the Pedro Cays and their dependencies, and the territorial limits of Jamaica include the air space, the territorial waters of Jamaica and any area outside such territorial waters over which Jamaica exercises sovereign rights and jurisdiction in accordance with international law;
 - b) the term "Spain" means the Kingdom of Spain and, when used in a geographical sense, means the territory of the Kingdom of Spain, including inland waters, the air space, the territorial sea and any area outside the territorial sea upon which, in accordance with international law and on application of its domestic legislation, the Kingdom of Spain exercises or may exercise in the future jurisdiction or sovereign rights with respect to the seabed, its subsoil and superjacent waters, and their natural resources;
 - c) the terms "a Contracting State" and "the other Contracting State" mean Spain or Jamaica as the context requires;
 - d) the term "person" includes an individual, a company and any other body of persons;
 - e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - f) the term "enterprise" applies to the carrying on of any business;
 - g) 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;
 - h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - i) the term "competent authority" means:
 - i) in the case of Spain: the Minister of Economy and Finance or his authorised representative;

- ii) in the case of Jamaica: the Minister responsible for Finance or his authorised representative;
- j) 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;
- k) the term "business" includes the performance of professional services and of other activities of an independent character.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws 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 tax therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

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

- a) he shall be deemed to be a resident only 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 closer (centre of vital interests);
- b) if the State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
- c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- d) if he is a national of both States or of neither of them, the competent authorities of the 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 only of the State in which its place of effective management is situated.

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, except as otherwise specified in this Article, 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;
- g) a store or premises used as a sales outlet, and
- h) a warehouse, in relation to a person providing storage facilities for others.

3. A building site or construction, assembly, installation or dredging project, or drilling rig or ship used for the activities of exploration or development of natural resources within a Contracting State constitutes a permanent establishment, but only if such site, project or activity continues within that State for a period or periods aggregating more than 183 days in any twelve-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, display or delivery of goods or merchandise belonging to the enterprise;
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

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

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

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

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent persons, he will not be considered an agent of an independent status within the meaning of this paragraph.

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

CHAPTER III

TAXATION OF INCOME

Article 6

INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case

include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. Where the ownership of shares or other rights in a company or any other legal person directly or indirectly entitles a resident of a Contracting State to the enjoyment of immovable property situated in the other Contracting State and held by that company or that other legal person, income derived by the owner from the direct use, letting or use in any other form of his right of enjoyment may be taxed in that other State to the extent that it might be taxed if the owner were a resident of that other State.

5. The provisions of paragraphs 1, 3 and 4 shall also apply to the income from immovable property of an enterprise.

Article 7

BUSINESS PROFITS

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

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

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

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. Insofar as it has been customary in a Contracting State to determine the business profits to be attributed to a permanent establishment on the basis of an apportionment of the total business profits of the enterprise to its various parts, nothing in paragraph 3 of this Article shall preclude that Contracting State from determining the profits to be so taxed by such an

apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles laid down in this Article.

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

7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles except as otherwise specifically provided therein, 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. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include profits from:

- a) the rental on a bareboat basis of such ships or aircraft;
- b) the rental of containers, including trailers, barges and related equipment for the transport of containers, used for the transport of goods or merchandise;

where such rental is ancillary to the operation of ships or aircraft in international traffic and performed by that enterprise.

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

Article 9

ASSOCIATED ENTERPRISES

1. Where

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

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

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

2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and that other State agrees that 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 this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10

DIVIDENDS

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

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

- (a) 5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly or indirectly at least 25% of the capital of the company paying the dividends;
- (b) 10% 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 shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent

establishment situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment 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.

6. Notwithstanding the provisions of paragraph 5, where a company which is a resident of a Contracting State, having a permanent establishment in the other Contracting State, derives profits or income from that permanent establishment, any remittances of such profits by the permanent establishment to the company resident in the first-mentioned State may be taxed in accordance with the law of the other Contracting State but the rate of tax imposed on such remittances shall not exceed 5 percent.

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 beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if the recipient is the beneficial owner of the interest and:

- a) is the State, a political subdivision or local authority thereof, or the Central Bank;
- b) the interest is paid by the State in which the interest arises or by a political subdivision, a local authority or statutory body thereof;
- c) the interest is paid in respect of a loan, debt-claim or credit that is owed to, or made, provided, guaranteed or insured by, that State or a political subdivision, local authority or export financing agency thereof;
- d) is a public financial institution;
- e) is a pension fund that is approved for tax purposes by that State and the income of that fund is generally exempt from tax in that State.

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, including premiums and prizes attaching to such securities, bonds or debentures.

Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

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 therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is 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 in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment 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 beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 12

ROYALTIES

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

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

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

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such a case the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment then such royalties shall be deemed to arise in the State in which the permanent establishment 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 a case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13

MANAGEMENT FEES

1. Management fees arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other Contracting State. However, such management fees may also be taxed in the first-mentioned Contracting State and according to the laws of that State, provided that the services are furnished in that State by an enterprise through employees or other personnel engaged by the enterprise for such purpose and the activities of that nature are exercised in that State and continue (for the same project) within that State for a period or periods aggregating more than 45 days in any period of six months, but the tax so charged shall not exceed 10 per cent of the gross amount of such payments if the beneficial owner of the management fees is a resident of the other Contracting State.

2. The term "management fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments for, or in respect of, the provision of industrial or commercial advice, or management or technical services, or similar services or facilities.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the management fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the management fees arise through a permanent establishment situated therein and the activity in respect of which the management fees are paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

4. Management fees shall be deemed to arise in a Contracting State when the payer is a resident of that Contracting State. Where, however, the person paying the management fees, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the management fees was incurred, and the management fees are borne by that permanent establishment, then the management fees shall be deemed to arise in that Contracting State.

5. Where, owing to a special relationship between the payer and the beneficial owner of the management fees or between both of them and some other person, the amount of the

management fees paid, having regard to the activity, services or use for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

Article 14

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 including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) may be taxed in that other Contracting State.
3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. Gains derived by a resident of a Contracting State from the alienation of shares or comparable interests deriving more than 50% of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.
5. Gains from the alienation of shares or other rights, which directly or indirectly entitle the owner of such shares or rights to the enjoyment of immovable property situated in a Contracting State, may be taxed in that State.
6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 15

INCOME FROM EMPLOYMENT

1. Subject to the provisions of Articles 16, 18, 19 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, 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 is not borne by a permanent establishment which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16

DIRECTORS' FEES

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

Article 17

ARTISTES AND SPORTSPERSONS

1. Notwithstanding the provisions of Articles 7 and 15, income derived by a resident of a Contracting State as an artiste, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that person's personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an artiste or a sportsperson in that person's capacity as such accrues not to the artiste or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 7 and 15, be taxed in the Contracting State in which the activities of the artist or sportsperson are exercised.
3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, income derived by a resident of a Contracting State as an artiste or a sportsperson from activities performed in the other Contracting State shall be taxable only in the first-mentioned Contracting State if such activities are wholly or substantially financed from the public funds of one or both States or of their political subdivisions or local authorities.

Article 18

PENSIONS

1. Subject to the provisions of paragraph 2 of Article 19, pensions, annuities and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.
2. The term “annuity” means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money’s worth.

Article 19

GOVERNMENT SERVICE

1.
 - a) Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
 - b) However, such salaries, wages and other similar 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) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration 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 pensions and other similar remuneration 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, 17, 18 and 21 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 20

STUDENTS

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

Article 21

TEACHERS AND RESEARCHERS

1. An individual who visits a Contracting State for the purpose of teaching or engaging in research at a university, college or other recognised educational institution in that Contracting State, and who was immediately before that visit a resident of the other Contracting State, shall be exempt from tax by the first-mentioned Contracting State on any remuneration for such teaching or research for a period not exceeding two years from the date of his first arrival in that State for such purpose.

2. The provision of paragraph 1 shall not apply to income from research, if such research is undertaken not in the public interest but primarily 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, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

CHAPTER IV

METHODS FOR ELIMINATION OF DOUBLE TAXATION

Article 23

ELIMINATION OF DOUBLE TAXATION

1. In the case of Jamaica, double taxation shall be avoided as follows:

Subject to the provisions of the law of Jamaica regarding the allowance as a credit against Jamaican tax of tax paid in Spain (which shall not affect the general principles thereof), where a resident of Jamaica derives income which, in accordance with the provisions of this Convention may be taxed in Spain, Jamaica shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in Spain and where a company which is a resident of Spain pays a dividend to a company resident in Jamaica, which controls directly or indirectly at least 10 per cent of the voting power in the first-mentioned company, the deduction shall take into account the tax payable in Spain by that first-mentioned company in respect of the profits out of which such dividend is paid.

2. In the case of Spain, double taxation shall be avoided following either the provisions of its internal legislation or the following provisions in accordance with the internal legislation of Spain:

a) Where a resident of Spain derives income which, in accordance with the provisions of this Convention, may be taxed in Jamaica, Spain shall allow:

- i) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Jamaica ;
- ii) the deduction of the underlying corporation tax shall be given in accordance with the internal legislation of Spain.

Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in Jamaica;

b) Where in accordance with any provision of the Convention income derived by a resident of Spain is exempt from tax in Spain, Spain may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

3. In case the credit method is applied in the elimination of double taxation and for the purpose of allowance as a credit in Spain the tax paid in Jamaica shall be deemed to include the tax which is otherwise payable in Jamaica but has been reduced or waived by Jamaica under the following laws, as amended:

- i) Section 11 – Export Industry Encouragement Act, 1956;

- ii) Section 9, 10 – Hotels (Incentives) Act, 1968;
- iii) Section 36D of the Income Tax Act, 1954;
- iv) Sections 9, 10, 11, 12 – Industrial Incentives Act, 1956;
- v) Section 12 – Industrial Incentives (Factory Construction) Act, 1961;
- vi) Sections 9, 10, 11, 12 – Petroleum Refining Industry (Encouragement) Act, 1962;
- vii) Sections 7, 8 – Resort Cottages (Incentives) Act, 1971.

The provisions of this paragraph shall apply for a period of 10 years after the date on which this Convention enters into force.

CHAPTER V

SPECIAL PROVISIONS

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 residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

This provision shall not be construed:

- a) as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents;
- b) as preventing Jamaica from charging a higher rate of Income tax under Section 48(5) of the Income Tax Act of Jamaica on a Life Insurance Company which is a resident of Spain than on a regionalized insurance company.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, paragraph 6 of Article 12, or paragraph 5 of Article 13 apply, interest, royalties, management fees 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 State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

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

Article 25

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with 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 endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly including through a joint commission consisting of themselves or their representatives for the purpose of reaching an agreement in the sense of preceding paragraphs. The competent authorities through consultations may develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article. In addition, a competent authority may devise appropriate unilateral procedures, conditions, methods and techniques to facilitate the abovementioned bilateral actions and the implementation of the mutual agreement procedure.

Article 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeable relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 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) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. 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.

Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the law of the requesting State.

3. If the information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though the other State may not need such information for its own tax purposes. Accordingly, that other Contracting State shall not decline to supply information solely because it has no domestic interest in such information.

4. In no case shall the provisions of paragraphs 1, 2, and 3 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).

5. In no case shall the provisions of paragraph 4 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 27

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

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

CHAPTER VI

FINAL PROVISIONS

Article 28

ENTRY INTO FORCE

1. The Governments of the Contracting States shall notify each other, through diplomatic channels that the internal procedures required by each Contracting State for the entry into force of this Convention have been complied with.
2. The Convention shall enter into force after the period of three months following the date of receipt of the later of the notifications referred to in paragraph 1 and its provisions shall have effect:
 - i. regarding taxes periodically assessed, in respect of taxes on income relating to any taxable year beginning on or after the date on which the Convention enters into force;
 - ii. regarding all other cases, the date on which the Convention enters into force.

Article 29

TERMINATION

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

- i. regarding taxes periodically assessed, in respect of taxes on income relating to any taxable year beginning on or after the first day of January in the calendar year next following that in which the notice is given;
- ii. regarding all other cases, the first day of January in the calendar year next following

that in which the notice is given.

In witness whereof the undersigned, duly authorised thereto, have signed this Convention.

Done at _____ in duplicate, in the English and Spanish languages,
the two texts having equal authenticity, this _____ day of
_____ 200 .

For the Kingdom of Spain

For Jamaica

PROTOCOL

At the moment of signing the Convention between the Kingdom of Spain and Jamaica for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed upon the following provisions which shall be an integral part of the Convention.

I. With reference to Articles 10, 11, 12, 13 and 14

A. - Notwithstanding other provisions of the Convention, the provisions of Articles 10, 11, 12, 13 and 14 of the Convention shall not apply if:

- a) an entity of a Contracting State paying the dividends, interests, royalties, management fees or capital gains to a resident of the other Contracting State has derived its income from a jurisdiction that does not have a Double Taxation Agreement with that other Contracting State, and
- b) that income has been exempt from or not subject to tax in the first-mentioned Contracting State.

B. - Notwithstanding other provisions of the Convention, the provisions of Articles 10, 11, 12, 13 and 14 of the Convention shall not apply if:

- a) an entity paying the dividends, interests, royalties, management fees or capital gains is resident of a Contracting State and persons who are not residents of that State hold, directly or indirectly, participation in that entity of more than 75 per cent of the share capital, and
- b) the income derived by that entity has been exempt from or not subject to tax in the first-mentioned Contracting State.

An entity which under the preceding paragraphs would not be entitled to the benefits of the Convention in respect of the aforementioned items of income, could still be granted such benefits if the competent authorities of the Contracting States agree under Article 25 of the Convention that the establishment of the entity and the conduct of its operations are founded on sound business reasons and thus does not have as its primary purpose the obtaining of such benefits.

II. With reference to Articles 10, 11, 12 and 13

If after the entry into force of this Convention, Jamaica has signed an Agreement or Convention for the avoidance of double taxation with any other State which is a member of the European Union and such Agreement or Convention contains lower tax rates (including zero rates) than those provided for under this Convention, those rates, while in force, will automatically replace the rates of this Convention, from the date of entry into force of such Convention or Agreement between Jamaica and that other State.

III. With reference to Article 26

Desirous of facilitating the exchange of information in furtherance of Article 26 of the Convention, it is understood that Article 26 will apply under the following guidelines:

A. Definitions

For the purposes of this Protocol, it is understood that:

- a) the term "publicly traded company" means any company whose principal class of shares is listed on a recognised stock exchange provided that its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold "by the public" if the purchase or sale is not implicitly or explicitly restricted to a limited group of investors;
- b) the term "principal class of shares" means the class or classes of shares representing a majority of the voting power and value of the company;
- c) the term "recognised stock exchange" means any stock exchange that operates under the supervision of a regulatory authority whose regulations contain sufficient safeguards against private limited companies posing as publicly listed companies;
- d) the term "collective investment fund or scheme" means any pooled investment vehicle, irrespective of its legal form. The term "public collective investment fund or scheme" means any collective investment fund or scheme provided that the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed "by the public" if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- e) the term "information gathering measures" means any provision of law and administrative or judicial procedures enabling a Contracting State to obtain and provide the requested information;
- f) the term "information" means any fact, statement or record in whatever form;
- g) the term "notification" means the delivery of documents to residents of either Contracting State according to the rules that govern the delivery of documents in that State.

B. Exchange of Information Upon Request

1. The competent authority of a Contracting State shall provide upon request information for the purposes referred to in Article 26. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of that Contracting State if such conduct occurred therein.
2. If the information in the possession of the competent authority of a Contracting State is not sufficient to enable it to comply with a request for information, that Contracting State shall use all relevant information gathering measures to provide the other Contracting State with the information requested, notwithstanding that the first-mentioned Contracting State may not need such information for its own tax purposes.
3. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under Article 26, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Contracting State shall ensure that its competent authorities for the purposes specified in Article 26 have the authority to obtain and provide upon request:

a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;

b) information regarding the ownership of companies, partnerships, trusts, foundations; "Anstalten" and other persons, including, within the constraints of Article 1 of the Convention, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlers, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries.

Further, Article 26 does not create an obligation on the Contracting States to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds.

5. In the case of Jamaica, for the purposes of paragraph 4(a) in its application to banks and other financial institutions, the authority to obtain and provide the requested information shall be regarded as vested in the Minister responsible for finance.

6. The competent authority of a Contracting State shall forward the requested information as promptly as possible to the other Contracting State. To ensure a prompt response, the competent authority of the first-mentioned Contracting State shall:

a) Confirm receipt of a request in writing to the competent authority of the other Contracting State and shall notify the competent authority of the other Contracting State of deficiencies in the request, if any, within 60 days of the receipt of the request.

b) If the competent authority of the first-mentioned contracting State has been unable to obtain and provide the information within 90 days of the receipt or the request, including if:

- (i) it encounters obstacles or is otherwise delayed in furnishing the information having regard to matters such as the conduct of related judicial or administrative proceedings connected with the information requested, or
- (ii) it refuses to furnish information,

it shall immediately inform the other Contracting State, explaining the reasons for its inability, the nature of the obstacles or the reasons for its refusal.

In the event that the first-mentioned Contracting State has not provided the information within 6 months of the receipt of the request, it shall inform the other Contracting State of the progress made in obtaining the requested information and provide with its best estimate within what period of time the request can be complied with. If the first-mentioned Contracting State is unable to comply with the request it will so inform the other Contracting State, while providing the reasons for its inability. The other Contracting State shall subsequently decide whether or not to rescind its request. If it decides not to rescind its request the Contracting States shall informally and directly, through Mutual Agreement or otherwise, discuss the possibilities to achieve the purpose of the request and consult with each other the manner in which to achieve that objective.

The time restrictions mentioned in this Article do not in any way affect the validity and

legality of information exchanged under this Convention.

7. The competent authorities of the Contracting States may by mutual agreement settle the mode in which requests for information shall be submitted to the requested State.

C. Possibility of Declining a Request

1. The provisions of this Convention shall not impose on a Contracting State the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:

- a) produced for the purposes of seeking or providing legal advice or
- b) produced for the purposes of use in existing or contemplated legal proceedings.

2. A Contracting State may decline a request for information if the information is requested by the other Contracting State to administer or enforce a provision of the tax law of the other Contracting State, or any requirement connected therewith, which discriminates against a national of the first mentioned Contracting State as compared with a national of the other Contracting State in the same circumstances.

3. The rights and safeguards secured to persons by the laws or administrative practice of the Contracting State which has been requested to provide the information under this Article shall not be applied in a manner that would unduly prevent or delay effective exchange of information.

D. Tax Examinations Abroad

It is understood that co-operation between both Contracting States includes tax examinations abroad within the following framework:

1. At the request of the competent authority of one Contracting State, the competent authority of the other Contracting State may allow representatives of the competent authority of the first-mentioned Contracting State to be present at the appropriate part of a tax examination in the second-mentioned Contracting State.

2. If the request referred to in paragraph 1 is acceded to, the competent authority of the Contracting State conducting the examination shall, as soon as possible, notify the competent authority of the other Contracting State about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Contracting State for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Contracting State conducting the examination.

E. Request for Notifications

It is understood that co-operation between both Contracting States includes assistance for notifications within the following framework:

1. The authority of a Contracting State, at the request of the competent authority of the

other Contracting State, and in accordance with the laws which govern the notification of such instruments in the first mentioned Contracting State, shall notify, when possible, decisions and any other instrument which emanate from the administrative authorities of the other Contracting State and concern the application of taxes of every kind and description imposed on behalf of the Contracting States.

2. The competent authority of a Contracting State shall inform the competent authority of the other Contracting State of the name, address and any other relevant information of the addressee, when making a request for notification, if such information is available.

3. The competent authority of a Contracting State shall confirm receipt of a request in writing to the competent authority of the other Contracting State and shall notify its Competent Authority of any deficiencies in the request.

4. The competent authorities of the Contracting States may by mutual agreement settle the mode in which requests for notification shall be submitted.

F. Language

Requests for assistance and answers thereto shall be drawn up in English or in Spanish.

IV. Entitlement to treaty benefits

A.- This Convention shall not be interpreted to mean that a Contracting State is prevented from applying its domestic legal provisions on the prevention of tax evasion or tax avoidance.

B.- The Contracting States declare that their domestic rules and procedures with respect to the abuses of law (including tax treaties) may be applied to the treatment of such abuses.

C.- It is understood that the benefits under this Convention shall not be granted to a person, which is not the beneficial owner of the items of income derived from the other Contracting State.

D.- This Convention does not prevent Contracting States from applying domestic Controlled Foreign Company rules (CFCs).

V. Exclusion of the Convention

A.- This Convention shall not apply to companies entitled to any special tax benefit (in Jamaica) under:

- a) the International Finance Companies (income Tax Relief) Act, 1971;
- b) the Foreign Sales Corporation Act, 1984; and
- c) any substantially similar law subsequently enacted by Jamaica.

B.- In addition, in the case of Spain, it is consequently understood that a company mentioned in paragraph A shall be excluded from the effects of the application of the First Additional Provision of Law 36/2006 on Measures to Avoid Tax Fraud (Ley 36/2006, de 29 de noviembre, de medidas para la prevención del fraude fiscal), as amended from time to

time.

In witness whereof the undersigned, duly authorised thereto, have signed this Protocol.

Done at _____ in duplicate, in English and Spanish languages the two texts having equal authenticity, this day of _____

For the Kingdom of Spain

For Jamaica