

1985 Income and Capital Tax Convention (English Translation)

Signed date: March 1, 1985

In force date: August 7, 1986

Effective date: January 1, 1987. See Article 22.

Status: In Force: varies for successor states

CONVENTION BETWEEN THE GOVERNMENT OF SPAIN AND THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS FOR THE AVOIDANCE OF DOUBLE TAXATION ON INCOME AND ON CAPITAL

The Government of Spain and the Government of the Union of Soviet Socialist Republics, Confirming their desire, in accordance with the Final Act of the Conference on Security and Co-operation in Europe, signed at Helsinki on 1 August 1975, to strengthen and develop economic, cultural, trade, industrial and scientific and technical co-operation, And with a view to avoiding double taxation, Have agreed as follows:

Article 1 Personal Scope

1. This Convention shall apply to persons who, for taxation purposes, are considered residents of one or both of the Contracting States.
2. For the purposes of this Convention:
 - (a) The term "resident of a Contracting State" means any person whose income or capital is subject to taxation in that State under its laws by reason of domicile, residence, place of management or establishment;
 - (b) The term "resident of both Contracting States" shall mean any person deemed by each of the Contracting States to be a resident in the sense of the previous subparagraph, during the same period of time.
3. When an individual is deemed to be a resident of both Contracting States, his status shall be determined as follows:
 - (a) He shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);
 - (b) If the Contracting State in which he has his centre of vital interests cannot be determined, or if he has no permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has a habitual abode;
 - (c) If he has a habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
 - (d) If each Contracting State considers him a national or if he is not a national of either of them, the competent authorities of the two Contracting States shall determine his residence in the manner stipulated in article 20 of this Convention.
4. When a person other than an individual is a resident of both Contracting States, it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

Article 2 Taxes Covered by the Convention

1. This Convention shall apply to taxes on income and on capital imposable under the laws of each Contracting State.
2. The following are the taxes to which the Convention shall apply at the time of signature:
 - (a) In Spain:
 - (i) The personal income tax;
 - (ii) The corporation tax;
 - (iii) The tax on capital;
 - (iv) Local taxes on income and on capital;Hereinafter referred to as "Spanish taxes";
 - (b) In the Union of Soviet Socialist Republics (USSR):
 - (i) The tax on the income of foreign bodies corporate;
 - (ii) The personal income tax;
 - (iii) The agricultural tax;

- (iv) The tax on building-owners;
 - (v) The land tax;
 - (vi) The tax on the owners of means of transport:
- Hereinafter referred to as "USSR taxes".

3. This Convention shall apply also to any identical or similar taxes that are imposed after the date of signature of the Convention in addition to, or in place of the existing taxes.

Article 3 General Definitions

1. The terms used in this Convention shall have the following meanings:

- (a) "A Contracting State" and "the other Contracting State" mean Spain or the Union of Soviet Socialist Republics (USSR), as the context requires;
- (b) "International traffic" means the transport of cargo or passengers by any means of transport operated by a person whose place of effective management is in one of the Contracting States, except where the transport is effected solely between points in only one of the Contracting States;
- (c) "Person" includes an individual and also:
 - (i) In the case of Spain, a body corporate, a company or any entity which is treated as a body corporate for tax purposes;
 - (ii) In the case of the USSR, a body corporate or any other organization constituted under the laws of the USSR or any of the Union Republics and treated as a body corporate for tax purposes;
- (d) "Competent authorities" means:
 - (i) In the case of Spain, the Minister of the Economy and Finance, or any authority to which the Minister delegates responsibility;
 - (ii) In the case of the USSR, the Ministry of Finance of the USSR or its authorized representative.

2. As regards the application of this Convention by the Contracting States, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of the Contracting State in which the tax is collected.

Article 4 Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which a resident of one Contracting State conducts all or part of his business in the other Contracting State.

2. A construction or installation site shall be deemed to be a permanent establishment if its operations last more than 12 months.

