

1991 Income and Capital Tax Convention (English Translation)

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

[TRANSLATION]

The Government of the Kingdom of Spain, represented by its Minister of Foreign Affairs, Francisco Fernandez Ordonez, and the Government of the Republic of Ecuador, represented by its Minister of Foreign Relations, Diego Cordovez, agree to sign the following Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital, in accordance with the clauses set forth below:

Article 1

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 on capital imposed on behalf of each of the Contracting States, irrespective of the manner in which they are levied.

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

a) In Spain:

I. el impuesto sobre la renta de las personas fisicas (individual income tax);

II. el impuesto sobre sociedades (corporation tax);

III. el impuesto sobre el patrimonio (capital tax);

which shall be referred to hereinafter as "Spanish tax".

b) In Ecuador:

I. el impuesto sobre la renta de las personas naturales (individual income tax);

II. el impuesto sobre la renta de las sociedades (corporate income tax);

which shall be referred to hereinafter as "Ecuadoran tax".

3. The Convention shall also apply to any identical or 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 relevant changes which have been made in their respective taxation laws.

Article 3 General Definitions

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

a) The term "Spain" means the Spanish State and, used in the geographical sense, means the territory of the Spanish State, including any area outside its territorial waters in which, in accordance with international law and under its domestic laws, the Spanish State exercises or may exercise in the future, jurisdiction or rights of sovereignty with respect to the seabed and its subsoil and the superjacent waters and their natural resources.

b) The term "Ecuador" means the Republic of Ecuador in the manner and with the territorial elements stipulated in its Constitution and Laws.

c) The expressions "a Contracting State" and "the other Contracting State" mean Spain and Ecuador, depending upon the context.

d) The terms "residence" and "resident", used in this Convention, with regard to Ecuador, mean "domicile" and "person domiciled", respectively.

e) The term "person" includes an individual, a company, or any other body of persons.

f) The term "individual", used in this Convention, with regard to Ecuador, means "natural person".

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

h) The expressions "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.

i) The term "national" means:

- I. Any individual possessing the nationality of a Contracting State.
- II. Any legal person, partnership, or association constituted in accordance with the laws in force of a Contracting State.
- j) The expression "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State in which the place of effective management or administration of the enterprise is situated, except when the ship or aircraft is operated solely between places situated in the other Contracting State.
- k) The expression "competent authority" means:
 - I. In Spain, the Minister of Economics and Finance or his authorized representative.
 - II. In Ecuador, the Minister of Finance and Public Credit, the Director General of Income, or any other delegated authority.
- 2. As regards the application of this Convention by a Contracting State, any expression not defined in another manner shall, unless the context otherwise requires, have the meaning which it has under the law of that Contracting State concerning the taxes to which this Convention applies.

Article 4 Residence or Domicile

- 1. For the purposes of this Convention, the expression "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 effective management or administration or any other criterion of a similar nature.
- 2. Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of both Contracting States, then his status shall be determined as follows:
 - a) He shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests).
 - b) If the Contracting State in which he has his centre of vital interests can not be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode.
 - c) If he has an 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 residence can not be determined by any of the aforementioned criteria, the competent authorities of the Contracting States shall settle the question by mutual agreement.
- 3. Where by reason of the provisions of paragraph 1 of this Article a company is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management or administration is situated.

Article 5 Permanent Establishment

- 1. For the purposes of this Convention, the expression "permanent establishment" means a place of business through which the business of an enterprise is wholly or partly carried on.
- 2. The expression "permanent establishment" includes especially:
 - a) a place of management of the business;
 - b) a branch, agency, or office;
 - c) a factory, plant, or industrial or assembly workshop;
 - d) a mine, quarry, or any other place of extraction or exploitation of natural resources.
- 3. Building sites or installation projects constitute a permanent establishment only when their duration exceeds twelve months.
- 4. The expression "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 advertising, providing information, conducting scientific research, or carrying on, for the enterprise, any other similar activity of a preparatory or auxiliary character.
- 5. A person---other than an independent agent to whom paragraph 6 of this Article applies---who is acting in a Contracting State on behalf of an enterprise of the other Contracting State, shall be

deemed to constitute a permanent establishment in the first-mentioned State if he has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless his activities are limited to those mentioned in paragraph 4 of this Article.

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other intermediary of an independent status, provided that such persons are acting in the ordinary course of their business, subject to the tax liabilities of such broker, general commission agent, or intermediary.

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

Article 6 Income From Immovable Property

1. Income of any kind derived from immovable property may be taxed in the Contracting State in which such property is situated, according to the law of that Contracting State.

2. The expression "immovable property" shall be defined in accordance with the Law of the Contracting State in which the property is situated. Ships, boats, and aircraft shall not be regarded as immovable property.

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. 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 the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for carrying out the purposes of the permanent establishment, including executive and general administrative expenses for such purposes, whether incurred in the State in which the permanent establishment is situated or elsewhere. Such expenses must be justified according to the laws of the Contracting State in which the permanent establishment is situated.

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. Where profits include income which is 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 Shipping and Air Transport

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

2. If the place of effective management or administration of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

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

4. The provisions of paragraphs 1 and 3 of this Article shall apply mutatis mutandis to the profits that an enterprise of a Contracting State derives from the operation of aircraft in international traffic, provided that there is international reciprocity. It is understood that if Ecuador accepts, as a result of an Agreement signed with a third country after the date this Instrument enters in force, a provision related to the taxation of profits from the operation of aircraft in international traffic that does not contain an international reciprocity clause, the expression "provided that there is international reciprocity" shall be automatically eliminated.

Article 9 Associated Enterprises

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, shall be included in the profits of that enterprise and, as a consequence, shall be taxed according to the laws of the corresponding Contracting State.

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 other Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 15 percent of the gross amount of the dividends.
3. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of the preceding paragraph.
4. The provisions of paragraph 2 of this Article shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.
5. The term "dividends" as used in this Article means income from shares or contributions or other rights, not being debt-claims, participating in the profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the taxation laws of the State of which the company making the distribution is a resident.
6. The provisions of paragraph 2 of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on a trade or business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated in that other State, provided that 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.
7. 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 therein, 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 of income arising in such other State.
8. In the case of Ecuador, the limit established in paragraph 2 of this Article applies to the tax on total income that pertains to the profits or dividends referred to in Article 39 of Law No. 56 on the Domestic Tax System. The tax credit referred to in Article 38 of the same legal text shall apply exclusively up to the amount of the tax stipulated in paragraph 2 of this Article.
9. Paragraph 2 of this Article does not apply, in the case of Spain, to distributed or undistributed income attributed to shareholders of the companies and entities referred to in Article 12.2 of Law 44/1978 of September 8, 1978, and Article 19 of Law 61/1978 of December 27, 1978, provided that such income is not subject to the Spanish corporation tax. Such income is subject to tax in Spain according to the provisions of its domestic laws.

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 and according to the laws of that other State.
2. Such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but the tax so charged shall not exceed 10 percent of the gross amount of the interest.
3. However, the tax charged in accordance with the preceding paragraph shall not exceed 5 percent when such interest is paid in respect of credit arising from:
 - a.1 the sale of industrial, commercial, or scientific equipment, or
 - a.2 the sale of merchandise delivered by one enterprise to another enterprise, or
 - a.3 the financing of construction, installation or assembly projects.

4. Interest paid to a resident of a Contracting State in respect of loans granted for a minimum term of five years arising from the other Contracting State shall not be subject to tax in that other Contracting State.
5. Interest arising in a Contracting State and paid to the other Contracting State, or to a political subdivision thereof, or to any financial institution that is totally owned by that State or a political subdivision thereof, shall be taxed only in that other State.
6. The provisions of paragraphs 2, 3 and 4 of this Article shall apply only if the recipient of the interest is the beneficial owner of the interest.
7. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of the preceding paragraphs.
8. The term "interest" as used in this Article means income from debt-claims of any kind, whether or not secured and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities or bonds or debentures, including premiums and prizes attaching to such securities, bonds, or debentures,
9. The provisions of paragraphs 2, 3, and 4 shall not apply if the owner of the interest, being a resident of a Contracting State, carries on commercial or industrial 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 cases the provisions of Article 7 shall apply.
10. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a territorial administrative subdivision, a local authority, or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.
11. Where by reason of a special relationship between the payer and the creditor or between both of them and some other person, the amount of the interest paid, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by both the payer and the creditor in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 12 Royalties or Fees

1. Royalties or fees arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State and according to the laws of that Contracting 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 in such case, the tax so charged shall not exceed 10 percent of the gross amount of such royalties.
3. Notwithstanding the provisions of paragraph 2 of this Article, if it is a question of royalties paid in respect of copyrights or other similar payments for the production or reproduction of a literary, dramatic, musical, or artistic work (with the exception of royalties for cinematograph films and works recorded on films or tapes for television), the tax charged in the Contracting State in which such royalties arise shall not exceed 5 percent of the gross amount of such royalties.
4. The provisions of paragraphs 2 and 3 of this Article shall apply only if the recipient of the royalties is the beneficial owner of such royalties.
5. 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 copyrights, patents, trade marks, designs or models, plans, secret formulas or processes, or for the use of, or the right to use, industrial, commercial, or scientific equipment, and amounts received for information concerning industrial, commercial, or scientific experience; this term also includes amounts of any kind received for cinematograph films and works recorded on films and tapes for television.
6. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of paragraphs 2 and 3 of this Article.
7. The provisions of paragraphs 2 and 3 of this Article shall not apply if the recipient of the royalties, being a resident of a Contracting State, carries on commercial or industrial 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 cases the provisions of Article 7 shall apply.

8. Royalties shall be deemed to arise in a Contracting State when the payer is the State itself, a political subdivision, a territorial administrative subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the contract in respect of which the royalties are paid was concluded, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

9. Where by reason of a special relationship between the payer and the creditor or between both of them and some other person, the amount of the royalties paid, 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 creditor in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13 Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 may be taxed in the Contracting State in which such property is situated.

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 gains derived from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

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

4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3 of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14 Independent Personal Services

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of a similar independent character shall be taxable only in that State, unless such person, in order to perform such activity, is present in the other Contracting State one hundred eighty-three days or more during the corresponding calendar year. In this case, the income derived may be taxed in the other Contracting State, but only so much of it as is attributable to the activity performed in that other Contracting State.

2. The expression "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. Subject to the provisions of Articles 16, 18, and 19 of this Convention, 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, in which case the remuneration derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1 of this Article, 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 one hundred eighty-three days during the calendar year concerned;

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 foregoing provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship operated in international traffic may be taxed in the Contracting State in which the place of effective management or administration of the enterprise is situated.

Article 16 Fees of Board Members and Directors

Attendance fees and similar payments derived by a resident of a Contracting State as a member of a Board of Directors, Management Board, Supervisory Board, or other similar board of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17 Artistes and Athletes

1. Notwithstanding the provisions of Articles 14 and 15 of this Convention, income derived by professional entertainers, such as a theatre, motion picture, radio or television artiste, musician, or athlete, from his personal activities as such, may be taxed in the Contracting State in which he exercises such activity.

2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15 of this Convention, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

Article 18 Pensions

Pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

Article 19 Government Service

1.

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

b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and if the recipient of the remuneration 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) Subject to the provisions of Article 18, pensions paid by a Contracting State, or a political subdivision or local authority thereof, to an individual in respect of services rendered to that State, political subdivision or local authority, shall be taxable only in that State.

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

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with an a trade or business carried on by a Contracting State or a political subdivision or 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 temporarily present in a Contracting State solely for the purpose of his training or education, receives for the purpose of his maintenance, education or training shall not be taxed in the first-mentioned State, provided that such payments arise from sources outside that State.

Article 21 Professors

1. Any remuneration other than the remuneration included in paragraph 2 of Article 14 derived by professors and other members of teaching staffs who are residents of a Contracting State when they commence their visit in the other Contracting State and who are present in the other Contracting State temporarily for the purpose of teaching or conducting scientific research at a university or other officially recognized educational institution for a period not exceeding two years shall be taxable only in the first-mentioned Contracting State.

2. The provisions of paragraph 1 of this Article do not apply to remuneration derived from conducting research studies if such studies are conducted primarily for the private benefit of one or several persons.

Article 22 Other Income

1. 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 of this Article 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 a trade or business in the other Contracting State through a permanent establishment situated in that other State, 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.

Article 23 Capital

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

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

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

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

Article 24 Method for Avoiding Double Taxation

1. Where a resident of Spain derives income or owns elements of capital which, in accordance with the provisions of this Convention, may be taxed in Ecuador, Spain shall allow as a deduction:

a) from the tax on the income of that resident, an amount equal to the income tax paid in Ecuador, and

b) from the tax on the capital of that resident, an amount equal to the capital tax paid in Ecuador.

2. Where a resident of Ecuador derives income or owns elements of capital which, in accordance with the provisions of this Convention, may be taxed in Spain, Ecuador shall allow as a deduction:

a) from the tax on the income of that resident, an amount equal to the income tax paid in Spain, and

b) from the tax on the capital of that resident, an amount equal to the capital tax paid in Spain.

3. Such deduction, in either case, shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in that other State.

4. Where, in accordance with any provision of this Convention, income derived by a resident of a Contracting State or the capital he owns is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

Article 25 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 than 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.

2. The taxation on a permanent establishment that an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that Contracting State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. 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.

4. Except where the provisions of Article 9, paragraph 11 of Article 11, and paragraph 9 of Article 12 apply, interest, royalties or 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 contracted 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.

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

Article 26 Mutual Agreement Procedure

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or may result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to the competent authority of the Contracting State of which he is a national. The petition must be presented within three years from the first notification of the action resulting in taxation not in accordance with this 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. When the competent authorities of both States deem it advisable in order to facilitate the application of this Convention, they may meet in a commission formed for this purpose by such authorities or their authorized representatives.

Article 27 Exchange of Information

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

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

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*).

Article 28 Diplomatic Agents and Consular Officers

Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under with the general rules of international law or under special agreements.

Article 29 Entry Into Force

1. This Convention shall be ratified in accordance with the respective domestic laws and shall enter into force on the date of the exchange of the instruments of ratification, and its provisions shall apply in both Contracting States:

- a) with respect to taxes withheld at the source on income paid or credited, on January 1 of the calendar year following the year in which the exchange of the instruments of ratification takes place; and
- b) with respect to other taxes, from the fiscal period that starts on January 1 of the calendar year following the year in which the exchange of the instruments of ratification takes place.

Article 30 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 notice of termination at least six months before the end of any calendar year after the fifth year following the year in which it enters into force. In such event, the Convention shall cease to have effect in both Contracting States:

- a) with respect to taxes withheld at the source on income paid or credited, on January 1 of the calendar year following the year in which notification is given; and
- b) with respect to other taxes, for the fiscal period that starts on January 1 of the calendar year following the year in which notification is given.

In witness whereof the undersigned have signed this Convention in duplicate at Quito, this 20th day of May 1991, in the Spanish language, each version being equally authentic.

FOR THE GOVERNMENT OF ECUADOR:

Diego Cordovez

Minister of Foreign Relations

FOR THE GOVERNMENT OF SPAIN:

Francisco Fernandez Ordóñez

Minister of Foreign Affairs

