

2004 Income and Capital Tax Convention and Final Protocol (English Translation)

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

[TRANSLATION]

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

Chapter I

Scope of Application of the Convention

Article 1 Personal Scope

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

Article 2 Taxes Covered

1. This Convention shall apply to taxes on income and capital imposed on behalf of either of the Contracting States, their political subdivisions or local entities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and capital all taxes imposed on total income or capital or on any elements of income or capital, including taxes on gains from the alienation of movable or immovable property, taxes on total wages and salaries paid by the enterprises, whether individuals or legal persons, as well as taxes on capital appreciation.
3. The existing taxes to which this Convention shall apply are in particular:
 - a) insofar as Spain is concerned:
 - i) tax on the income of legal persons (Impuesto sobre la Renta de Personas Físicas);
 - ii) corporation tax (Impuesto sobre Sociedades);
 - iii) tax on the income of non-residents (Impuesto sobre la Renta de no Residentes);
 - iv) capital tax (Impuesto sobre el Patrimonio); and
 - v) local taxes on income and capital (Impuestos locales sobre la renta y sobre el patrimonio);
 - b) insofar as Costa Rica is concerned:
 - i) income taxes (Impuestos sobre la Renta), and
 - ii) capital taxes (Impuestos sobre el Patrimonio).
4. This 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 any significant changes which have been made in their respective taxation laws.

Chapter II

Definitions

Article 3 General Definitions

1. For the purposes of this Convention, unless the context requires a different interpretation:
 - a) the term "Spain" refers to the Spanish state and, in its geographic sense, refers to the territory of the Spanish state, including the areas beyond its territorial waters over which, in accordance with international law and by virtue of its domestic laws, the Spanish state exercise or becomes in the future entitled to exercise jurisdiction or sovereign rights regarding the sea floor, the subsea floor, and the water column and its natural resources;
 - b) the term "Costa Rica" refers to the territory and the air space and the marine areas, including the subsea and sea floor adjacent to the outside limits of the territorial waters over which Costa Rica exercise or is entitled to exercise sovereign rights, in accordance with international and domestic laws, in respect of the natural resources of these areas.
 - c) the terms "Contracting State" or "the other Contracting State" refer to Spain or Costa Rica, according to the context herewith.

- d) the term "person" refers to any individual or company or other group of people.
 - e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes.
 - f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" refer, respectively, to an enterprise carried on by a resident of a Contracting State and to an enterprise carried on by a resident of the other Contracting State.
 - g) the term "international traffic" refers to any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is solely operated between points located in the other Contracting State;
 - h) the term "competent authority" refers to:
 - i) in the case of Spain, the Minister of Finance (Ministro de Hacienda), or his or her authorized representative, and
 - ii) in the case of Costa Rica, the Minister of Finance (Ministro de Hacienda), or his or her authorized representative.
 - i) the term "national" means:
 - i) any individual having the citizenship of a Contracting State.
 - ii) all bodies corporate, partnerships, and associations constituted in conformity with the laws in effect in a Contracting State.
2. As regards the application of this Convention by a Contracting State, any expression or term not defined therein shall, unless the context requires a different interpretation, have the meaning which it has at that time under the law of that State concerning the taxes to which the Convention applies. The meaning of such term under the tax legislation shall prevail over any meaning this term may have in accordance with other types of laws of this State.

Article 4 Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" refers to any person who, under the laws of that State, is liable to tax therein by reason of his or her domicile, residence, headquarters or any other criterion of a similar nature and also includes that State itself and any political subdivisions or local entities. This term, however, does not include any persons who are liable to tax in that State in respect only of income from sources in said State situated therein, or from capital located in the same.
2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his or her status shall be determined as follows:
 - a) such person shall be deemed to be a resident of the State in which he or she has a permanent home available to him or her; if he or she has a permanent home available to him in both States, such person shall be deemed to be a resident of the State with which his personal and economic relations are closer (center of vital interests);
 - b) if the State in which such person has his or her center of vital interests cannot be determined, or if such person has not a permanent home available to him or her in either State, such person shall be deemed to be a resident of the Contracting State in which he or she has an habitual abode;
 - c) if such person has an habitual abode in both States or in neither of them, he or she shall be deemed to be a resident of the State of which he or she is a national;
 - d) if such person 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 such person shall be deemed to be a resident of the State in which its place of effective management is located.

Article 5 Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially:
 - a) places of management;
 - b) branch offices;
 - c) offices;
 - d) factories;
 - e) workshops, and
 - f) mines, oil or gas wells, quarries or all other places that are related with the extraction of natural resources.

3. A construction, installation or assembly site or supervisory activities related with a project of this type only constitute a permanent establishment as long as its duration exceeds nine months.
4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise, always provided this does not constitute a sale;
 - b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery, always provided this does not constitute a sale;
 - c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of transformation or processing by another enterprise;
 - d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or 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 maintains its preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting 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 and which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other independent agent, provided that such persons are acting in the ordinary course of their business.
7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether acting through a permanent establishment or otherwise), shall not of itself constitute either of the two companies a permanent establishment of the other.

Chapter III Taxation

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 laws of the Contracting State in which the property is situated. Said term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of private 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, vessels, and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to income from immovable property of an enterprise.
5. In case ownership of shares or other corporate rights in a company give the owner of such shares or corporate rights, whether directly or indirectly, the right to enjoy immovable property held by the company, any income arising out of the direct use, rental, or any other use of such right of enjoyment can be subjected to taxation in the Contracting State in which the immovable property is situated.

Article 7 Business Profits

1. The profits of an enterprise of a Contracting State shall be subject to tax 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

subject to tax in the other State but only so much of them as is attributable to such permanent establishment.

2. Pursuant 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 commercial or industrial 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. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year after year, unless there are good and sufficient reasons to proceed otherwise.

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

Article 8 Transport by Sea or Air

1. Profits derived from the operation of ships or aircraft in international traffic shall be taxable only in that Contracting State in which the place of effective management of the enterprise is located.

2. The provisions of paragraph 1 shall also apply to profits from the participation in a consortium or 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, whether 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 subjected to tax 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 such other State acknowledges 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 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 per cent of the gross amount of dividends in case the beneficial owner is a company (excluding partnerships) which holds directly at least 20 per cent of the capital of the company paying such dividends

b) 12 per cent of the gross amount of dividends in all other cases. The competent authorities of the Contracting States are entitled to establish the manner in which these limits will be applied by mutual agreement.

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

3. The term "dividends" as used in this Article refers to income from shares, "jouissance" shares, 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 Contracting 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, an entrepreneurial activity through a permanent establishment situated therein or provides independent personal services through a fixed place of business therein situated in such other State, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or said fixed place of business. In this case, the provisions of Article 7 shall apply.

5. Where a company which is a resident of a Contracting State obtains profits or income from the other Contracting State, that other Contracting State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed place of businesses situated in that other State, nor may such other Contracting State 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, whether as a whole or in part, of profits or income arising in such other State.

6. Profits of a company of a Contracting State which carries out its activities in the other Contracting State through a permanent establishment located in the other Contracting State can, after having been taxed by virtue of Article 7, be subjected to tax, insofar as the remaining amount is concerned, in the Contracting State in which the permanent establishment is located and in compliance with the laws of this State, although in this case, this tax must not exceed 5 per cent.

Article 11 Interest

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

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

a) 5 per cent of the gross amount of interest, when the term of the loan is equal to or longer than five years;

b) 10 per cent of the gross amount of interest, in all other cases.

The competent authorities of the Contracting States may establish the manner in which these limits are applied by mutual agreement.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to a resident of the other Contracting State can only be subjected to tax in that other State as long as the recipient of such interest is its beneficial owner and:

a) the beneficial owner is a Contracting State, one of its political subdivisions or local entities; or

b) such interest is paid in connection with the sale to an enterprise of a Contracting State of merchandise or equipment on deferred terms; or

c) such interest is paid on the basis of credits granted by a bank or by another financial institution residing in a Contracting State.

4. The term "interest" as used in this Article refers to income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits and, in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, as well as any other income which the laws of the State in which the interest arises treat similar to amounts loaned. Surcharges for late payments shall not be considered interest for the purposes of this Article.

5. The provisions of paragraphs 1, 2, and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on an entrepreneurial activity in the other Contracting State in which the interest arises through a permanent establishment situated therein or provides independent personal services through a fixed place of business in that other State, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In this case, the provisions of Article 7 or 14, as the case may be, 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 a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed place of business in connection with

which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or such fixed place of business, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed place of business is situated.

7. Where, by reason of a special relationship which exists between the payer and the beneficial owner or between both of them and some third party, 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 debtor and the creditor in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part 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 can be subjected to tax in that other State.

2. These royalties, however, may also be taxable in the Contracting State in which they arise and in accordance with the laws of this State; however, in case the beneficiary owner of such royalties is a resident of the other Contracting State, the tax levied in such a manner can not exceed 10 per cent of the gross amount of the royalties.

The competent authorities of the Contracting States may establish the manner in which these limits are applied by mutual agreement.

3. The term "royalties" as used in this Article refers to payments of any kind paid as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films or films, tapes or other media for the reproduction of images and sound, any patents, trade or industrial marks, designs or models, plan, secret formulas or processes, or for the use of, or the right to use, any industrial, commercial, or scientific equipment, or for information pertaining to industrial, commercial, or scientific know-how as well as technical, financial, or administrative consulting.

4. The provisions of paragraphs 1 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on an industrial or commercial activity in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or provides independent personal services by using a fixed base in that other State, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or said fixed place of business. In this case, the provisions of Article 7 or 14, as the case may be, shall apply.

5. The royalties are deemed to arise in a Contracting State in case the payer is a resident of that State. In case the payer of the royalties, whether a resident of a Contracting State or not, however, has a permanent establishment or a fixed place of business in a Contracting State with respect to which the duty of payment of the royalties arises and which as such incurs the charge thereof, such royalties are deemed to arise in the State in which the permanent establishment or fixed place of business is situated.

6. Where, by reason of a special relationship which exists between the payer and the beneficial owner of the royalties or between both of them and some third party, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13 Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property as defined in Article 6 of this Convention that is situated in the other Contracting State may be subjected to tax in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, or property belonging to a fixed place of business which a resident of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment or fixed place of business (whether alone or together with the whole enterprise), may be subjected to tax in that other Contracting State.

3. Gains from the alienation of ships or aircraft operated by an enterprise in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the enterprise is a resident.

4. Gains from the alienation of shares more than half the value of which is made up, whether directly or indirectly, by immovable property situated in the other Contracting State can be taxed in such other State.

5. Gains from the alienation of elements of property that are different from those mentioned in paragraphs 1, 2, 3, and 4 shall only be taxable in the Contracting State in which the seller resides.

Article 14 Independent Personal Services

1. Income obtained by an individual who is a resident of a Contracting State in respect of personal services or other independent activities that are carried out in the other Contracting State can be taxed in the latter State, although the tax levied in such a manner may not exceed 10 per cent of the gross amount received for such services or activities, except in cases where this resident has a fixed place of business available to him or her in the other Contracting State to carry out his or her activities. In this latter case, said income shall be subject to taxation in such other State in accordance with its domestic laws, to the extent that they can be attributed to the aforementioned fixed place of business.

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

Article 15 Dependent Personal Services

1. Without prejudice to the provisions of Articles 16, 17, 18, and 19, wages and other types of similar remuneration received by a resident of a Contracting State in respect of employment shall be taxable only in that State unless such employment is exercised in the other Contracting State. In case the employment is so exercised, such remuneration as is received therefor can be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration obtained 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 exceeding in the aggregate one hundred and eighty-three days during any twelve-month period commencing or ending during the fiscal year in question, 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 or a fixed place of business which the employer has in the other State.

3. The preceding provisions of this Article notwithstanding, remuneration obtained in respect of employment exercised aboard a ship or aircraft operated by an enterprise in international traffic may be taxed in that Contracting State.

Article 16 Directors' Fees

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

Article 17 Artists and Athletes

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be subjected to tax in that other State.

2. Notwithstanding the provisions of Articles 7, 14, and 15, where income in respect of personal activities exercised by an entertainer or athlete in his or her capacity as such accrues not to the entertainer or athlete himself or herself but to another person, such income may be subjected to tax in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. The provisions of paragraphs 1 notwithstanding, any income obtained as a result of the activities mentioned therein and conducted within the scope of a Cultural or Athletic Convention or Agreement entered into between the Contracting States shall be exempt from tax in the Contracting State in which the activities are performed as long as the visit of this State is financed, whether as a whole or substantially, by using public funds of the other Contracting State or one of its political subdivisions or local entities.

Article 18 Pensions

The provisions of paragraph 2 of Article 19 notwithstanding, any pensions and other substantially similar remuneration that are paid to a resident of a Contracting State for prior employment shall be taxable in that State.

Article 19 Government Service or Public Functions

1. a) Wages, salaries and other similar remuneration, other than pensions, paid by a Contracting State or by one of its political subdivisions or local entities to an individual in respect of services rendered to that State, political subdivision or local entity thereof shall be taxable in that State.

b) However, such wages, salaries 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) Any pensions paid by a Contracting State or one of its political subdivisions or local entities, whether directly or by drawing on funds created for that purpose, to an individual in respect of services rendered to that State or a political subdivision or local entity thereof shall be taxable only in that State.

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

3. The provisions of Articles 15, 16, 17, and 18 shall apply to wages, salaries and other similar remuneration and pensions paid in respect of services rendered in connection with an entrepreneurial activity carried on by a Contracting State or one of the political subdivisions or local entities of such State.

Article 20 Professors and Students

1. Any remuneration of a person who is a resident of a Contracting State and who is temporarily present in the other Contracting State for a period not exceeding two years for the purpose of teaching, giving lectures or engaging in scientific research in a school, institute, university or another officially recognized teaching or research organization can be taxed in the first-mentioned State.

2. Any funds received to cover the costs of daily living, studies or practical training by a student or an intern who is or was, immediately prior to arriving in a Contracting State, a resident of the other Contracting State and who is present in the first-mentioned State for the sole purpose of pursuing his or her studies or practical training can not be taxed in that State as long as such funds come from sources located outside of that State.

Article 21 Other Income

1. Income of a resident of a Contracting State, regardless of its origin, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State. The above notwithstanding, winnings from official lotteries can be taxed in the Contracting State in which they are obtained.

2. The provisions of paragraph 1 above shall not apply to income, other than income from immovable property as defined by paragraph 2 of Article 6, if the beneficial owner of such income, being a resident of a Contracting State, carries on an entrepreneurial activity in the other Contracting State through a permanent establishment situated in such other State, or provides independent personal services through a fixed place of business located in such other State, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed place of business. In this case, the provisions of Article 7 or 14, as the case may be, shall apply.

Chapter IV

Taxation of Capital

Article 22 Capital

1. Capital represented by immovable property as defined by Article 6 that is held by a resident of a Contracting State and which is located in the other Contracting State may be taxed in such other State.

2. Capital represented by movable property forming part of the business property of a permanent establishment or movable property belonging to a fixed place of business which an enterprise of a Contracting State has in the other Contracting State may be taxed in that other Contracting State.

3. Capital consisting of ships or aircraft operated by an enterprise in international traffic as well as movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the enterprise resides.

4. All other elements of capital of a resident of a Contracting State shall only be taxable in that State.

Chapter V

Methods for the Elimination of Double Taxation

Article 23 Elimination of Double Taxation

Double taxation shall be eliminated in compliance with the provisions set forth in the domestic laws of the Contracting States or in accordance with the following provisions:

- a) In the event that a resident of a Contracting State receives income or owns capital items which, in accordance with the provisions of this Convention, can be subjected to taxation in the other Contracting State, the first-mentioned Contracting State shall allow, within the limits imposed by its domestic laws:
- i) a deduction of the tax on the income of this resident in an amount that is equal to the income tax paid in the other Contracting State;
 - ii) a deduction of the tax on the capital of this resident in an amount that is equal to the tax paid in the other Contracting State for these capital items;
 - iii) a deduction of the corporation tax actually paid by the company distributing the dividends corresponding to the profits out of which said dividends are paid, in accordance with its domestic laws. Said deduction, however, may not exceed that part of the income tax or capital tax, calculated prior to the deduction, which pertains to the income or the capital items which can be subjected to taxation in the other Contracting State.
- b) Where, in accordance with any provision of this Convention, income received or the capital held by a resident of a Contracting State is exempt from taxes in said Contracting State, such exempted income or capital can nonetheless be included in calculating the tax on the remainder of the income or capital of this resident.

Chapter VI

Miscellaneous 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 are or may be subjected, especially in terms of residence. The provisions of Article 1 notwithstanding, this present provisions shall also apply to persons who are not residents of one or of neither 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 favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision may not be construed 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.
3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Accordingly, liabilities assumed by a company of a Contracting State with respect to a resident of the other Contracting State shall be deductible in determining the capital that is subject to tax of such company under the same conditions as if such liabilities had been assumed with respect 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 Article 2 notwithstanding, the provisions of this Article shall apply to taxes of every kind and description.

Article 25 Mutual Agreement Procedure

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

2. The competent authority shall endeavor, if the objection appears to it to be justified and in case such competent authority 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, in order to avoid taxation which is not in accordance with this Convention. Any agreement reached shall be implemented notwithstanding any time limits set forth in the domestic Law of the Contracting States.
3. The competent authorities of the Contracting States shall to everything in their power to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Convention. They may also reach an agreement in an attempt to eliminate double taxation in cases not provided for in this Convention.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching agreements in the sense of the preceding paragraphs of this Article. In the event that it is believed that such agreement can be facilitated by personal contacts, such exchange of opinions can take place within the scope of a commission consisting of representatives of the competent authorities of the Contracting States.

Article 26 Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic Laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

- a) to carry out administrative measures at variance with the laws and 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, industrial, or professional secrets or trade processes or information, the disclosure of which would be contrary to public policy (ordre public).

Article 27 Members of Diplomatic Missions and Consular Posts

No provision of this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international Law or by virtue of the provisions of special agreements.

Chapter VII

Final Provisions

Article 28 Entry Into Force

1. The governments of the Contracting States shall notify each other as soon as the respective legal requirements for the entry into force of this Convention have been met.

2. This Convention shall come into force and effect on the date on which the last of the notices referred to in paragraph 1 is received, and its provisions shall apply to taxes levied on income or capital on or after the first day of January of the calendar year following the calendar year during which the Convention entered into force and effect.

Article 29 Termination

This Convention shall remain in force and effect indefinitely unless terminated by one of the Contracting Parties. Five (5) years after the date of entry into force of this Convention, either Contracting State may terminate this Convention by providing a written notice of termination through diplomatic channels at least six months prior to the end of each calendar year. In this case, the Convention shall cease to apply to taxes levied on income or capital on or after the first day of January of the calendar year following the calendar year during which the termination notice was communicated.

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

Done in two original copies at Madrid on the 4th day of March 2004 in the Spanish language.

FOR THE KINGDOM OF SPAIN:

FOR THE REPUBLIC OF COSTA RICA:

PROTOCOL

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

I. Without prejudice to the content of this Protocol, the provisions of this Convention shall be interpreted in accordance with the comments on the OECD Model Convention, version 2003. The provisions of this Convention shall not prevent the Contracting States from applying any clauses directed at avoiding any abuse in the application of this Convention that are provided for in their respective domestic laws.

II. Insofar as one of the Contracting States maintains a criterion of territoriality in its tax system and, in application of the provisions of Articles 6 to 21 of this Convention, this State has exclusive taxation rights and, pursuant to such criterion of territoriality, some income is not deemed to originate in that State, such income can be subjected to tax in the other State as if this Convention had not come into force and effect.

III. Ad Article 2.3

With regard to Article 2.3 a) v), local taxes on income and capital in Spain includes the Impuesto de Bienes Inmuebles (Real-Estate Tax) and the Impuesto sobre Actividades Económicas (Tax on Economic Activities).

Regarding Article 2.3 b) i), the Impuesto sobre la Renta en Costa Rica (Costa-Rican Income Tax) includes, in particular, the taxes governed by the Ley del Impuesto sobre la Renta (Income Tax Act), Law Nº 7092, dated April 21, 1988, as amended, and the Ley Reguladora del Mercado de Valores (Securities Exchange Act), Law Nº 7732, dated January 27, 1997. Regarding Article 2.3 b) ii), Costa-Rican capital taxes include, in particular, the Impuesto sobre la Propiedad de Vehículos Automotores, Embarcaciones y Aeronaves (Tax on Automotive Vehicle, Vessel, and Aircraft Ownership) and the Impuesto sobre Bienes Inmuebles (Real-Estate Tax).

IV Ad Article 11.3.b)

Insofar as Costa Rica is concerned, this paragraph covers the amounts paid for the rental of capital goods and for interest on loans as long as they are used in industrial or farming activities by enterprises domiciled in Costa Rica and paid to foreign institutions recognized by the central Bank of Costa Rica as first-rate institutions specializing in this type of transactions.

V Ad Article 11.3.c)

Insofar as Costa Rica is concerned, this paragraph covers interest, commissions, and other financial charges paid by enterprises domiciled in Costa Rica to foreign banks - or to financial entities thereof - recognized by the Central Bank of Costa Rica as institutions which usually specialize in international transactions, including payments effected for such purpose to foreign vendors for the import of merchandise.

VI Ad Article 12. 3

The term "technical, financial, or administrative consulting" refers to services based on a contract in which one of the parties agrees to communicate its specific know-how and experience of a technical, financial, or administrative nature to the other party, who may use it on its own behalf and without the transferor becoming involved in the use which the transferee makes of the transferred know-how or experience and without guaranteeing its result. Technical, financial or administrative consulting does not cover service agreements under which one of the parties agrees, on the basis of common know-how in its industry, to itself carry out a project for the other party.

VII Ad Article 13

Insofar as Costa Rica is concerned, please note that, as a result of the application of this Convention, any income arising out of the alienation of tangible goods that are subject to depreciation as referred to by Article 8, letter f) of the Law 7092 as well as the usual capital gains to which Article 6, letter d) of the same Law refers shall be governed by the provisions of Article 7 of this Convention, provided said Article remains in force and effect.

VIII Ad Article 16

Insofar as Costa Rica is concerned, please note that this Article is deemed to include remuneration, wages, commissions, professional fees, allowances, [and] bonuses paid or credited by enterprises or entities domiciled in Costa Rica to members of the Board of Directors, management councils or other administrative bodies acting abroad.

IX Ad Article 17.3

Please note that the visit of artists and athletes is financed "substantially" by using public funds as long as 75 per cent or more of the total expenditures for transportation, lodging, or daily allowances is financed by funds of this type.

X.- Ad Article 21

The scope of this Convention does not include any acquisition by individuals of goods and rights through inheritance, bequests, or otherwise through succession as well as by way of donation or any other free-of-charge legal transaction inter vivos.

XI.- Ad Article 23

As long as Costa Rica maintains a criterion of territoriality in its tax system (based on which income obtained in Spain by a resident in Costa Rica or his or her capital situated in Spain is not subject to taxation in Costa Rica), Costa Rica shall not be able to apply the provisions of this Article to its residents, in which case the provisions set forth in its domestic laws to that effect shall apply

XII Ad Article 24

Regarding Article 24, please note that the provisions of this Convention shall not prevent any Contracting State from applying its internal rules regarding lack of capital or excessive debts.

XIII.- Ad Article 26

The authorities of the Contracting States agree to guarantee the exchange of information, including bank information, by exercising the same powers the Constitution and the domestic Laws vest in such authorities in respect of its own residents for the purpose of tax investigation or information.

Whenever applicable, these powers shall be exercised through court intervention, whenever applicable.

Insofar as Costa Rica is concerned, the stock exchange, counters, agents, stock-exchange brokerages and those employed by them shall be entitled to provide information on negotiations entrusted to them by means of a written client authorization, court order, a request made by the Superintendencia General de Valores (Office of the General Stock Exchange Superintendent) or a stock exchange, to fulfill the information requirements of Spanish fiscal authorities.

The competent authorities of the Contracting States agree to meet the information requirements of the other Contracting State with a period of six months after receiving a request to that effect.

XIV. Ad Articles 10, 11, 12 and 14

In the event that Costa Rica, after having signed this Convention, agrees, with a third-party State:

- a) on an exemption of dividends, interest, royalties, or independent personal services originating in Costa Rica that is not contemplated in this Convention ; or
- b) on a tax rate to be levied on dividends, interest royalties or independent personal services which is lower than that set forth in Articles 10, 11, 12, and 14 of this Convention, or a percentage of capital holding that is lower than that provided for under Number 2 of Article 10; or
- c) a term which exceeds that set forth in letter 3 of Article 5;

such exemption, tax rate, or term shall automatically apply to this Convention as if it had been expressly included herein, and shall come into force and effect on the same date on which the provisions of the Convention signed with such third-party State come into force and effect.

For the exclusive purpose of the application of this Clause XIV of the Protocol, the income to which letter 6 of Article 10 of this Convention refers shall also be deemed to represent a dividend.

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

Done in two original copies at Madrid on the 4th day of March 2004 in the Spanish language.

FOR THE KINGDOM OF SPAIN:

FOR THE REPUBLIC OF COSTA RICA: