

1984 Income and Capital Tax Convention and Final Protocol (English Translation)

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CONVENTION BETWEEN THE GOVERNMENT OF SPAIN AND THE GOVERNMENT OF THE HUNGARIAN PEOPLE'S REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL

The Government of Spain and the Government of the Hungarian People's Republic
Mindful of the principles set forth in the Final Act of the Conference on Security and Cooperation in Europe

To further develop and facilitate their economic relationship and
Desiring to conclude a Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital

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, on 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 total 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) the income tax on individuals;
 - (ii) the corporation tax;
 - (iii) the capital tax
- (hereinafter referred to as "Spanish tax");

b) in the Hungarian People's Republic;

- (i) the income taxes;
 - (ii) the profit taxes;
 - (iii) the special corporation tax;
 - (iv) the house tax;
 - (v) the ground tax;
 - (vi) the contribution to communal development;
 - (vii) the levy on dividends and profit distributions of commercial companies;
- (hereinafter referred to as "Hungarian tax").

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

Article 3 General Definitions

1. In this Convention, unless the context otherwise requires:

a) the terms "a Contracting State" and "the other Contracting State" mean the Hungarian People's Republic or Spain as the context requires;

b) the term "person" includes an individual, a company and any other body of persons;

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

d) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean, respectively, an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

e) the term "nationals" means:

(i) any individual possessing the nationality of a Contracting State;

(ii) any legal person, partnership and association deriving its status as such from the law in force in a Contracting State;

f) the term "international transport" means any transport by a ship, aircraft or road transport vehicle operated by an enterprise which has its place of effective management in a Contracting State, except when the ship, aircraft or road transport vehicle is operated solely between places in the other Contracting State.

g) the term "competent authority" means:

i) in the case of Spain, the Minister of Economy and Finance, the State Secretary of Finance, the General Director of Taxes or any other authority to whom the Minister delegates.

(ii) in the case of the Hungarian People's Republic the Minister of Finance or his authorized representative.

2.- In the application of this Convention by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of this convention.

Article 4 Resident

1.- For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State, or capital situated therein.

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 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 in which his center of vital interests is situated.

b) If the Contracting State in which he has his centre of vital interests cannot be determined, or if he has no permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has 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 he is a national of both Contracting 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 Contracting State in which its place of effective management is situated.

Article 5 Permanent Establishment

1.- For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2.- The term "permanent establishment" includes especially:

a) a place of management;

b) a branch;

c) an office;

d) a factory;

e) a workshop, and

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

3.- A building site or construction or installation or assembly project constitutes a permanent establishment only if it lasts more than twenty-four 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 the 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 in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

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

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

4.- 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.

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, nothing in paragraph 2 shall preclude that Contracting State from determining the

profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5.- 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.

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 International Transport

1.- Profits from the operation of ship, aircraft or road transport vehicle in international transport shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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

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

4.- For the purpose of this article, profits from the operation in international transport of ship, aircraft or road transport vehicle include profits derived from the use, maintenance or rental of containers and related equipment for the transport of containers used for the transport of goods or merchandise in international traffic.

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, may be included in the profits of that enterprise and taxed accordingly.

Article 10 Dividends

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

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

a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25 per cent of the capital of the company paying the dividends;

b) 15 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

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

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

4.- The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State 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 Article 14, as the case may be, shall apply.

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

2.- The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

3.- The provision of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, 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.

4.- Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such 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 if such resident is the beneficial owner of the royalties.

2.- The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, and films or tapes for radio or television broadcasting, 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.

3.- The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, 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.

4.- Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such 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 and situated in the other Contracting State may be taxed in that other State.

2.- Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State 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.

3.- Gains from the alienation of ship, aircraft road transport vehicle operated in international transport or movable property pertaining to the operation of such ship, aircraft or road transport vehicle shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4.- Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3, 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 term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15 Dependent Personal Services

1.- Subject to the provisions of Articles 16, 18, 19, 20 and 21 salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other state.

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

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned, and

b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3.- Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship, aircraft or road transport vehicle operated in international transport, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16 Directors' Fees

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

Article 17 Artists and Athletes

1.- Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artist, 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 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, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3.- Notwithstanding the provisions of paragraphs 1 and 2 of this Article income mentioned in this Article shall be exempt from tax in the Contracting State in which the activity of the entertainer or athlete is exercised provided that this activity is supported in a considerable part out of public funds of this State or of the other State or the activity is exercised under a cultural agreement or arrangement between the Contracting States.

Article 18 Pensions

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 a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

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

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2.-

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

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

3.- The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 20 Students

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

2.- Notwithstanding the provisions of Articles 14 and 15 a student or an apprentice mentioned in paragraph 1 shall not be taxed in the first State for an aggregate period not more than three years in respect of remuneration not exceeding annually 250 thousand pesetas in Spain or 60 thousand forints in the Hungarian People's Republic for services rendered in the first State, provided that the services are in connection with his studies or training or the remuneration of the services constitutes earnings necessary for his maintenance, studies and training.

Article 21 Teachers

1.- Remuneration received for education or scientific research by an individual who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first State for the purpose of scientific research or for teaching at a university college, establishment for higher education, or at a similar establishment shall be exempt from tax in the first State.

2.- The provision of paragraph 1 shall not apply to income from research or teaching if such research or teaching is undertaken not in the public interest but for the private benefit of a private person or persons.

Article 22 Other Income

1.- Items of income of a resident of a Contracting State wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2.- The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, 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 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.- 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 of an enterprise, or by movable property pertaining to a fixed base used for the

performance of professional services, may be taxed in the Contracting State in which the permanent establishment or fixed base is situated.

3.- Capital represented by ships, aircraft and road transport vehicles operated in international transport and by movable property pertaining to the operation of such ships, aircraft and road transport vehicles shall be taxable only in the Contracting State in which the place of effective management 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 Elimination of Double Taxation

1.- In Spain, double taxation will be avoided in the following manner:

a) Where a resident of Spain derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in the Hungarian People's Republic, Spain shall allow:

(i) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in the Hungarian People's Republic,

(ii) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in that other State.

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 the Hungarian People's Republic.

b) Where in accordance with any provision of the 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 tax on the remaining income or capital of such resident, take into account the exempted income or capital.

2.- In the Hungarian People's Republic, the double taxation will be avoided in the following manner:

(i) Where a resident of the Hungarian People's Republic derives income or owns capital which, in accordance with the provisions of this Convention may be taxed in Spain the Hungarian People's Republic shall, subject to the provisions of subparagraphs (ii) and (iii), exempt such income or capital from tax.

(ii) Where a resident of the Hungarian People's Republic derives items of income which, in accordance with the provisions of Article 10, may be taxed in Spain, the Hungarian People's Republic shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Spain. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given which is attributable to such items of income derived from Spain.

(iii) Where in accordance with any provision of the Convention income derived or capital owned by a resident of the Hungarian People's Republic is exempt from tax in the Hungarian People's Republic, the Hungarian People's Republic 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.- The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2.- The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for tax 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 Contracting State to any taxation or any requirement connected therewith which is more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

4.- Except where the provisions of Article 9, paragraph 4 of Article 11, or paragraph 4 of Article 12, apply interest royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. 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.

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 will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national 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 endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate 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 not in accordance with the 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 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 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 or on request of the Contracting State giving the information 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 purpose. 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 as to impose on one of the Contracting States the obligation:

- a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;
- b) to supply particulars which are 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 Members of Diplomatic or Consular Missions

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

Article 29 Entry Into Force

1.- The Contracting Parties shall notify each other as soon as possible that constitutional requirements for the entry into force of this Convention have been complied with.

2.- This Convention shall enter into force on the date of the latter of the notifications referred to in paragraph 1 and its provisions shall apply;

- a) in respect of taxes withheld at source, to amounts derived on or after 1st January in the calendar year next following that in which the Convention enters into force:

b) in respect of other taxes on income and taxes on capital, to taxes chargeable for the taxable year beginning on or after 1st January in the calendar year next following that in which the Convention enters into force.

Article 30 Termination

This Convention shall remain in force until denounced by one of the Contracting parties. Either Contracting Party may denounce the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year following after the period of five years from the date on which the Convention enters into force. In such event, the Convention shall cease to have effect:

a) in respect of taxes withheld at source, to amounts derived on or after 1st January in the calendar year next following that in which the notice is given.

b) in respect of their taxes on income, and taxes on capital, to taxes chargeable for any taxable year beginning on or after 1st January in the calendar year next following that in which the notice is given. In witness whereof the undersigned, duly authorized thereto have signed this convention.

Done in Madrid on the 9th of July, 1989 in two original copies in the Spanish, Hungarian and English languages, each text being equally authentic.

FOR THE GOVERNMENT OF SPAIN

[Signature]

FOR THE GOVERNMENT OF THE HUNGARIAN PEOPLE'S REPUBLIC

[Signature]

PROTOCOL

At the signing today of the Convention between the Government of the Hungarian People's Republic and the Government of Spain for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital the undersigned have agreed upon the following provisions which shall form an integral part of the Convention.

1. It is understood that the term "place of business" includes also a place of production.

2. Concerning Article 7, where a building site, construction, installation or assembly project constitutes a permanent establishment, only those profits can be attributed to that permanent establishment which derive from the activity of the building site, construction, installation or assembly project. No profit can be attributed to the permanent establishment by reason of delivery of goods or merchandise, machinery or equipment notwithstanding that the delivery was carried out by the enterprise or by a third person.

3. Concerning Article 8, operation in international transport of ship, aircraft or road transport vehicle includes the activity of agencies of international transport enterprises and auxiliary activities of those enterprises namely transport by bus between a town and the airport in so far as these above - mentioned activities are closely connected with international transport.

4. Every two years after the date at which the provisions of the Convention entered into force, the competent authorities may revise the amounts referred to in paragraph 2 of article 20.

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

Done in Madrid on the 9th of July 1984 in two original copies in Spanish Hungarian, and English languages, both being equally authentic.

FOR THE GOVERNMENT OF SPAIN:

FOR THE GOVERNMENT OF THE HUNGARIAN PEOPLE'S REPUBLIC: