

1994 Income Tax Convention and Final Protocol

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

The Government of the Republic of Korea and the Government of 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, 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. The taxes to which this Convention shall apply are:

(a) In the case of Korea:

(i) the income tax:

(ii) the corporation tax: and

(iii) the inhabitant tax

(hereinafter referred to as "Koreas tax"):

(b) In the case of Spain:

(i) the income tax on individuals (el Impuesto sobre la Renta de las personas físicas):

(ii) the corporation tax (el Impuesto Sobre Sociedades): and

(iii) the local tax on the increase of value of urban land

(hereinafter referred to as "Spanish Tax").

2. 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.

Article 3 General Definitions

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

(a) the term "Korea" means the territory of the Republic of Korea including any area adjacent to the territorial sea of the Republic of Korea which, in accordance with international law, has been or may hereafter be designated under the laws of the Republic of Korea as an area within which the sovereign rights of the Republic of Korea with respect to the seabed and subsoil and their natural resources may be exercised:

(b) 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 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:

(c) the terms "a Contracting State" and "the other Contracting State" mean Korea or Spain, as the context requires:

(d) the term "tax" means Korean tax or Spanish tax, as the context requires:

(e) the term "person" includes an individual, a company and any other body of persons:

(f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes:

(g) 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:

(h) the term "nationals" means:

(i) all individuals possessing the nationality of a Contracting State:

(ii) all legal persons, partnerships and associations deriving their status as such from the laws in force in a contracting State:

(i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of 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 Korea, the Minister of Finance or his authorized representative:

(ii) in the case of Spain, the Minister of Economy and 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 under the law of that Contracting 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 any person who, under the laws of that State, is liable to tax Therein by reason of his domicile, residence, place of head or main office 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.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of but 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 liable to him in both States, he shall be deemed to be a resident of the State with which his personal and economics 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 State 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:

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

(g) a building site or construction or installation project which exists for more than 12 months.

3. 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.

4. Notwithstanding the provisions of paragraphs 1 and 2, where a person-other than an agent of independent status to whom paragraph 5 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 3 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.

5. 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.

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

5. 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.

6. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8 Shipping and Air Transport

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. 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

Where:

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

Article 10 Dividends

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

(a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25 per cent of the capital of the company paying the dividends:

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

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, mining shares founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

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

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's Undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11 Interest

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

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

3. Notwithstanding the provisions of paragraph 2,

(a) Interests arising in a Contracting State and derived by the government of the other Contracting State including political subdivisions and local authorities thereof, the Central Bank of that other Contracting State or any financial instrumentality of that Government as may be agreed upon by the competent authorities of the Contracting States or by any resident of the other Contracting State with respect to debt-claims guaranteed or indirectly financed by the Government of that other Contracting State including political sub-divisions and local authorities thereof, the Central Bank of that other Contracting State or any financial instrumentality as may be agreed upon by the competent authorities of the Contracting States, shall be exempt from tax in the first-mentioned contracting State.

(b) Interests paid in connection with the sale on credit of any industrial, commercial or scientific equipment, or paid in connection with the sale on credit of any merchandise by one enterprise to another enterprise shall be taxable only in the Contracting State of which the beneficiary is a resident.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures as well as all other income assimilated to income from money lent by the taxation laws of the State in which the income arises.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on 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.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, 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.

7. 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 laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 10 per cent of the gross amount of the royalties

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 and films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

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 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, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain

taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13 Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of shares, parts or other rights in a company, or other legal person, the property of which consist, directly or indirectly, mainly of 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 gains, 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 legal person. However, the tax so charged shall not exceed 10 per cent of the gains mentioned in this paragraph.
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. 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 of which the enterprise is a resident.
6. Gains from the alienation of any property other than that 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, 18, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such a 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 twelve months period commencing or ending in the fiscal year concerned: and
 - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State: and
 - (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State, may be taxed in that State.

Article 16 Directors Fees

Directors' fees and the 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 Contracting State.

Article 17 Artistes and Sportsmen

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 sportsman 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 a sportsman in his capacity as such accrues not to the entertainer or sportsman 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 sportsmen are exercised.
3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, income derived from the activities referred to in paragraph 1 performed under a programme of cultural exchange agreed upon between the Governments of both Contracting States, shall be exempt from tax in the Contracting State in which the activities are exercised.

Article 18 Pensions

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

Article 19 Government Service

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
 - (i) is a national of that other 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 and Trainees

