

2003 Income and Capital Tax Convention and Final Protocol

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

The Kingdom of Spain and the Republic of Lithuania, 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:

Chapter I

Scope of the Convention

Article 1 Persons Covered

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, 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 (Impuesto sobre la Renta de las Personas Físicas);
- (ii) the corporation tax (Impuesto sobre la Renta de Sociedades);
- (iii) the income tax on non residents (Impuesto sobre la Renta de no Residentes);
- (iv) the capital tax (Impuesto sobre el Patrimonio);
- (v) local taxes on income and on capital (impuestos locales sobre la renta y sobre el patrimonio); (hereinafter referred to as "Spanish tax");

b) in Lithuania:

- (i) the tax on profits of legal persons (juridiniu asmenu pelno mokestis);
- (ii) the tax on income of natural persons (fiziniu asmenu pajamu mokestis);
- (iii) the tax on enterprises using state-owned capital (palukanos uz valstybinio kapitalo naudojima);
- (iv) the immovable property tax (nekilnojamojo turto mokestis); (hereinafter referred to as "Lithuanian tax").

4. The Convention shall apply also to any identical or substantially similar taxes that 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 significant changes that have been made in their taxation laws.

Chapter II

Definitions

Article 3 General Definitions

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

- a) the term "Spain" means the Kingdom of Spain and, when used in the geographical sense, comprises the land territory, inland waters and the territorial sea and any other area outside the territorial sea of Spain over which, under the National Law of the Kingdom of Spain and in accordance with International Law, it exercises and/or may exercise jurisdiction and sovereign rights;
- b) the term "Lithuania" means the Republic of Lithuania and, when used in the geographical sense, comprises the land territory, inland waters, the territorial sea and any other area outside the territorial sea of the Republic of Lithuania over which under the laws of the Republic of Lithuania and in accordance with International Law, it exercises and/or may exercise jurisdiction and sovereign rights;
- c) the terms "a Contracting State" and "the other Contracting State" mean Spain or Lithuania, 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 "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;
 - h) the term "competent authority" means:
 - (i) in Spain, the Minister of Finance or his authorised representative;
 - (ii) in Lithuania, the Minister of Finance or his authorised representative;
 - i) the term "national" means:
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership, association or other entity deriving its status as such from the laws in force in a Contracting State.
2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, 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, place of incorporation or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
- a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
 - b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only 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 only of the State of which he is a national;
 - d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement, having regard to the person's place of effective management, the place where it is incorporated or constituted, and any other relevant economic and material factors. In the absence of such agreement, for the purposes of the Convention, the person shall not be entitled to claim any benefits provided by this Convention.

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, a construction, assembly or installation project or a supervisory activity connected therewith constitutes a permanent establishment only if such site, project or activity lasts for a period of more than nine months.

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

a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business 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.

Chapter III

Taxation of Income

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 provisions of this Convention relating to immovable property shall apply also to 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. Where the ownership of shares or other corporate rights in a company entitles the owner of such shares or corporate rights to the enjoyment of immovable property held by the company, the income from the direct use, letting, or use in any other form of such right to the enjoyment may be taxed in the Contracting State in which the immovable property is situated.

5. The provisions of paragraphs 1, 3 and 4 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 in a Contracting State, there shall be allowed as deductions expenses (other than expenses which would not be deductible if that permanent establishment were a separate enterprise of that Contracting State) which are incurred for the purposes of the permanent establishment including executive and general administrative expenses, whether incurred 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

1. Where

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

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10 Dividends

1. 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:

a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) 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 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.

3. Notwithstanding the provisions of paragraph 2:

a) interest arising in a Contracting State, derived and beneficially owned by the Government of the other Contracting State, including political subdivisions and local authorities thereof, the Central Bank or any financial institution wholly owned by that Government, or interest paid in respect of a loan guaranteed by that Government, subdivision or authority or a public institution acting within the framework of the promotion of the export and which is agreed upon by the mutual agreement of the competent authorities of both Contracting States, shall be exempt from tax in the first-mentioned State;

b) interest arising in a Contracting State shall be exempt from tax in that State if the beneficial owner of the interest is an enterprise of the other Contracting State, and the interest is paid with respect to an indebtedness arising as a consequence of the sale on credit by an enterprise of that other State of any merchandise, or industrial, commercial or scientific equipment to an enterprise of the first-mentioned State, except where the sale or indebtedness is between related persons.

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 Contracting State in which income arises. However, the term "interest" shall not include any income which is treated as a dividend under the provisions of Article 10. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

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 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 also be taxed in the Contracting State in which they arise and according to the laws 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 paid for the use of industrial, commercial or scientific equipment;
 - b) 10 per cent of the gross amount of the royalties in all other cases.
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes and other means of image or sound reproduction for radio or television broad-casting, 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 a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner 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 or shares in a company the assets of which consist mainly of such property may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains derived by an enterprise of a Contracting State operating ships or aircraft in international traffic 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 that State.
4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14 Independent Personal Services

1. Income derived by an individual who is 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. For this purpose, where an individual who is a resident of a Contracting State stays in the other Contracting State for a period or periods exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, he shall be deemed to have a fixed base regularly available to him in that other State and the income that is derived from his activities referred to above that are performed in that other State shall be attributable to that fixed base.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15 Dependent Personal Services

1. Subject to the provisions of Articles 16, 18, 19 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 twelve month 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 other similar remuneration derived by a resident of a Contracting State in his capacity as a member of the board of directors or any other similar organ of a company which is a resident of the other Contracting State may be taxed in that other 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 a 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 sportsman 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) 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 salaries, wages and other similar 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, 17, and 18 shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 20 Students

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

Article 21 Offshore Activities

1. The provisions of this Article shall apply notwithstanding the provisions of Articles 4 to 20 of this Convention.

2. For the purposes of this Article, the term "offshore activities" means activities carried on offshore in a Contracting State in connection with the exploration or exploitation of the sea bed and sub-soil and their natural resources situated in that State.

3. A person who is a resident of a Contracting State and carries on offshore activities in the other Contracting State shall, subject to paragraph 4, be deemed to be carrying on business in that other State through a permanent establishment or a fixed base situated therein.

4. The provisions of paragraph 3 shall not apply where the offshore activities are carried on for a period or periods not exceeding in the aggregate 30 days in any twelve month period. For the purposes of this paragraph:

a) offshore activities carried on by a person who is associated with another person shall be deemed to be carried on by the other person if the activities in question are substantially the same as those carried on by the first-mentioned person, except to the extent that those activities are carried on at the same time as its own activities;

b) a person shall be deemed to be associated with another person if one is controlled directly or indirectly by the other, or both are controlled directly or indirectly by a third person or third persons.

5. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment connected with offshore activities in the other Contracting State may, to the extent that the duties are performed offshore in that other State, be taxed in that other State. However, such remuneration shall be taxable only in the first-mentioned State if the employment is carried on for an employer who is not a resident of the other State and for a period or periods not exceeding in the aggregate 30 days in any twelve month period.

6. Gains derived by a resident of a Contracting State from the alienation of:

a) exploration or exploitation rights; or

b) property situated in the other Contracting State which is used in connection with the offshore activities carried on in that other State; or

c) shares deriving their value or the greater part of their value directly or indirectly from such rights or such property or from such rights and such property taken together; may be taxed in that other State.

In this paragraph the term "exploration or exploitation rights" means rights to assets to be produced by offshore activities carried on in the other Contracting State, or to interests in or to the benefit of such assets.

Article 22 Other Income

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

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

Chapter IV

Taxation of Capital

Article 23 Capital

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by movable property forming part of the business property of a permanent establishment 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.

3. Capital of an enterprise of a Contracting State represented by ships and aircraft operated in international traffic by that enterprise and by movable property pertaining to the operation of such ships and aircraft, shall be taxable only in that State.

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

Chapter V

Methods for Elimination of Double Taxation

Article 24 Elimination of Double Taxation

Double taxation shall be avoided as follows:

In Spain:

In accordance with the provisions and subject to the limitations of the laws of Spain:

a) Where a resident of Spain derives income or owns elements of capital which, in accordance with the provisions of this Convention, may be taxed in Lithuania, Spain shall allow:

(i) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Lithuania;

(ii) as a deduction from the tax on the capital of that resident, an amount equal to the tax paid in Lithuania on the same elements of capital;

(iii) the deduction of the underlying corporation tax shall be given in accordance with the internal legislation of Spain.

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

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

2. In Lithuania:

Where a resident of Lithuania derives income or owns capital which, in accordance with this Convention, may be taxed in Spain, unless a more favourable treatment is provided in its domestic law, Lithuania shall allow:

a) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid thereon in Spain;

b) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid thereon in Spain.

Such deduction in either case shall not, however, exceed that part of the income tax or capital tax in Lithuania, 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.

Chapter VI

Special Provisions

Article 25 Non-Discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, 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. 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 taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting

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

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

5. 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 the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 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 a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall 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, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

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) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose 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 (*ordre public*).

Article 28 Members of Diplomatic Missions and Consular Posts

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

Chapter VII
Final Provisions

Article 29 Entry Into Force

1. The Governments of the Contracting States shall notify each other that the internal procedures required by the law of each Contracting State for the entry into force of this Convention have been complied with.

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 in both Contracting States:

- a) in respect of taxes withheld at source, on income derived on or after the first day of January in the calendar year next following the year in which the Convention enters into force;
- b) in respect of other taxes on income and taxes on capital, for taxes chargeable for any fiscal year beginning on or after the first day of January in the calendar year next following the year in which the Convention enters into force.

Article 30 Termination

This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention, through diplomatic channels, by giving written notice of termination at least six months before the end of any calendar year. In such event, the Convention shall cease to have effect in both Contracting States:

- a) in respect of taxes withheld at source, on income derived on or after the first day of January in the calendar year next following the year in which the notice has been given;
- b) in respect of other taxes on income and taxes on capital, for taxes chargeable for any fiscal year beginning on or after the first day of January in the calendar year next following the year in which the notice has been given.

In witness whereof, the undersigned, duly authorised thereto, have signed this Convention. Done in duplicate in Madrid this 22 day of July 2003, in the Spanish, Lithuanian and English languages, all three texts being equally authentic. In the case of divergence between any of the texts, the English text shall prevail.

FOR THE KINGDOM OF SPAIN:

FOR THE REPUBLIC OF LITHUANIA:

PROTOCOL

At the moment of signing the Convention between the Kingdom of Spain and the Republic of Lithuania 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.

I. Ad Article 2, paragraph 2

It is understood that taxes on the total amounts of wages or salaries paid by enterprises shall also be regarded as taxes on income, but social security charges or any other similar charges shall not be regarded as taxes on income.

II. Ad Article 2, paragraph 4

It is understood that in the case of introduction of a local tax in Lithuania the provisions of the Convention shall also apply to such tax.

III. Ad Article 4, paragraph 3

It is understood that the provisions of paragraph 3 are applicable as long as the place of effective management criterion for the determination of residence is not used under the domestic legislation of Lithuania. In the case of implementation of such criterion the competent authorities of Lithuania shall inform the competent authorities of Spain as soon as such criteria is implemented, and the following provisions shall be applicable instead of the provisions of paragraph 3 from the earliest possible date as determined by the competent authorities of both Contracting States:

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

IV. Ad Article 5, paragraph 3

If in any Convention for the avoidance of double taxation signed after the date of signature of this Convention by Lithuania and a third State which is a member of the Organisation for Economic Co-operation and Development at the date of signature of this Convention, Lithuania agrees to a duration period of more than nine months or a definition without reference to assembly projects for the same duration period set out in the said paragraph, such duration period or definition shall automatically apply under this Convention as if they were specified respectively in paragraph 3 with effect from the

date on which the provisions of that Convention, or of this Convention, whichever is the later, become effective.

V. Ad Article 6, paragraph 2

It is understood that the term "immovable property" includes options (agreements granting a right, without imposing any obligation, to purchase or sell immovable property for a determined price within a specified period of time).

Ad Article 6, paragraph 3

It is understood that all income and gains from the alienation of immovable property referred to in Article 6 and situated in a Contracting State may be taxed in that State in accordance with the provisions of Article 13.

VII. Ad Articles 10, 11, 12 and 13

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 the 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.

VIII. Ad Article 11, paragraphs 2 and 3

If in any Convention for the avoidance of double taxation signed after the date of signature of this Convention by Lithuania and a third State which is a member of the Organisation for Economic Co-operation and Development at the date of signature of this Convention, Lithuania agrees to exempt interest arising in Lithuania, other than interest mentioned in paragraph 3, or to lower rate of tax on interest than that provided for in paragraph 2, then such exemption or lower rate shall automatically apply under this Convention as if they were specified respectively in paragraph 3 or paragraph 2 with effect from the date on which the provisions of that Convention, or of this Convention, whichever is the later, become effective.

IX. Ad Article 12, paragraphs 2 and 3

If in any Convention for the avoidance of double taxation signed after the date of signature of this Convention by Lithuania and a third State which is a member of the Organisation for Economic Co-operation and Development at the date of signature of this Convention, Lithuania agrees to a definition of royalties which excludes any rights or other property referred to in paragraph 3 or to exempt royalties arising in Lithuania from Lithuanian tax on royalties or to lower rates of tax than those provided for in paragraph 2, such definition, exemption, or lower rates shall automatically apply under this Convention as if they were specified respectively in paragraph 3 or paragraph 2 with effect from the date on which the provisions of that Convention, or of this Convention, whichever is the later, become effective.

X. Ad Article 13, paragraph 1

It is understood that for the purposes of this paragraph the assets of the company shall not include immovable property in which the business of the company is carried on, except the rental property. In witness whereof the undersigned, duly authorised thereto, have signed this Protocol.

Done in duplicate in Madrid this 22 day of July 2003, in the Spanish, Lithuanian and English languages, all three texts being equally authentic. In the case of divergence between any of the texts, the English text shall prevail.

FOR THE KINGDOM OF SPAIN:

FOR THE REPUBLIC OF LITHUANIA: