

1999 Income and Capital Tax Convention and Final Protocol

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

The State of Israel 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 on 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 income tax on non residents;
 - iv) the capital tax; and
 - v) local taxes on income and on capital; (hereinafter referred to as "Spanish Tax");
 - b) in Israel:
 - i) taxes imposed according to the Income Tax Ordinance and its adjunct laws (including company tax and tax on capital gains);
 - ii) taxes imposed upon gains from the alienation of real property according to the Land Appreciation Tax Law;
 - iii) taxes imposed on real property according to the Property Tax Law; and
 - iv) the tax imposed according to the Employers Tax Law; (hereinafter referred to as "Israeli 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 each other of 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 term "Spain" means the Spanish State and, when used in a geographical sense, it comprises 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 domestic 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 "Israel" means the State of Israel and, when used in a geographical sense, it comprises the territory of the State of Israel including any area outside the territorial sea upon which, in accordance with international law and on application of its domestic legislation, the State of Israel 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;

- c) the terms "a Contracting State" and "the other Contracting State" mean Spain or Israel as the context requires;
 - d) the term "person" includes an individual, a company and any other body of persons;
 - e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - f) the 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;
 - g) the term "national" means:
 - i) any individual possessing the nationality of a Contracting State;
 - ii) any legal person, partnership or association deriving its status as such from the law in force in a Contracting State;
 - h) 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;
 - i) 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 Israel, the Minister of Finance or his authorized representative.
2. As regards the application of this Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that Contracting State relating to the taxes which are the subject of this Convention, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4 Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. However, a person will not be deemed to be a resident of a Contracting State by virtue only of his being liable to tax in that State in respect of income from sources in that State.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:
- a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);
 - b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
 - c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
 - d) if 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, construction, installation or assembly project, or supervisory or consulting activities connected therewith, constitutes a permanent establishment only if it lasts more than 12 months.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

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

5. Notwithstanding the provisions of paragraphs 1, 2 and 3, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise of the other Contracting State 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 Shipping Transport 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 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 State has been charged to tax in that other Contracting State and that other State agrees that the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of 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. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

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, 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 in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of applications of this limitation.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to a resident of the other Contracting State in connection with the sale on credit of any industrial, commercial or scientific equipment, or in connection with the sale on credit of any merchandise by one enterprise to another enterprise, or on any loan granted by a financial institution may be taxed in the first mentioned State and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the interest.

4. Notwithstanding the provisions of paragraphs 2 and 3 interest arising in a Contracting State shall be exempt from tax in that State if it is paid in relation to any loan granted or directly guaranteed by the Government of the other Contracting State, including its political subdivisions and local authorities, the Central Bank of the other Contracting State or any financial instrumentality of that Government as may be agreed upon by the competent authorities of the Contracting States.

5. 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. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

6. The provisions of paragraphs 1,2,3 and 4 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.

7. Interest shall be deemed to arise in a Contracting State when the payer is that 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.

8. 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 may be taxed in that other State.

2. However, such royalties may be taxed in the Contracting State in which they arise, and according to the law of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed:

a) 5 per cent of the gross amount of the royalties for the use of or the right to use any copyrights of literary, dramatic, musical, artistic work or for the use of, or the right to use, industrial, commercial or scientific equipment.

b) 7 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 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 cinematographic films or other films, video tapes or other tapes, and other means of image or sound reproduction, 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 professional 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 a 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 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 fixed base in connection with which the obligation to pay the royalties was incurred, and those royalties are borne by the permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

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 that 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 shares or other participation rights in a company, the assets of which consist, directly or indirectly, mainly of real property situated in one of the Contracting States, may be taxed in that State.

3. Gains derived by a resident of a Contracting State from the sale, exchange or other disposition, directly or indirectly, of shares in a company which is a resident of the other Contracting State, may be taxed in that other State, but only if the resident of the first-mentioned State owned either directly or indirectly at any time within the twelve-month period preceding such sale, exchange or other disposition, shares giving the right to 25 per cent or more of the voting power in the company. However, the tax so charged shall not exceed 25 per cent of the net amount of the gains mentioned in this paragraph.

For the purposes of this paragraph, indirect ownership shall be deemed to include, but not be limited to, ownership by a related person.

4. 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 Contracting State.

5. Gains from the alienation of ships or aircraft operated in international traffic and 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.

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, 17, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any 12 month period, and

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

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

3. Notwithstanding the 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 an athlete shall be exempt from tax by the other Contracting State if the visit to that other State is substantially supported by public funds of the first-mentioned State or a political subdivision or local authority thereof.

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) Salaries, wages and other similar 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

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 shall be exempt from tax in that Contracting State on:

a) payments received from abroad for the purpose of his maintenance, education or training;

b) scholarships, grants, allowances, and awards from governmental, scientific, literary or educational organizations for the purposes of his maintenance, education or training.

Article 21 Teachers and Researchers

1. An individual who is or was a resident of a Contracting State immediately before making a visit to the other Contracting State and, at the invitation of any university, college, school or other similar educational institution which is recognized as non-profitable by the Government of that other State, stays in that other State for the purpose of teaching or doing research, shall be exempt from tax in that other State on his remuneration for such teaching or research for a period of two years from the date of his arrival to that State.

2. The provisions of paragraph 1 of this Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of 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 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 a 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 shares or other participation rights in a company, the assets of which consist, directly or indirectly, mainly of real property situated in a Contracting State, may be taxed in that State.

3. Capital represented by shares or other participation rights in a company that is a resident of a Contracting State, owned by a resident of the other Contracting State, may be taxed in the first-mentioned State if the owner of such shares or rights held, directly or indirectly, at any time during the fiscal year concerned at least 25 per cent of the capital of the company.

4. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by

movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

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

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

Article 24 Relief From Double Taxation

1. In Spain, double taxation will be avoided, in accordance with the relevant provisions of the law of Spain, which shall not affect the general principle contained in this paragraph, as follows:

a) Where a resident of Spain derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Israel, Spain shall allow as a deduction from the tax on the income or on the capital of that resident, an amount equal to the tax effectively paid in Israel.

Such deduction shall not, however, exceed that part of the tax on income or the tax on capital, 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 Israel.

b) In the case of a dividend paid by a company which is a resident of Israel to a company which is a resident of Spain and which holds at least 25 per cent of the capital of the company paying the dividend, or the percentage provided for by the Spanish internal legislation in case it were lower, in the computation of the credit it shall be taken into account, in addition to the tax creditable under subparagraph a) of this paragraph, that part of the tax effectively paid by the first-mentioned company on the profits out of which the dividend is paid, which relate to such dividend, provided that such amount of tax is included, for this purpose, in the taxable base of the receiving company. 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 income tax, as computed before the deduction is given, which is attributable to the income subject to tax in Israel.

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 at least during the year prior to the date of payment of the dividend.

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

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

a) Where a resident of Israel derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Spain, Israel shall allow as a deduction from the tax on the income or on the capital of that resident, an amount equal to the tax effectively paid in Spain.

Such deduction shall not, however, exceed that part of the income tax or the 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 Spain.

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 Israel and which holds at least 25 per cent of the capital of the company paying the dividend, or the percentage provided for by the Israeli internal legislation in case it were lower, in the computation of the credit it shall be taken into account, in addition to the tax creditable under subparagraph a) of this paragraph, that part of the tax effectively paid by the first-mentioned company on the profits out of which the dividend is paid, which relate to such dividend, provided that such amount of tax is included, for this purpose, in the taxable base of the receiving company. However, the additional tax credit referred to in this subparagraph shall not prevent Israel from imposing a tax on such dividend at a rate that may not exceed 5 per cent.

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 income tax, as computed before the deduction is given, which is attributable to the income subject to tax in Spain.

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 at least during the year prior to the date of payment of the dividend.

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

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 in particular with respect to residence 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.

3. Except where the provisions of Article 9, paragraph 8 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. Similarly, any debts of an enterprise of a Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

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

5. The provisions of 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 tax purposes on account of civil status or family responsibilities which it grants to its own residents.

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

Article 26 Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or 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 which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic laws of the Contracting States.

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 shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

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

Article 28 Members of Diplomatic Missions and Consular Posts

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

Article 29 Entry Into Force

1. The Contracting States shall notify each other that the constitutional requirements for the entry into force of this Convention have been complied with.

2. The Convention shall enter into force on the date of receipt of the later of the notifications referred to in paragraph 1 and its provisions shall have effect:

- a) 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;
- b) in respect of other taxes, in relation to the income or capital 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.

Article 30 Termination

This Convention shall remain in force until denounced by one of the Contracting States. Either Contracting State 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 three 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, 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;
- b) in respect of other taxes, in relation to the income or capital 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.

In witness whereof the Plenipotentiaries of the two Contracting States, duly authorized thereto, have signed the present Convention.

Done in duplicate at Jerusalem this 30th day of November 1999, which corresponds to the 21st day of AV 5760 in the Hebrew, Spanish and English languages, the three texts being equally authentic. In case there is any divergence of interpretation of the provisions of this Convention, the English text shall prevail.

FOR THE STATE OF ISRAEL:

FOR THE KINGDOM OF SPAIN:

PROTOCOL

At the moment of signing the Convention between the Kingdom of Spain and the State of Israel 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 be an integral part of the Convention.

1. With reference to paragraph 3 of Article 10 (Dividends), with respect to Spain it is understood that the term "dividends" includes profits on the liquidation of a company which is a resident of Spain.
2. With reference to Article 25 (Non-discrimination), it is understood that the provisions of this Article shall not prevent the application by a Contracting State of its domestic law concerning thin capitalisation, where necessary.
3. With reference to Articles 10 (Dividends), 11 (Interest), 12 (Royalties) and 13 (Capital Gains), it is understood that:

a) Notwithstanding the provisions of this Convention, a company resident in a Contracting State in which persons who are not residents of that State hold, directly or indirectly, a participation of more than 50 per cent of the share capital, shall not be entitled to the reliefs provided for by the Convention in respect of dividends, interest, royalties and capital gains arising in the other Contracting State. This provision shall not apply where the said company is engaged in substantive business operations, other than the mere holding of shares or property, in the Contracting State of which it is a resident.

b) A company which under the preceding subparagraph would not be entitled to the benefits of the Convention in respect of the aforementioned items of income, could still be granted such benefits if the competent authorities of the Contracting States agree under article 26 of this Convention that the establishment of the company and the conduct of its operations are founded on sound business reasons and thus do not have as its primary purpose the obtaining of such benefits.

In witness whereof the Plenipotentiaries of the two Contracting States, duly authorized thereto, have signed the present Protocol.

Done in duplicate at Jerusalem this 30th day of November 1999, which corresponds to the 21st day of AV 5760 in the Hebrew, Spanish and English languages, the three texts being equally authentic. In case there is any divergence of interpretation of the provisions of this Protocol, the English text shall prevail.

FOR THE STATE OF ISRAEL:

FOR THE KINGDOM OF SPAIN: