

1995 Income and Capital Tax Convention and Final Protocol (English Translation)

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In force date: July 1, 1997

Effective date: Income subject to withholding tax, from July 1, 1997. Other provisions, from January 1, 1998. See Article 32.

Status: In Force

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

[TRANSLATION]

His Majesty the King of Spain and the President of the French Republic, desiring to avoid double taxation and prevent fiscal evasion and fraud with respect to taxes on income and on capital have decided to conclude a Convention and for this purpose have named as plenipotentiaries:

His Majesty the King of Spain: His Excellency Javier Solana

The President of the French Republic: His Excellency Hervé Charette

The above-mentioned plenipotentiaries, after having exchanged their full powers, and those powers having been duly recognized, have agreed as follows.

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 on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

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

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

(a) In Spain:

i) El impuesto sobre la renta de las personas físicas (individual income tax)

ii) El impuesto sobre sociedades (corporation tax)

iii) El impuesto sobre el patrimonio (capital tax)

iv) Los impuestos locales sobre la renta y sobre el patrimonio (local taxes on income and on capital) (hereinafter referred to as "Spanish tax").

(b) In France:

i) L'impôt sur le revenu (income tax)

ii) L'impôt sur les sociétés (company tax)

iii) La taxe sur les salaires (tax on salaries)

iv) L'impôt de solidarité sur la fortune (wealth tax)

And all withholdings at source, all prepayments and partial payments that are deemed to be taxes on income and on capital for the purposes of paragraph 2

(hereinafter referred to as "French tax").

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of important 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 expressions "a Contracting State" and "the other Contracting State" mean Spain or France, according to the context.

b) The term "Spain" means the Spanish State and, used in the geographical sense, means the territory of the Spanish State, including the areas outside its territorial waters in which, according to

international law and under its domestic laws, the Spanish State may exercise rights of sovereignty with respect to the natural resources of the seabed, of its subsoil, and of its superjacent waters;

c) The term "France" means the European and overseas departments of the French Republic, including its territorial waters and the areas outside the latter, in which in accordance with international law the French Republic has rights of sovereignty for the purposes of the exploration and exploitation of the natural resources of the seabed, of its subsoil, and of its superjacent waters;

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

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

f) 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;

g) The expression "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

h) The expression "competent authority" means:

i) in the case of Spain, the Minister of Economics and Finance or his authorized representative;

ii) in the case of France, the Minister of Budget or his authorized representative.

2. As regards the application of the Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

Article 4 Resident

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 management or any other criterion of a similar nature. However, this expression does not include persons who are liable to tax in this State only on income that they derive from sources situated in that State or for capital that they own in that State.

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

(a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

(b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either 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 States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

(d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

Article 5 Permanent Establishment

1. For the purposes of this Convention, the expression "permanent establishment" means a fixed 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;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A construction, installation, or assembly project shall constitute a permanent establishment only if its duration exceeds twelve 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;

- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person --- other than an agent of an independent status to whom paragraph 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 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 through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

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 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 expression "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The expression shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

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

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

5. When the ownership of stock, shares or other rights in a company or another body corporate give the owner right to interest and dividends from immovable property situated in a Contracting State and held by that company or that other body corporate, the income that the owner derives from the direct use, letting or any other form of use of those rights may be taxed in that State. The provisions of this paragraph shall apply subject to the provisions of Articles 7 and 14.

Article 7 Business Profits

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

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

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

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, the provisions of paragraph 2 shall not preclude that Contracting State from determining the profits to be taxed in such manner as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

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

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

7. Where profits include items of income which 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 Shipping and Air Transport

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

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

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

Article 9 Associated Enterprises

1. Where:

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

(b) The same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State -- and taxes accordingly -- profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits if it deems that adjustment to be justified. In determining such adjustment, due regard shall be had to the other provisions of the 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.a) The dividends referred to in paragraph 1 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 recipient is the beneficiary owner of the dividends the tax so charged shall not exceed 15 percent of the gross amount of the dividends.

b) However, those dividends may be taxed only in the Contracting State of which the beneficial owner is a resident, if the beneficial owner is a company subjected to the corporation/company tax that is:

i) a resident of France which holds directly at least 10 percent of the capital of the company paying the dividends; or

ii) a resident of Spain which has a substantial holding in the company paying the dividends.

The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3.a) A resident of Spain who receives from a company which is a resident of France dividends of which he is the beneficial owner and which would entitle him to a tax credit ("avoir fiscal") if they were received by a resident of France, shall be entitled to a payment from the French Treasury of an amount equal to that tax credit ("avoir fiscal"), subject to the tax referred to in sub-paragraph a) of paragraph 2 of this Article.

b) The provisions of sub-paragraph a) of this paragraph shall apply only to a resident of Spain who is:
i) an individual, or

ii) a company which does not have a substantial holding in the company paying the dividends.

c) The provisions of sub-paragraph a) of this paragraph shall apply only to the beneficial owner of the dividends who is subjected to Spanish tax on those dividends and the payment from the French Treasury.

d) In the case of a company, the provisions of sub-paragraph a) of this paragraph shall not apply if the company which is the beneficial owner of the dividends is not the owner of the holding in respect of which the dividends are paid or if the primary purpose, or one of the primary purposes, of the holding is to permit another person, whether or not a resident of a Contracting State, to obtain the advantages contained in the provisions of sub-paragraph a) of this paragraph.

e) Unless he obtains the payment from the French Treasury stipulated in sub-paragraph a) of this paragraph, a resident of Spain who receives dividends paid by a company which is a resident of France may obtain a reimbursement of the withholding tax ("précompte") insofar as that tax was actually withheld by the company on those dividends. The provisions of paragraph 2 shall apply to the gross amount of the withholding.

f) The gross amounts of the payment from the French Treasury and the withholding stipulated in sub-paragraphs a) and e) of this paragraph shall be deemed to be dividends for purposes of the application of this Convention.

4.a) The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income which is subjected to the same profit distribution plan by the taxation laws of the Contracting State of which the company making the distribution is a resident.

b) For the purposes of the provisions of sub-paragraph b) ii) of paragraph 2 and sub-paragraph b) ii) of paragraph 3, a company shall be deemed to have a substantial holding in the company paying the dividends when the company holds directly or indirectly at least 10 percent of the capital of the company paying the dividends.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on industrial or commercial business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein, or performs independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or 14, as the case may be, shall apply.

6. 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 or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11 Interest

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

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 percent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, the interest referred to in paragraph 1 may only be taxed in the Contracting State in which the recipient of the interest resides, if the recipient is the beneficial owner of the interest and if the interest is paid:

i) by the other Contracting State or a political subdivision or local authority thereof; or

ii) by an enterprise of that other State to an enterprise of the first-mentioned State in connection with a trade or business; or

iii) in respect of the credit sale of industrial, commercial, or scientific equipment; or

iv) by a loan, irrespective of the nature thereof, granted by a credit institution.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds, or debentures, as well as any other revenue similar to income arising from sums loaned, under the taxation laws of the Contracting State in which the income arises. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article. The term "interest" shall not include that part of the income which is deemed to be dividends by application of the provisions of Article 10.

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 a trade or business in the other Contracting State in which the interest arises, through a permanent establishment situated in that other State, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment 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.

7. Where, by reason of a special relationship between the payer and the beneficial owner of the interest 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 the payer and the payee 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

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

2.a) Notwithstanding the provisions of sub-paragraph b), the royalties referred to in paragraph 1 may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 5 percent of the gross amount of the royalties.

b) Payments of any kind arising in a Contracting State and paid to a resident of the other Contracting State for the use of, or the right to use, any copyright of literary or artistic work (with the exception of cinematograph films and other sound or visual recordings) shall only be subjected to tax in that other State if the recipient is the beneficial owner.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience ("know-how").

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on a trade or business in the other Contracting State in which the royalties arise, through a permanent establishment situated in that other State, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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

Article 13 Capital Gains

1.a) Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

b) Gains from the alienation of stock, shares, or other rights in a company or body corporate the business property of which is primarily composed, directly or through one or more companies or bodies corporate, of immovable property situated in a Contracting State or rights pertaining to such property may be taxed in that State.

2.a) Gains from the alienation of stock, shares, or other rights (other than the stock, shares, or rights referred to in sub-paragraph b) of paragraph 1) which constitute a substantial holding in a company which is a resident of a Contracting State may be taxed in that State. A substantial holding shall be deemed to exist if the alienator, alone or with affiliated persons, owned, directly or indirectly, at any time during the twelve months preceding the date of the alienation:

i) at least 25 percent of the capital of that company, or

ii) stock, shares, or other rights all of which together confer a right to at least 25 percent of the company's profits.

b) Where, however, gains derived from the alienation by a resident of a Contracting State of stock, shares, or other rights which constitute a substantial holding in a company which is a resident of the other Contracting State are the object of a tax deferral in the first-mentioned State, in accordance with its laws, in connection with a taxation treatment specific to companies of the same group or a merger, a spin-off, a transfer of assets, or a stock swap, those gains shall be taxable only in the first-mentioned State.

3. 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 another Contracting State, or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

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

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

Article 14 Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State, but only so much of it as is attributable to that fixed base.

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, 19 and 20, salaries, wages, and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- a) the recipient is present in the other State for a period or periods not exceeding in the aggregate one hundred eighty-three days in any consecutive twelve month period, and
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the provisions of paragraphs 1 and 2, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16 Members of Boards of Directors or Supervisory Boards

1. Directors' fees and other similar payments derived by a resident of a Contracting State as a member of the Board of Directors or Supervisory Board of a company which is a resident of the other Contracting State may be taxed in that other State.
2. Income of any other kind derived by the persons referred to in paragraph 1 is included, depending on its character, in the provisions of the other Article of this Convention.

Article 17 Entertainers 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 taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or 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, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.
3. Notwithstanding the provisions of paragraph 1 and of Articles 14 and 15, income derived by an entertainer or athlete who is a resident of a Contracting State in respect of his personal activities exercised in the other Contracting State in his capacity as such, shall be taxable only in the first-mentioned State if those activities in the other State are financed primarily by government securities of the first-mentioned State, a political subdivision or local authority thereof, or a body corporate thereof constituted under public law.
4. Notwithstanding the provisions of paragraph 2 of Articles 7, 14 and 15, where income derived in respect of personal activities exercised by an entertainer or athlete who is a resident of a Contracting State in his capacity as such in the other Contracting State accrues not to the entertainer or athlete himself but to another person, that income shall be taxable only in the first-mentioned Contracting State when that other person is financed predominantly by government securities of that other State, a political subdivision or local authority thereof, or a body corporate thereof constituted under public law.

Article 18 Pensions

1. Subject to the provisions of paragraph 2 of Article 19, 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, other than a pension, paid by a Contracting State or a political subdivision or local authority thereof, or by a body corporate thereof constituted under public law, to an individual in respect of services rendered to that State or subdivision or authority or body corporate constituted under public law shall be taxable only in that State.
- b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident and national of that State but is not at the same time a national of the first-mentioned State.
- 2.a) Pensions paid by, or out of funds created by, a Contracting State or by a political subdivision or local authority thereof or by a body corporate thereof constituted under public law, to an individual in respect of services rendered to that State or subdivision or authority or body corporate constituted under public law, 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 and national of that State but is not at the same time a national of the first-mentioned State.
3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions paid in respect of services rendered in connection with a trade or business carried on by a Contracting State or a

political subdivision or local authority thereof, or by a body corporate thereof constituted under public law.

Article 20 Professors and Researchers

1. An individual who is a resident of a Contracting State when he commences his visit in the other Contracting State and who, at the invitation of the government of that other State or a university or officially recognized educational institution situated therein, is present in that State for the purpose of teaching or conducting research, or both, at a university or officially recognized educational institution, shall only be subjected to tax in the first-mentioned State on income derived from such activities for a period not exceeding two years from the date of his arrival in that other State.

Article 21 Students

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

Article 22 Other Income

1. Income of a resident of a Contracting State, wherever arising, the resident being the beneficial owner thereof, and not dealt with in the other Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on a trade or business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services through a fixed base also situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

Article 23 Capital

1.a) 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.

b) Capital represented by stock, shares, or other rights in a company or body corporate the business property of which is composed, directly or through one or more other companies or bodies corporate, primarily of immovable property situated in a Contracting State or of rights pertaining to such property may be taxed in that State.

2. Capital represented by stock, shares, or other rights (other than the stock, shares, or rights referred to in sub-paragraph b) of paragraph 1) which represents a substantial holding in a company which is a resident of a Contracting State, may be taxed in that State. A substantial holding shall be deemed to exist if an individual, alone or with affiliated persons, directly or indirectly owns:

i) at least 25 percent of the capital of the company, or

ii) stock, shares, or other rights all of which together confer a right to at least 25 percent of the company's profits.

3. 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 or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the performance of independent personal services may be taxed in that other State.

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

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

6. Notwithstanding the preceding provisions of this Article, for the imposition of the wealth tax on the capital of an individual who is a resident of France and who is a Spanish national but is not a French national, property situated outside of France owned by that person on January 1 of each of the five calendar years following the year in which he becomes a resident of France shall not be included in the tax base relating to each of those five years. If that person ceases to be a resident of France for a period of at least three years, then he becomes a resident of France again, the property situated outside of France owned by him on January 1 of each of the five calendar years following the one in which he becomes a resident of France again shall not be included in the tax base relating to each of those five years.

Article 24 Elimination of Double Taxation

1. In France, double taxation shall be avoided in the following manner:

a) Income that arises in Spain and which may be taxed in or may be taxed only in that State, in accordance with the provisions of this Convention, shall be taken into account in calculating the French tax if the recipient thereof is a resident of France and if that income is not exempt from the company tax in application of French law. In such case, the Spanish tax may not be deducted from that income, but the recipient shall be entitled to a tax credit which may be offset against the French tax. Such tax credit shall be equal:

i) for all income not mentioned in paragraph ii), to the amount of French tax corresponding to that income;

ii) for income referred to in paragraph 2 of Article 10; paragraph 2 of Article 11; paragraph 2 sub-paragraph a) of Article 12; paragraphs 1 and 2 of Article 13; paragraph 3 of Article 15; paragraph 1 of Article 16; and paragraphs 1 and 2 of Article 17, to the amount of tax paid in Spain in accordance with the provisions of those Articles. However, this credit may in no case exceed the amount of the French tax corresponding to that income.

b) A resident of France who owns elements of capital which may be taxed in Spain, in accordance with the provisions of paragraphs 1, 2 or 3 of Article 23, shall also be subjected to tax in France on that capital. The French tax shall be calculated by deducting a tax credit equal to the amount of the Spanish tax paid on that capital. That deduction shall not exceed that part of the French tax corresponding to that capital.

2. With respect to Spain, double taxation shall be avoided in accordance with the provisions of Spanish domestic law and in accordance with the following provisions:

a) 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 France, Spain shall allow, as a deduction from the tax which it levies on the income or on the capital of that resident, an amount equal to that part of the tax paid in France. However, that deduction shall in no case exceed that part of the Spanish 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 taxable in France.

b) Where it is a question of dividends paid by a company which is a resident of France, or a company which is a resident of Spain and which directly owns at least 10 percent of the capital of the company paying the dividends, Spain shall allow deduction of the tax actually paid by the first-mentioned company corresponding to the profits in respect of which the dividends are paid, in the amount corresponding to such dividends, provided that such amount is included in the tax base of the company that earns the dividends. Such deduction shall in no case exceed that part of the tax on income, as computed before the deduction is given, which is attributable to the income which may be taxed in France.

As regards the application of the provisions of the preceding paragraph, the holding in the company paying the dividends must be at least 10 percent and must have been maintained continuously for the two years immediately prior to the date on which the dividends are paid.

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

Article 25 Non-Discrimination

1. Individuals who are 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 individuals who are nationals of that other State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to individuals who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant 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, or other disbursements paid by an enterprise of a Contracting

State to a resident of the other Contracting State shall, for the purpose of determining taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. Enterprises of a Contracting State the capital of which is wholly or partly owned or controlled, directly or indirectly by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. By reason of the agreement between the competent authorities of the Contracting States, the contributions paid by an individual who is a resident of a Contracting State to a retirement institution recognized for tax purposes in the other Contracting State in which that person was previously a resident, shall be treated for tax purposes in the first-mentioned State in the same manner as contributions paid to a retirement institution recognized for tax purposes in that first-mentioned State.

6. Tax exemptions and other advantages provided for under the tax laws of a Contracting State to the benefit of that State [or] the political subdivisions or local authorities thereof the business of which is not industrial or commercial in nature, shall apply under the same conditions, respectively, to the other Contracting States or to the political subdivisions or local authorities thereof the business of which is identical or similar. The provisions of this paragraph shall, notwithstanding the provisions of paragraph 7, not apply to taxes due in consideration of services rendered.

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

Article 26 Mutual Agreement Procedure

1. Where a person considers that the actions of one or both 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 laws of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavor, if 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. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach such agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

Article 27 Exchange of Information

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

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

3. The exchange of information shall take place automatically or upon request for specific cases. The competent authorities of the Contracting States shall reach an agreement for determining the list of information which shall be provided automatically.

Article 28 Collection Assistance

1. The Contracting States shall provide mutual aid and assistance for the purpose of collecting the taxes covered by this Convention, as well as any surcharges, late charges, interest, fees, and non-criminal penalties on those taxes.

2. When asked to do so by the requesting Contracting State, the requested Contracting State shall collect the tax debt-claims of the first-mentioned Contracting State in accordance with the laws and administrative practice applicable to the collection of its own tax debt-claims unless the Convention stipulates otherwise.

3. The provisions of paragraph 2 shall apply only to tax debt-claims which are the object of an enforcement order which permits the collection thereof in the requesting State and which, unless the competent authorities agree otherwise, have not been appealed or are not yet susceptible to appeal.

4. The requested State shall not be obligated to act on the request of the requesting State if the latter has not exhausted in its own territory all of the means that it could reasonably implement for collecting tax debt-claims.

5. The request for administrative assistance shall be accompanied by:

- a) a certification specifying the nature of the tax debt-claim and, concerning collection, that the conditions stipulated in paragraphs 3 and 4 have been met;
- b) an official copy of the order permitting enforcement in the requesting State; and
- c) any other document required for collection or for taking protective measures.

6. The order permitting enforcement in the requesting State shall, if applicable and in accordance with the provisions in effect in the requested State, be accepted, approved, completed, or replaced, as soon as possible after the date of receipt of the request for assistance, with an order permitting enforcement in the requested State.

7. Questions concerning the term of limitation of the tax debt-claim shall be governed exclusively by the laws of the requesting State. The request for assistance shall contain information regarding the term of limitation.

8. Collection actions taken by the requested State following a request for assistance which, in accordance with the laws of that State, might have the effect of suspending or interrupting the term of limitation, shall have the same effect with regard to the laws of the requesting State. The requested State shall inform the requesting State of any measures taken for such purpose.

9. Tax debt-claims for the collection of which assistance is provided shall not benefit in the requested State from any privilege which is connected in particular with the tax debt-claims of that State, even though the procedure used for collection is the one used for its own tax debt-claims.

10. The provisions of paragraph 1 of Article 27 shall also apply to any information provided to the competent authority of a Contracting State in application of this Article.

11. With regard to the tax debt-claims of a Contracting State which are the object of appeal or are still susceptible to appeal, the competent authority of the State may, in order to protect its rights, ask the competent authority of the other Contracting State to take the protective measures provided for under the law of that other State.

12. The competent authorities of the Contracting States shall reach an agreement for establishing the methods for transferring the amounts collected by the requested State on behalf of the requesting State.

13. If its laws or administrative practice so permit under similar circumstances, the requested State may permit a deferred payment or installment, but must inform the requesting State in advance.

Article 29 Diplomatic Agents and Consular Officers

1. The provisions of this Convention shall not affect the fiscal privileges of members of diplomatic missions, consular posts or permanent delegations to international organizations in accordance with the general principles of international law or by virtue of special agreements.
2. Notwithstanding the provisions of Article 4, any individual who is a member of a diplomatic mission, or a consular post or a permanent delegation of a Contracting State situated in the other Contracting State or in a third State shall be deemed, for purposes of this Convention, to be a resident of the accrediting State, provided that he is subjected to the same obligations with respect to taxes on his total income or capital as the residents of that State.
3. The Convention shall not apply to international organizations, the bodies thereof or the officials thereof, nor to persons who are members of a diplomatic mission, a consular post or a permanent delegation of a third State if they are in the territory of a Contracting State and are not subject in either of the Contracting States to the same obligations as the residents of those States with respect to taxes on total income or capital.

Article 30 Methods of Application

1. The competent authorities of the Contracting States shall govern, insofar as is necessary, the methods of application of this Convention, particularly with respect to the formalities to be carried out in order to benefit from the provisions of the Convention.
2. In order to obtain in a Contracting State the tax exemptions or reductions and other advantages provided for under this Convention, residents of the other Contracting State must, unless the competent authorities stipulate otherwise, submit a proof of residence form indicating, in particular, the nature and the amount or value of the income or capital in question which includes a certification from the tax offices of that other State.

Article 31 Territorial Scope

1. This Convention may be applied, either in its entirety or with any necessary modifications, to the overseas territories and other political subdivisions and local authorities of the French Republic which impose taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed between the Contracting States in notes to be exchanged through diplomatic channels or in any other manner in accordance with their constitutional procedures.
2. Unless otherwise agreed by both Contracting States, the termination of the Convention by one of them under Article 33 shall also terminate, in the manner provided for in that Article, the application of the Convention, to any territory or political subdivision or local authority to which it has been extended under this Article.

Article 32 Entry Into Force

1. Each of the Contracting States shall notify the other of the completion of the procedures required with respect to the entry into force of this Convention. This Convention shall enter into force on the first day of the second month following the date on which the latter State receives such notifications.
2. The provisions of this Convention shall apply for the first time:
 - a) With respect to taxes which are levied by withholding at source, to income the payment of which may be required after the entry into force of this Convention;
 - b) With respect to other taxes on income, to income corresponding to the calendar year following the calendar year during which this Convention enters into force or to the fiscal year which commences during that same year;
 - c) With respect to other taxes, to taxes the fact in respect of which they are levied occurs as of January 1 of the year following the year during which this Convention enters into force.
3. The provisions of the Convention between the French Republic and the Spanish State for the avoidance of double taxation with respect to taxes on income and on capital signed at Madrid on June 27, 1973, shall cease to have effect when the provisions corresponding to this Convention enter into force. Except for of Articles 8 to 28, the provisions of the Convention signed at Madrid on January 8, 1963, between France and Spain for the avoidance of double taxation and the establishment of reciprocal administrative assistance rules with respect to taxes on income and taxes on inheritances shall remain in effect.

Article 33 Termination

1. This Convention shall remain in force with no time limitation. However, either of the Contracting States may terminate the Convention, through diplomatic channels, by giving notice of termination at

least six months before the end of any calendar year as of the fifth calendar year following the calendar year during which it enters into force.

2. In such event, the provisions of the Convention shall apply for the last time:

- a) With respect to taxes which are levied by withholding at source, to income the payment of which may be required up to December 31 of the calendar year the expiration of which is referred to in the notification of termination;
- b) With respect to other taxes on income, to income corresponding to the calendar year the expiration of which is referred to in the notification of termination or to the fiscal year which ends during that year;
- c) With respect to other taxes, to taxes the fact in respect of which they are levied occurs during the calendar year the expiration of which is referred to in the notification of termination.

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

Done in duplicate at Madrid, this 10th day of October 1995, in the French and Spanish languages, each version being equally authentic.

FOR THE KINGDOM OF SPAIN:

Javier Solana

Minister of Foreign Affairs

FOR THE FRENCH REPUBLIC:

Hervé Charette

Minister of Foreign Affairs

PROTOCOL

At the time of the signature of the Convention between the Kingdom of Spain and the French Republic for the avoidance of double taxation and the prevention of fiscal evasion and fraud with respect to taxes on income and on capital, the undersigned agreed to the following provisions, which shall form an integral part of the Convention:

1. With respect to sub-paragraph b) of paragraph 3 of Article 2, the tax on salaries shall be governed by the provisions of the Convention corresponding to business profits or to income from independent personal services, as the case may be.
2. With respect to paragraph 2 of Article 3, it shall be understood as regards the application of the Convention that the meaning given to a term or an expression under tax law takes precedence over the meaning given to that term or expression under the other branches of the law.
3. With respect to paragraph 1 of Article 4, the expression "resident of a Contracting State" shall be understood to include:
 - a) That State, the political subdivisions and local authorities thereof, and the bodies corporate thereof constituted under public law;
 - b) In the case of France, partnerships and other bodies of persons which are subjected under French law to a taxation treatment similar to that of partnerships which have their place of management in France and which are not subjected therein to the company tax and in which each member is personally subjected to tax in France on his share of the profits in application of French domestic law.
4. The competent authorities of the Contracting States shall reach an agreement establishing the conditions under which term of twelve months stipulated in paragraph 3 of Article 5 shall apply for the case of associated enterprises which according to paragraph 1 of Article 9 carry on in a project activities which are essentially the same and which are not carried on simultaneously.
5. The provisions of Article 6 shall apply to income derived from the letting of furnished immovable property.
6. With respect to paragraphs 1 and 2 of Article 7:
 - a) Where an enterprise of a Contracting State sells merchandise or carries on a business in the other Contracting State through a permanent establishment situated therein, the profits of that permanent establishment shall not be calculated on the basis of the total amount earned by the enterprise, but rather on the basis of the remuneration attributable to the actual business of the establishment with respect to those sales or that activity.
 - b) In the case of contracts, especially study contracts, supply contracts, installation contracts, or contracts for the construction of equipment, or of industrial, commercial or scientific establishments, or public works contracts, where the enterprise has a permanent establishment, the profits from that permanent establishment shall not be determined on the basis of the total amount of the contract but only on the basis of that part of the contract which is actually executed by that permanent establishment. Profits relating to that part of the contract which is executed in the Contracting State in which the place of effective management is situated shall be taxable only in that State.

7. With respect to Article 8, an enterprise the place of effective management of which is situated in Spain and which operates ships or aircraft in international traffic, shall be exempt from the business tax in France on that operation. Likewise, it shall be understood that an enterprise the place of effective management of which is situated in France and which operates ships and aircraft in international traffic is exempt in Spain from the business operation tax on that operation.

8. With respect to paragraph 4 of Article 10, the term "dividends" shall be understood:

a) To include the share from corporate liquidation of corporations which are subjected to the corporation tax/the company tax;

b) Not to include the income referred to in paragraph 1 of Article 16.

9. With respect to Articles 10 and 11:

a) A joint stock investment institution constituted in a Contracting State in which it is not subjected to the tax referred to in sub-paragraphs a) i) or ii), or b) i) or ii) of paragraph 3 of Article 2, and which earns dividends or interest the source of which is in the other Contracting State, may benefit from tax deductions or exemptions or other advantages provided for under this Convention [in accordance with] the terms mutually agreed between the competent authorities of the Contracting States;

b) Notwithstanding the provisions of paragraph 3 of Article 10, the payment from the French Treasury referred to in that paragraph, to which a resident of Spain which is a joint stock investment institution is entitled, is limited to that part of the dividends earned which correspond to the rights held in that institution by residents of Spain and which may be taxed in the name of those residents.

10. Notwithstanding the provisions of paragraph 2 of Article 12, royalties paid as a consideration for the use of, or the right to use, containers, ships, or bare hull aircraft used in international traffic shall be taxable only in the Contracting State in which the beneficial owner is a resident.

11. The expression "affiliated persons" as used in paragraph 2 a) of Article 13 and in paragraph 2 of Article 23 shall apply to individuals and shall mean the spouse of the contributor, his ancestors, and his descendants.

12. Notwithstanding the provisions of paragraphs 1 and 2 of Article 15, as long as no new provisions are agreed upon between the Contracting States, the provisions of paragraph 4 of the Convention of June 27, 1973, between Spain and France for the avoidance of double taxation with respect to taxes on income and on capital, the text of which follows, shall remain in force:

"4. Border workers who verify this status by means of the border document created by specific agreement between the Contracting States shall be subjected to taxes on wages, salaries, and other such remuneration which they receive, only in the Contracting State of which they are residents." The competent authorities of the Contracting States shall determine, when necessary, the method by which the preceding provisions shall be applied and shall reach a special agreement, if necessary, on the substantiating document which shall serve as a border card, for the purposes of these provisions.

13. The provisions of paragraph 1 of Article 16 shall apply to income, with the exception of dividends, which an individual who is a resident of Spain receives in his capacity as a partner or director of a company other than a sociedad anónima (corporation) which is a resident of France and is subject therein to the company tax.

14. With respect to Article 24, it shall be understood that:

a) As regards the application of the provisions of paragraph 1, the expression "amount of French tax corresponding to that income" refers to:

i) Where in order to determine the tax due on that income a proportional tax rate is applied, the result of multiplying the amount of the net income in question by the tax rate that is actually applied;

ii) Where in order to determine the tax due on that income a progressive rate is applied, the result of multiplying the amount of the net income in question by the rate resulting from dividing the tax actually due by the total net income taxable under French law and the amount of that total net income.

This interpretation is applicable by analogy to the expression "amount of French tax corresponding to that capital";

b) For the income referred to in sub-paragraph a) ii) of paragraph 1, the expression "amount of tax paid in Spain" means the amount of Spanish tax actually and definitively borne on that income, according to the provisions of this Convention, by the resident of France who is the recipient of that income;

c) For the income referred to in sub-paragraphs a) and b) of paragraph 2, the expressions "amount equal to the tax paid in France" and "amount actually paid by the first-mentioned company" mean the amount of French tax actually and definitively borne on that income, according to the provisions of this Convention, by the resident of Spain who is the recipient of that income.

15. With respect to paragraph 1 of Article 25, it shall be understood that individuals who are nationals of a Contracting State do not have the same status as individuals who are nationals of the other Contracting State when they are not residents of that State.

16. The provisions of this Convention shall not prevent:

a) France from applying the provisions of Articles 209.B) and 212 of its general tax code or other similar provisions which might amend or replace the provisions of those Articles;

b) Spain from applying the provisions of Article 16.9 of Law 61/1978 of December 27, 1978, or other similar provisions which might modify or replace the provisions of those Articles.

It shall be understood that the aforementioned provisions of domestic law related to under-capitalization apply insofar as they are in conformity with the principles of paragraph 1 of Article 9.

17.a) If the laws of a Contracting State authorize companies which are residents of that State to determine their taxable profits as a function of a consolidation which includes, in particular, the results of subsidiaries which are residents of the other Contracting State or of permanent establishments situated in that other State, the provisions of this Convention shall not oppose the application of those laws;

b) If, in accordance with its laws, a Contracting State determines the profits of the residents of that State by deducting the losses of subsidiaries which are residents of the other Contracting State or of permanent establishments situated in that other State, by adding in the profits of those subsidiaries or those permanent establishments up to the amount of the losses deducted, the provisions of this Convention shall not oppose the application of those laws.

18. If the clauses of this Convention are incompatible with the provisions established by the institutions of the European Communities, both Contracting States may, by mutual agreement between their competent authorities, establish via diplomatic channels the terms and conditions under which those clauses shall cease to apply.

In witness whereof the undersigned have signed this Protocol.

Done in duplicate at Madrid, this 10th day of October 1995, in the French and Spanish languages, each version being equally authentic.

FOR THE KINGDOM OF SPAIN:

Javier Solana

Minister of Foreign Affairs

FOR THE FRENCH REPUBLIC:

Hervé Charette

Minister of Foreign Affairs