1. (a) An individual who is a resident of a Contracting State at the beginning of his visit to the other Contracting State and who is temporarily present in that other Contracting State for the primary purpose of:
 - (i) studying at a university or other accredited educational institution in that other Contracting State: or
 - (ii) securing training required to qualify him to practice a profession or professional specialty: or
 - (iii) studying or doing research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary or educational organization,shall be exempt from tax by that other Contracting State with respect to the amounts described in subparagraph (b) of this paragraph for a period not exceeding five years from the date of his arrival in that other Contracting State.
(b) the amounts referred to in subparagraph (a) of this paragraph are:
 - (i) payments from abroad, other than compensation for personal services, for the purpose of his maintenance, education, study, research or training:
 - (ii) the grant, allowance or award: and
 - (iii) income from personal services performed in that other Contracting State in an aggregate amount not in excess of 1,000,000 Pesetas or its equivalent in Korean currency for any taxable year.
2. An individual who is a resident of a Contracting State at the beginning of his visit to the other Contracting State and who is temporarily present in that other Contracting State as an employee of or under contract with, a resident of the first-mentioned Contracting State, for the primary purpose of:
 - (a) acquiring technical, professional or business experience from a person other than that resident of the first-mentioned Contracting State, or
 - (b) studying at a university or other accredited educational institution in that other Contracting State

shall be exempt from tax by that other Contracting State for a period of 12 consecutive months with respect to his income from personal services in an aggregate amount not in excess of 1,000,000 Pesetas or its equivalent in Korean currency.

3. 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 21 Professors and Teachers

An individual who is or was a resident of a Contracting State immediately before making a visit to the other Contracting State, who, 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, visits that other State for a period not exceeding two years from the date of his first arrival in that other State, solely for the purpose of teaching or doing research or both at such educational institution shall be exempt from tax in that other State on his remuneration for such teaching or research.

Article 22 Other Income

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

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

Article 23 Relief From Double Taxation

1. In the case of a resident of Korea, double taxation shall be avoided as follows:

Subject to the provisions of Korean tax law regarding the allowance as a credit against Korean tax of tax payable in any country other than Korea (which shall not affect the general principle hereof), the Spanish tax payable (excluding, in the case of dividend, tax payable in respect of profits out of which the dividend is paid) under the laws of Spain and in accordance with this Convention, whether directly or by deduction, in respect of income from sources within Spain shall be allowed as a credit against Korean tax payable in respect of that income. The credit shall not, however, exceed that proportion of Korean tax which the income from sources within Spain bears to the entire income subject to Korean tax.

2. In the case of a resident of Spain, double taxation shall be avoided, in accordance with the relevant provision of the law of Spain, as follows:

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

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

(b) In the case of a dividend paid by a company which is a resident of Korea to a company which is a resident of Spain and which holds directly at least 25 per cent of the capital of the company paying the dividend, in the computation of the deduction it shall be taken into account, in addition to the tax deductible 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 relates 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 Korean tax.

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 the two years prior to the day of payment of the dividend.

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

Article 24 Non-Discrimination

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the

taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting State.

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

3. Except where the provisions of Article 9, paragraph 7 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.

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 requirements 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, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 25 Mutual Agreement Procedure

1. Where a person considers that the action of one or both of the Contracting States result or will result for him in taxation not in accordance with 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 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.

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 and for the avoidance of the abuse of 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 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 or administrative bodies) involved in 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 or the administrative practice of that or of the other Contracting State:

(b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State:

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

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 as soon as possible.

2. The Convention shall enter into force upon the exchange of the instruments of ratification and its provision shall have effect:

(a) in respect of taxes withheld at the source, on amounts paid to non-residents on or after the first day of January of the calendar year next following that in which the exchange of the instruments of ratification takes place; and

(b) in respect of other taxes, for taxation years beginning on or after the first day of January of the calendar year next following that in which the exchange of the instruments of ratification takes place.

Article 29 Termination

This Convention shall remain in force indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year from the fifth year, following that in which the instruments of ratification have been exchanged, give to the other Contracting State, through diplomatic channels, written notice of termination and, in such event, this Convention shall cease to have effect:

(a) in respect of tax withheld at the source, on amounts paid to non-residents on or after the first day of January in the calendar year next following that in which the notice is given and

(b) in respect of other taxes, for taxation years beginning on or after the first day of January in the calendar year next following that in which the notice is given

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention.

DONE in duplicate at Seoul this 17th day of January of the year one thousand nine hundred and ninety-four in the Korean, Spanish and English languages, all texts being equally authentic In case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA

FOR THE GOVERNMENT OF THE KINGDOM OF SPAIN

PROTOCOL

At the moment of signing the Convention between the Republic of Korea and the Kingdom of Spain for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed upon the following provisions which shall be an integral part of the Convention.

1. With reference to Article 10 (Dividends):

(a) It is understood that the term "dividends" includes profits on the liquidation of a company which is a resident of a Contracting State.

(b) Notwithstanding subparagraph (a) of paragraph 2 of Article 10 subparagraph (b) of that paragraph shall apply in all cases to a dividend paid by a Spanish investment institution which is subject to Spanish tax according to Article 34 or Article 35 of Law 46 of December 26, 1984.

2. With reference to Article 19 (Government Service):

The provisions of paragraphs 1, 2 and 3 of Article 19 shall likewise apply in respect of remuneration or pensions paid by the governmental instrumentalities performing functions of governmental nature as may be confirmed by the competent authorities of the Contracting State upon the request of the said instrumentalities. It is understood that, in the case of Korea, the Bank of Korea and the Korea Trade Promotion Corporation are included in the governmental instrumentalities.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Protocol.

DONE in duplicate at Seoul this 17th day of January of the year one thousand nine hundred and ninety-four in the Korean, Spanish and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA

FOR THE GOVERNMENT OF THE KINGDOM OF SPAIN