

1994 Income and Capital Gains Tax Convention and Final Protocol

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Status: In Force

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

Ireland and the Kingdom of Spain 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 gains 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 gains imposed by each Contracting State, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and capital gains all taxes imposed on total income or on elements of income and on gains from the alienation of movable or immovable property.
3. The taxes which are the subject of this Convention are:
 - a) in Spain (and hereinafter referred to as "Spanish tax"):
 - i) the income tax on individuals (el Impuesto sobre la Renta de las Personas Físicas); and
 - ii) the corporation tax (el Impuesto sobre Sociedades);
 - b) in Ireland (and hereinafter referred to as "Irish tax"):
 - i) the income tax;
 - ii) the corporation tax; and
 - iii) the capital gains 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 any substantial changes which have been made in their respective taxation laws as soon as possible.

Article 3 General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:
 - a) the term "Spain" means the territory of the Spanish State including any area outside the territorial sea upon which, in accordance with international law and on application of its legislation, the Spanish State exercises or may exercise in the future jurisdiction or sovereign rights with respect to the seabed, its subsoil and superjacent waters, and their natural resources;
 - b) the term "Ireland" includes any area outside the territorial waters of Ireland which in accordance with international law has been or may hereafter be designated, under the laws of Ireland concerning the Continental Shelf, as an area within which the rights of Ireland with respect to the seabed and subsoil and their natural resources may be exercised;
 - c) the term "national" means:
 - i) in relation to Spain, any individual possessing the nationality of Spain and any legal person, association or other entity deriving its status as such from the law in force in Spain;
 - ii) in relation to Ireland, any citizen of Ireland, and any legal person, association or other entity deriving its status as such from the law in force in Ireland;
 - d) the term "tax" means Spanish tax or Irish tax, as the context requires;
 - e) the terms "a Contracting State" and "the other Contracting State" mean Spain or Ireland, as the context requires;
 - f) the term "person" includes an individual, a company and any other body of persons;
 - g) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

h) 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;

i) the term "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;

j) the term "competent authority" means:

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

ii) in the case of Ireland, the Revenue Commissioners or their authorised 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 term "resident of a Contracting State" means, subject to the provisions of paragraphs 2 and 3 of this Article, 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. 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. The terms "resident of Spain" and "resident of Ireland" shall be construed accordingly.

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

a) he shall be deemed to be a resident of the 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 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 of this Article 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 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;

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 project constitutes a permanent establishment only if it lasts more than 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 subparagraphs 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 of this Article, where a person -- other than an agent of an independent status to whom paragraph 7 of this Article 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 of this Article 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. A person engaged in a Contracting State in exploration of the seabed and its subsoil or in exploitation of natural resources situated there, as well as in activities which are complementary or auxiliary to such activities, shall be deemed to exercise such activities through a permanent establishment in that State. However, this provision shall not apply where these activities are carried on in the other Contracting State for a period not exceeding 30 days.

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

8. 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 and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 of this Article 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 of this Article 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. Where the ownership of shares or other rights in a company or other entity entitles the owner of such shares or rights to the enjoyment of real property held by the company or other entity, the income from the direct use, letting, or use in any other form of such right of enjoyment may be taxed in the Contracting State in which the real property is situated.

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 of this Article, where an enterprise of a Contracting State carries on business in the other 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 of this Article 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 of this Article, 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 or gains 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 harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

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

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. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10 Dividends

1. a) Dividends paid by a company which is a resident of Ireland to a resident of Spain may be taxed in Spain.

b) Where a resident of Spain is entitled to a tax credit in respect of a dividend under paragraph 2 of this Article, tax may also be charged in Ireland and according to the laws of Ireland on the aggregate of the amount of that dividend and the amount of that tax credit at a rate not exceeding 15 per cent.

c) Except as aforesaid dividends paid by a company which is a resident of Ireland and which are beneficially owned by a resident of Spain shall be exempt from any tax in Ireland which is chargeable on dividends.

2. A resident of Spain who receives dividends from a company which is a resident of Ireland shall, subject to the provisions of paragraph 3 of this Article and provided he is the beneficial owner of the dividends, be entitled to the tax credit in respect thereof to which an individual resident in Ireland would have been entitled if he had received those dividends, and to the payment of any excess of that tax credit over his liability to Irish tax.

3. The provisions of paragraph 2 of this Article shall not apply where the beneficial owner of the dividends is a company which either alone or together with one or more associated companies controls directly or indirectly at least 25 per cent of the voting power in the company paying the dividends. For

the purposes of this paragraph two companies shall be deemed to be associated if one controls directly or indirectly more than 50 per cent of the voting power in the other company, or a third company controls more than 50 per cent of the voting power in both of them.

4. a) Dividends paid by a company which is a resident of Spain to a resident of Ireland may be taxed in Ireland.

b) Such dividends may also be taxed in Spain according to the laws of Spain but if the resident of Ireland is the beneficial owner of the dividends, the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

c) Notwithstanding the provisions of subparagraph b), if the beneficial owner is a company which controls directly at least 25 per cent of the voting power in the company paying the dividends, such dividends shall be exempt front tax in Spain under the conditions established by the relevant Spanish law which implements the EC Directive on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (90/435/EEC).

5. The preceding paragraphs of this Article shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

6. 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 any income or distribution assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident.

7. The provisions of paragraphs 1, 2 and 4 of this Article 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.

8. 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 undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

9. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this Article.

Article II 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, as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises but does not include any income dealt with in Article 10. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

3. The provisions of paragraph 1 of this Article 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. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

5. 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 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 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 payment 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 may be taxed in that other State.

2. However, much royalties 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:

a) 5 per cent of the gross amount of royalties for the use of, or the right to use, any copyrights of literary, dramatic, musical or artistic work;

b) 8 per cent of the gross amount of royalties received in consideration for the use of, or the right to use, cinematographic films, or films, tapes, and other means of transmission or reproduction of image or sound, and of the gross amount of royalties for the use of, or the right to use, industrial, commercial or scientific equipment, and for any copyright of scientific work; and

c) 10 per cent of the gross amount of all other royalties.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. The term "royalties" as used in this Article means payment 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 cinematographic films, and films and tapes for television or radio 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.

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 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.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the royalties was incurred and the royalties are borne by that permanent establishment or fixed base, then the royalties shall be deemed to arise in the Contracting 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 or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the 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 situated in the other Contracting State may be taxed in that other State,

2. Gains from the alienation of shares, rights or an interest in a company, in any other legal person or in a partnership, the assets of which consist principally of, or of rights in, immovable property situated in a Contracting State or of shares in a company the assets of which consist principally of, or of rights in, such immovable property situated in a Contracting State may be taxed in the Contracting State in which the immovable property is situated.

3. Gains from the alienation of shares or other rights, other than those mentioned in paragraph 2 of this Article, in a company or other legal person which is a resident of a Contracting State may be

taxed in that Contracting State if the recipient of the gain, during the 12-month period preceding such alienation, had a participation, directly or indirectly, of at least 25 per cent in the capital of that company or other legal person.

4. Gains, other than those dealt with in paragraphs 2 and 3, 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 Contracting State.

5. Except as provided in Paragraphs 2 and 3 of this Article and notwithstanding the provisions of paragraph 4 of this Article, 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.

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

7. For the purposes of this Article the term "immovable property" means immovable property as defined in paragraph 2 of Article 6.

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 and 19, 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 there from 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 within any twelve-month period falling wholly or partly within the fiscal year concerned of that other State, and

b) the remuneration is paid by, or on behalf of, a person 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 person has in the other State.

3. Notwithstanding the preceding provisions of this Article, 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 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 Artistes 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 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, income derived by a resident of a Contracting State as an entertainer or athlete shall be exempt from tax in the other Contracting State if the visit to that other State is substantially supported by public funds of the first-mentioned State or of a political subdivision or local authority thereof.

Article 18 Pensions And Annuities

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid in consideration of past employment to a resident of a Contracting State and any annuity paid to such a resident shall be taxable only in that State.

2. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

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 purposes 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 or 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

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is 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 21 Professors And Teachers

1. A professor or teacher who visits one of the Contracting States for a period not exceeding two years for the sole purpose of teaching or carrying out advanced study (including research) at a university, college or other recognised research institute or other establishment for higher education in that Contracting State and who was immediately before that visit a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching or research for a period not exceeding two years from the date he first visits that Contracting State for such purpose. An individual shall be entitled to the benefits of this Article only once.

2. The preceding provisions of this Article shall not apply to remuneration which a professor or teacher receives for conducting research if the research is undertaken primarily for the private benefit a specific 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 of this Article shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being 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 Elimination of Double Taxation

1. In Spain, double taxation will be avoided, in accordance with the relevant provisions of the law of Spain, as follows:

a) Where a resident of Spain derives income or gains which, in accordance with the provisions of this Convention, may be taxed in Ireland, Spain shall allow as a deduction from the tax on the income or gains of that resident, an amount equal to the tax effectively paid in Ireland (excluding in the case of a dividend tax payable in respect of the profits out of which the dividend is paid).

Such deduction shall not, however, exceed that part of the Spanish tax, as computed before the deduction is given, which is attributable to the income or gains, as the case may be, which may be taxed in Ireland.

b) In the case of a dividend paid by a company which is a resident of Ireland to a company which is a resident of Spain and which controls directly 25 per cent or more of the voting power in the company paying the dividend, the credit shall take into account (in addition to any Irish tax creditable under the provisions of subparagraph a) of this paragraph) the Irish tax effectively paid by the company in respect of the part of the profits out of which such dividend is paid, provided that in such case the Spanish tax shall be charged on the aggregate of the amount of the dividend and the amount of the Irish tax so effectively paid by the company paying the dividend.

Such deduction, together with the deduction allowable in respect of the dividend under subparagraph a) of this paragraph, shall not exceed that part of the Spanish tax, as computed before the deduction is given, which is attributable to the income subject to tax in Ireland.

For the application of this subparagraph it shall be required that the participation in the company paying the dividend is held on a continuous basis during at least the two years prior to the day on which the dividend is paid.

2. Subject to the provisions of the laws of Ireland regarding the allowance as a credit against Irish tax of tax payable in a territory outside Ireland (which shall not affect the general principle hereof):

a) Spanish tax payable under the laws of Spain and in accordance with this Convention on profits, income or gains from sources within Spain (excluding in the case of a dividend tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any Irish tax computed by reference to the same profits, income or gains by reference to which the Spanish tax is computed.

b) In the case of a dividend paid by a company which is a resident of Spain to a company which is a resident of Ireland and which controls directly 25 per cent or more of the voting power in the company paying the dividend, the credit shall take into account (in addition to any Spanish tax creditable under the provisions of subparagraph a) of this paragraph) the Spanish tax payable by the company in respect of the profits out of which such dividend is paid.

For the application of this subparagraph it shall be required that the participation in the company paying the dividend is held on a continuous basis during at least the two years prior to the day on which the dividend is paid.

3. Where in accordance with any provision of the Convention income or gains derived by a resident of a Contracting State are exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income or gains of such resident, take into account the exempted income or gains.

Article 24 Non-Discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. 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 favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. The provisions of this Article shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

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

4. Except where the provisions of paragraph 1 of Article 9, paragraph 5 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable

profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

Article 25 Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with 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.

Article 26 Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by 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. Notwithstanding the provisions of paragraph 1 of this Article a Contracting State shall not be obliged:
 - a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
 - c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

Article 27 Diplomatic Agents and Consular Officers

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

Article 28 Entry Into Force

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Dublin as soon as possible.
2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:
 - a) in Spain:
 - i) in respect of taxes withheld at source, in relation to income derived on or after the first day of January in the calendar year next following that in which the Convention enters into force;
 - ii) in respect of other taxes, in relation to the income of any tax year beginning on or after the first day of January in the calendar year next following that in which the Convention enters into force;
 - b) in Ireland:
 - i) as respects income tax and capital gains tax, for any year of assessment beginning on or after the sixth day of April in the calendar year next following that in which this Convention enters into force;
 - ii) as respects corporation tax, for any financial year beginning on or after the first day of January, in the calendar year next following that in which this Convention enters into force.

Article 29 Termination

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the expiration of 5 years from the date of its entry into force. In such event the Convention shall cease to have effect:

a) in Spain:

- i) in respect of taxes withheld at source, in relation to income derived on or after the first day of January in the calendar year next following that in which the notice of termination is given;
- ii) in respect of other taxes, in relation to the income of any tax year beginning on or after the first day of January in the calendar year next following that in which the notice of termination is given;

b) in Ireland:

- i) as respects income tax and capital gains tax, for any year of assessment beginning on or after the sixth day of April in the calendar year next following that in which such notice is given;
- ii) as respects corporation tax, for any financial year beginning on or after the first day of January in the calendar year next following that in which such notice is given.

In witness whereof the Plenipotentiaries of the two Contracting States, duly authorised thereto, have signed the present Convention and affixed thereto their seals.

Done in duplicate at Madrid this 10th day of February, 1994 in the English and Spanish languages, each text being equally authoritative.

FOR IRELAND:

Richard Ryan Javier

FOR THE KINGDOM OF SPAIN

Solana Madariaga

PROTOCOL

At the moment of signing the Convention between Ireland and the Kingdom of Spain for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains, the undersigned have agreed upon the following provisions which shall be an integral part of the Convention.

1. Where under any provision of this Convention income or gains is, or are, relieved from tax in Spain and, under the law in force in Ireland, an individual, in respect of the said income or gains, is subject to tax by reference to the amount thereof which is remitted to or received in Ireland, and not by reference to the full amount thereof, the relief to be allowed under this Convention in Spain shall apply only to so much of the income or gains as is, or are, remitted to or received in Ireland.

2. Notwithstanding the provisions of this Convention, income (imputed or otherwise) or capital gains derived from time-share rights not exceeding 4 annual weeks by a resident of a Contracting State, and capital represented thereby owned by a resident of a Contracting State, shall be taxable only in that State.

3. Notwithstanding the provisions of Articles 10, 11, 12 and 13, the tax reductions or exemptions which would, under those provisions, otherwise be applicable to dividends, interest, royalties and gains, shall not apply where such income or gains are derived from one Contracting State by a company which is a resident of the other Contracting State and in which persons who are not residents of that other Contracting State hold directly or indirectly a participation of more than 50 per cent of the share capital:

Provided that the provisions of this paragraph shall apply only to dividends, interest, royalties and gains arising in one of the Contracting States and derived by a company resident in the other Contracting State where that company is engaged merely in the holding of shares or other property.

4. a) Notwithstanding the provisions of paragraph 1 of Article 11, if under Spanish domestic legislation interest arising in Spain and paid to a resident of Ireland becomes subject to Spanish taxation, such interest, which may be taxed in Ireland, may also be taxed in Spain, but if the recipient of the interest is the beneficial owner, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

b) The provisions of subparagraph a) shall, in no case, apply to interest paid in connection with the sale on credit of any industrial, commercial or scientific equipment.

5. Notwithstanding paragraph 2 of Article 12, but subject to paragraphs 4 and 6 of that Article, income derived by a resident of a Contracting State from the leasing on a bareboat basis of ships, aircraft or containers, used in international traffic, shall be taxable only in that State.

6. Nothing in Article 24 shall be construed as preventing a State from applying the provisions of its domestic laws regarding "thin-capitalisation".

7. The Agreement dated 25 February, 1975, between Ireland and Spain for the avoidance of double taxation on income derived from the business of sea or air transport shall not have effect as respects any tax for any period for which this Convention has effect in relation to that tax.

In witness whereof the Plenipotentiaries of the two Contracting States, duly authorised thereto, have signed the present Protocol and affixed there to their seals.

Done in duplicate at Madrid this 10th day of February, 1994 in the English and Spanish languages, each text being equally authoritative.

FOR IRELAND:

Richard Ryan Javier

FOR THE KINGDOM OF SPAIN

Solana Madariaga