3. Notwithstanding the provisions of paragraph 1, the following activities conducted by a resident of one Contracting State in the other Contracting State shall not be deemed to have been carried on through a permanent establishment:

- (a) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise for that person;
- (b) The use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to that person;
- (c) The maintenance of a stock of goods or merchandise belonging to the person solely for the purpose of storage, display or delivery;
- (d) The maintenance of a stock of goods or merchandise belonging to the person solely for the purpose of processing by another person;
- (e) The maintenance of a fixed place of business solely for the purpose of publicity, market studies and the collection and dissemination of information in connection with the business of that person;
- (f) The maintenance of a fixed place of business solely for the purpose of carrying on, for this person, any other activity of a preparatory or auxiliary character;
- (g) The maintenance of a fixed place of business solely for the purpose of carrying on the several kinds of activity listed in subparagraphs (a) to (f), provided that such joint activity of this fixed place of business maintains its preparatory or auxiliary character.

4. A resident of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because he carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

5. Where a person - other than an agent of an independent status to whom paragraph 4 applies - is acting on behalf of a resident of one Contracting State and has and habitually exercises in the other Contracting State an authority to conclude contracts in the name of this resident, the latter shall be deemed to have a permanent establishment in this other Contracting State in respect of any activity that the first-mentioned person undertakes for this resident. However, a permanent establishment

shall not be deemed to exist if the first-mentioned person limits his activities to those indicated in paragraph 3 above.

6. The fact that a resident of one Contracting State controls or is controlled by a person who is a resident of the other Contracting State, or who carries on business in that other State (whether through a permanent establishment or otherwise), shall not make either of these persons a permanent establishment of the other.

Article 5 Income From the Permanent Establishment

1. Income received in one Contracting State by a resident of the other Contracting State may be subject to taxation in the first Contracting State only if it is received through a permanent establishment, and only that part which can be attributed to the activity of this permanent establishment.

2. Subject to the provisions of paragraph 3, where a resident of one 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 person engaged in the same or similar activities under the same or similar conditions and acting completely independently.

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

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

5. Where profits include items of income that are 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 6 Profits From International Traffic

1. Profits made by a person from international traffic operations may be taxable only in the Contracting State in which the person's place of effective management is situated.

2. If the place of effective management of a person engaged in maritime or river traffic is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated, or if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.

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

Article 7 Royalties

1. Royalties arising in a Contracting State and whose beneficial owner is a resident of the other Contracting State may be taxed in that other Contracting State.

However, such royalties may be taxed in the Contracting State in which they arise and according to the laws of that State; but the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.

2. 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, dramatic, musical, artistic or scientific work, including cinematograph film or any means of reproducing image or sound, for the use of radio or television, and patented or unpatented inventions, trade or service marks, firm names, designs or models, plans, secret formulas or processes, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

3. Notwithstanding the provisions of paragraph 1, royalties arising in one Contracting State and paid to a resident of the other Contracting State for the use of, or the right to use, a copyright for literary, dramatic, musical or artistic works (except for royalties for cinematograph films or any means for the reproduction of image or sound to be used by radio or television) may be taxed only in the other Contracting State.

4. The provisions of paragraph 1 and 3 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, has a permanent establishment in the Contracting State in which the royalties arise, and the right or property in respect of which the royalties are paid is effectively connected with the permanent establishment. In this case, the provisions of article 5 of this Convention shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a subdivision, a local authority or a resident of that State. Where, however, the person paying the

royalties, whether he is a resident of one of the Contracting States or not, has in one of them a permanent establishment in connection with which the obligation 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 Contracting State in which the permanent establishment is situated.

6. If the amount of the royalties paid exceeds the amount which would have been agreed upon between independent parties for the use, or the right to use, the excess part may be taxable in accordance with the laws of each Contracting State, due regard being had to the other provisions of this convention.

Article 8 Dividends

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

However, those dividends may be taxed in the Contracting State in which they arise and in accordance with the laws of that State; but the tax thus levied may not exceed 18 per cent of the gross amount of the dividends.

2. The term "dividends" as used in this article means income from shares as well as other income subjected to the same tax system as income from shares by the laws of the Contracting State of which the person making the distribution is a resident.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, has in the other Contracting State in which the dividends arise a permanent establishment, and the holding in respect of which the dividends are paid is effectively connected with it. In that case, the provisions of article 5 of this Convention shall apply.

Article 9 Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.

2. The term "interest" as used in this article means income from debt-claims of every kind and any other income which, under the tax law of the Contracting State in which it arises, is assimilated to income from debt-claims.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, has in the other Contracting State in which the interest arises a permanent establishment, and the debt-claim in respect of which the interest is paid is effectively connected with it. In such cases, the provisions of article 5 of this Convention shall apply.

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

5. Where 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 between independent parties, then the excess part of the payments shall remain taxable in accordance with the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 10 Income From Immovable Property

1. Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other Contracting 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. In any case, ships, boats and aircraft shall not be regarded as immovable property.

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

Article 11 Gains From the Alienation of Property

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in article 10 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 a permanent establishment which a resident of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment, may be taxed in the other Contracting State.

3. Gains from the alienation of means of transport operated in international traffic or movable property pertaining to the operation of such means of transport shall be taxable only in the

Contracting State in which the place of effective management of the person engaged in international traffic is situated.

4. Gains from the alienation of shares, or similar holdings, of a body corporate, the property of which is wholly or mainly immovable property may be taxed in the Contracting State in which the immovable property is situated.

5. Gains from the alienation of shares, or similar holdings, representing substantial participation in the capital stock of a body corporate resident in one of the Contracting States may be taxed in that Contracting State. Participation shall be deemed to be substantial if it accounts for 25 per cent or more of the capital stock of the body corporate.

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 12 Income of Individuals

1. 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. However, 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 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.

2. Notwithstanding the provisions of paragraph 1, the following income of individuals resident in a Contracting State may not be taxed in the other Contracting State:

(a) wages derived in respect of an employment in the other Contracting State that is directly connected with a construction or installation site at a time when it does not constitute a permanent establishment within the meaning of article 4, paragraph 2, of this Convention.

(b) The amounts received by a resident of a Contracting State who is in the other Contracting State at the invitation of a State body or institution, or an official educational or scientific establishment of that Contracting State, in order to teach, conduct scientific research, participate in conferences or execute intergovernmental programmes of co-operation, for a period of residence not to exceed three years. The provisions of this paragraph shall not apply when such activities serve mainly the private interests of a resident of the first-mentioned Contracting State.

(c) Scholarships for pupils, students, post-graduate students and trainees who are in the other State in order to pursue their studies or acquire experience in their speciality, and remuneration received by such persons for living expenses, training and experience in their speciality from sources outside that other State, provided that such persons are or were, immediately before their arrival in the second Contracting State, residents of the first Contracting State. This provision shall apply only for a period not to exceed six years.

3. Notwithstanding the provisions of paragraph 1, wages and other similar remuneration derived in respect of an employment exercised aboard means of transport operated in international traffic may be taxed only in the Contracting State in which the place of effective management of the person who engages in international traffic is situated.

4. Notwithstanding the provisions of paragraph 1, emoluments and other similar remuneration derived by a resident of a Contracting State in his capacity as a member of the managerial or supervisory board of a body corporate resident in the other Contracting State may be taxed in that other State.

5. Notwithstanding the provisions of paragraph 1, income derived by entertainers and athletes for exercising their activities in such capacity may be taxed in the Contracting State in which such activities are exercised, whether such income accrues to the entertainers or athletes themselves or to another person.

However, income derived by an entertainer or athlete in that capacity shall be taxed only in the Contracting State of which he is a resident if that activity is exercised as part of an intergovernmental programme of co-operation in the area of culture or sports.

6. For the purpose of paragraph 2, taxes shall be calculated on the basis of income derived after the expiry of the time periods stipulated in that paragraph.

Article 13 Government Service

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

However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who:

- is a national of that State, or
- did not become a resident of that State solely for the purpose of rendering the services.

2. Any pension paid by a Contracting State, a subdivision or a local authority to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of that State.

3. The provisions of this article shall not apply to remuneration and pensions received by an individual in respect of an employment connected with commercial and industrial activities, in which case the provisions of article 12 of this Convention shall apply.

Article 14 Other Income

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.

Article 15 Capital

1. Capital represented by immovable property referred to in article 10, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by movable property forming part of a permanent establishment which a resident of a Contracting State has in the other Contracting State may be taxed in that other State.

3. Capital represented by means of transport operated in international traffic and by movable property pertaining to the operation of such means of transport shall be taxable only in the Contracting State in which the place of effective management of the person engaged in international traffic is situated.

4. Capital represented by shares, or similar holdings, of a body corporate the property of which is wholly or mainly immovable property may be taxed in the Contracting State in which that immovable property is situated.

5. Capital represented by shares, or similar holdings, representing substantial participation in the capital stock of a body corporate resident in one of the Contracting States may be taxed in that Contracting State. Participation shall be deemed to be substantial if it accounts for 25 per cent or more of the capital stock of the body corporate.

6. Capital represented by 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 owner is a resident.

Article 16 Elimination of Double Taxation

Where a resident of a Contracting State has income or elements of capital which, in accordance with the provisions of this Convention, may be taxed in the other Contracting State, the first-mentioned State shall eliminate double taxation in accordance with its legislation.

Article 17 Implementation of the Convention

1. This Convention shall apply to the territory of each Contracting State and the continental shelf extending beyond the territorial sea of each Contracting State over which they exercise or may exercise jurisdiction or sovereign rights under international law for the exploration and exploitation of the natural resources of the continental shelf.

2. The provisions of this Convention shall not affect any agreements previously concluded between the Contracting States that regulate questions of taxation in any way. However, this Convention shall prevail if it provides for more favourable tax treatment.

Article 18 Fiscal Privileges

Nothing in this Convention shall affect the fiscal privileges of diplomatic or consular missions of the Contracting States, members of the diplomatic, administrative, technical and service staff of those missions, and members of their families, under the general rules of international law or under the provisions of special agreements.

Article 19 Exchange of Information

1. The competent authorities of the Contracting States shall exchange, within the limits permitted by their domestic law, 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 this Convention.

Such information shall be treated as secret and may be communicated only to the authorities charged with the implementation of this Convention.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

(a) To carry out administrative measures at variance with the laws or administrative practice of either Contracting State;

(b) To supply information which is not obtainable under the laws or in the normal course of the administration of either Contracting State;

(c) To supply information which would disclose any trade, industrial or professional secret.

Article 20 Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under article 21, 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 this Convention.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Convention. They may also consult together, in accordance with the procedures provided under their respective domestic laws, for the elimination of double taxation in cases not provided for in the Convention.

Article 21 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 higher or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are subjected.

Notwithstanding the provisions of article 1 of this Convention, this provision shall also apply to individuals who are nationals of either Contracting State whether or not they are residents.

2. A permanent establishment of a resident of a Contracting State situated in the other Contracting State shall not be subjected in that other State to any taxation or any requirement connected therewith which is higher or more burdensome than the taxation and connected requirements to which a permanent establishment, in the same circumstances, of a resident of a third State with which the second-mentioned Contracting State has a valid convention for the avoidance of double taxation is subjected.

The provisions of this paragraph shall not oblige the other Contracting State to grant a permanent establishment of a resident of the first-mentioned State the fiscal privileges granted to a permanent establishment of a resident of a third State by virtue of special agreements with that third State.

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

Article 22 Entry Into Force

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

2. This Convention shall enter into force upon the exchange of the instruments of ratification referred to in paragraph 1, and its provisions shall apply to taxation on income and on capital for the tax period starting on or after 1 January of the calendar year following the year in which the Convention enters into force.

Article 23 Termination of the Convention

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention after it has been in force for five years, by giving written notice through the diplomatic channel at least six months before the end of any calendar year. In such event, the Convention shall cease to apply to taxation on income and on capital for the tax period starting on or after 1 January of the calendar year following the year in which notice of termination is given.

In witness whereof, the plenipotentiaries of the Contracting States have signed this Convention.

Done at Madrid on 1 March 1985, in duplicate in the Spanish and Russian languages, both texts being equally authentic.

FOR THE GOVERNMENT OF SPAIN:

Fernando Moran
Minister for Foreign Affairs

FOR THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS:

Andrei Gromyko
Minister for Foreign Affairs