

1992 Income and Capital Tax Convention and Final Protocol (English Translation)

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CONVENTION BETWEEN THE UNITED MEXICAN STATES AND THE KINGDOM OF SPAIN FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL AND THE PREVENTION OF FISCAL FRAUD AND EVASION

[TRANSLATION]

The United Mexican States and the Kingdom of Spain, desiring to enter into a convention for the avoidance of double taxation with respect to taxes on income and capital and the prevention of fiscal fraud and evasion, hereinafter referred to as the "Convention," have agreed as follows:

Article 1 Personal Scope

This Convention shall apply to persons who are residents of one or both of the Contracting States.

Article 2 Taxes Covered

1. This Convention shall apply to taxes on income and on capital imposed by each one of the Contracting States, 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 or capital or any part thereof, 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 the case of Mexico:
 - el impuesto sobre la renta (income tax);
 - el impuesto al activo (assets tax);(hereinafter referred to as the "Mexican tax");
 - b) in the case of the Kingdom of Spain:
 - el impuesto sobre la renta de las personas físicas (individual income tax);
 - el impuesto sobre sociedades (corporation tax);
 - el impuesto sobre el patrimonio (capital tax);(hereinafter referred to as the "Spanish tax").
4. The Convention shall apply also to any identical or substantially similar taxes on income 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 "Mexico" means the territory of the United Mexican States, comprising the integral parts of the federation; the islands, including the reefs and the keys in the adjacent seas; the islands of Guadalupe and Revillagigedo; the continental shelf and the underwater skirting of the islands, keys and reefs; the waters of the territorial seas in the extension and terms established by international law and inland waterways, and the air space situated above the national territory, with the extension and modalities established by international law itself;
 - b) the term "Spain" means the territory of the Spanish State and, employed in the geographical sense, designates the territory of the Spanish State including the areas outside of its territorial sea in which, in accordance with international law and its domestic law, the Spanish State may exercise jurisdiction or rights of sovereignty with respect to the sea floor and subsoil, their overlying waters and their natural resources;
 - c) the terms "a Contracting State" and the "other Contracting State" mean, as the case may be, the United Mexican States or the Kingdom of Spain, respectively;
 - d) the term "person" includes an individual, a company and any other body of persons;
 - e) the term "company" means any legal person or any entity which is treated as a body corporate for tax purposes;

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

g) The term "national" means:

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

(ii) any legal person, association or entity constituted under the laws in force in a Contracting State.

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

i) The term "competent authority" means:

(i) in the case of Mexico, the Secretariat of Treasury and Public Credit; and

(ii) in the case of Spain, the Minister of Economy and Treasury or his authorized representative.

2. As regards the application of the Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that 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 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 obtained from sources situated in that State or for capital he may possess therein.

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

a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (center of vital interests);

b) if the State in which he has his center 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 Contracting 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 neither of the Contracting States the competent authorities of the Contracting States shall settle the question by mutual agreement.

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

Article 5 Permanent Establishment

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

2. The term "permanent establishment" includes especially:

a) a place of management;

b) a branch;

c) an office;

d) a factory;

e) a workshop; and

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

3. The term "permanent establishment" likewise encompasses a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than six 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 doing advertising, supplying information, performing scientific research, preparing the placement of loans or 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 sup-paragraphs a) to e), provided that the overall activity of the fixed place of business retains its 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 7 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. Notwithstanding the preceding provisions of this Article, an insurance business of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom the following paragraph applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business 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 and, in their commercial or financial relations with the enterprise, they are not bound by accepted or imposed conditions which differ from those generally agreed to by independent agents.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise) shall not of itself constitute either company a permanent establishment of the other.

Article 6 Income From Immovable Property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

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

3. The provisions of paragraph 1 shall also apply to income derived from the direct use, letting, sharecropping 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.

5. When the direct or indirect ownership of capital stock or capital of a company or other entity confers to the owner of such capital stock or capital the use of immovable property in any manner, the direct use, leasehold or any other manner of use of immovable property held by the company or entity, the income derived from such use, direct use, leasehold or in any other manner of the use of such right may be taxed in the Contracting State in which the immovable property is located.

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 or has carried on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on or has carried 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 business 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. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the right to the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in determining the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

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

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

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

Article 8 Maritime and Air Transport

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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

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

Article 9 Associated Enterprises

1. Where:

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

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

Article 10 Dividends

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

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

- a) 5 percent of the gross amount of the dividends if the beneficial owner is a company (excluding partnerships) which holds directly at least 25 percent of the capital of the company paying the dividends;
 - b) 15 percent of the gross amount of the dividends in all other cases.
3. The provisions of paragraphs 1 and 2 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.
4. 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.
5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of one of the Contracting States, carries on or has carried on an industrial or commercial business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs or has performed 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.
6. 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 Contracting State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed:
 - a) 10 percent of the gross amount of the interest when received by a bank which is the beneficial owner thereof;
 - b) 15 percent of the gross amount of the interest in all other cases.
3. Notwithstanding the provisions of preceding paragraph, during a period of five years commencing from the date when the provisions of this Convention take effect, instead of the rate provided for in paragraph 2 a) of this Article, the rate of 15 percent shall apply.
4. Notwithstanding the provisions of paragraph 2, the interest mentioned in paragraph 1 shall only be taxed in the Contracting State where the beneficial owner resides, provided that he satisfies any one of the following requirements:
 - a) The beneficial owner is one of the Contracting States, one of its political subdivisions, or one of its local authorities;
 - b) The interest is paid by a person mentioned in sub-paragraph a), above;
 - c) The interest is paid for loans with a duration of at least three years, paid or guaranteed by a government financing or guarantee of that Contracting State, the purpose of which is to promote exports by means of the granting of credits or guarantees under preferential conditions.
5. The term "interest" as used in this Article means income from debt-claims of any 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 public funds and bonds or debentures, including the premiums and bonuses connected with such securities, as well as any other income subject to the same tax treatment as that for yields from loans under the tax legislation of the State from which such income derives.
6. The provisions of paragraphs 1, 2, 3 and 4 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on or has carried on an industrial or commercial 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 them. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

8. Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest paid, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

9. The provisions of this Article shall not apply when the debt-claim for which the interest is paid was agreed to or assigned principally for the purpose of taking advantage of this Article.

Article 12 Royalties

1. Royalties arising in a Contracting State paid to a resident of the other Contracting State shall be taxable 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 recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 10 percent of the gross amount of the royalties.

3. Notwithstanding the provisions of paragraph 2, royalties for copyrights and other similar remuneration relating to the production or reproduction of literary, dramatic, musical or artistic works (excluding royalties relating to cinematograph films and works recorded on films or tapes used for television broadcasting and disks or tapes) deriving from a Contracting State and paid to a resident of the other Contracting State who is subject to taxation by reason of such royalties shall only be taxed in that other State.

4. 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, 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, and for the information relating to industrial, commercial or scientific experience. The term "royalties" also includes the gains obtained from the alienation of any of the property or rights to which this paragraph refers, to the extent that the amount obtained for such alienation is conditioned upon the productivity or use of such property or rights.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the royalties, being a resident a Contracting State, carries on an industrial or commercial business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs or has performed 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.

6. Royalties shall be deemed to arise in a Contracting State when the payer is the State itself, one of its political subdivisions, one of its local authorities 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 which is effectively connected with the use of the property or right for which the royalties were paid, and such royalties are borne by such 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.

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 royalties paid, having regard to the consideration 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. 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.

8. The provisions of this Article shall not apply when the right or property for which the royalties are paid was agreed to or assigned principally for the purpose of taking advantage of this Article or not for sound commercial reasons.

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 Contracting State.

2. Gains obtained from the alienation of capital stock, partnership shares or other rights of a company or of another body corporate or legal person, the assets of which are principally constituted, whether directly or indirectly, of immovable property located in a Contracting State, or of rights relating to such immovable property, may be taxed in that State. For these purposes, the immovable property which such company or body corporate or legal person applies to its industrial, commercial or agricultural business, or to the rendering of independent personal services, shall not be taken into consideration.

3. Gains derived from an alienation of shares representing a holding of at least 25 percent of the capital stock of a company which is a resident of a Contracting State, held for a period of at least twelve months preceding the alienation, may be taxed in that State.

4. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other Contracting State.

5. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

6. Gains from the alienation of property or rights referred to in Article 12 of this Convention shall only be taxed in accordance with the provisions of that Article.

7. Gains from the alienation of any property other than that referred to in the preceding paragraphs 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, except in the following circumstances, when such income may also be taxed in the other Contracting State:

a) if such resident has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities, in which case only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or

b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any period of 12 months; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

Article 15 Dependent Personal Services

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that Contracting 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 Contracting 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 Contracting State if:

a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate of 183 days during any twelve-month period;

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

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

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State where the effective management of the enterprise is located.

Article 16 Directors' Fees

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

Article 17 Entertainers and Athletes

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theater, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, the income derived by an entertainer or athlete, as such, who is a resident of a Contracting State shall be exempt from tax in the other State if the visit to that other State is substantially financed by the public funds of the first-mentioned State, a political subdivision or local authorities thereof.

Article 18 Pensions

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

Article 19 Government Service

1.a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

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

i) is a national of that State; or

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

2.a) Any pension paid directly by, or out of funds created by, a 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 other State.

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

Article 20 Students

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting 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 Contracting State, provided that such payments arise from sources outside that State.

Article 21 Other Income

1. Items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention shall only be taxable 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 an industrial or commercial business in the other 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 cases the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, income of a resident of one of the States not dealt with in the foregoing Articles and arising in the other Contracting State may also be taxed in that other State.

Article 22 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 representing capital stock, partnership shares or other rights of a company or of another body corporate or legal person, the assets of which are principally constituted, whether directly or indirectly, of immovable property located in a Contracting State, or of rights relating to such immovable property, may be taxed in that State. For these purposes, the immovable property which such company or body corporate or legal person applies to its industrial, commercial or agricultural business, or to the rendering of independent personal services, shall not be taken into consideration.

3. Capital constituted of shares representing a holding of at least 25 percent of the capital stock of a company which is a resident of a Contracting State may be taxed in that State.

4. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

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

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

Article 23 Methods for Elimination of Double Taxation

1. In the case of Mexico, double taxation is to be avoided, in accordance with the applicable provisions contained in the law of Mexico, in the following manner:

a) residents of Mexico may credit the income tax paid in Spain up to an amount not exceeding the tax which would be paid in Mexico for the same income;

b) companies which are residents in Mexico may credit, against the income tax applied thereto derived from the obtaining dividends, the income tax paid in Spain on the profits from which the company residing in Spain has paid the dividends.

2. In Spain, double taxation is to be avoided, in accordance with the applicable provisions contained in the law of Spain, in the following manner:

a)

i) when a resident of Spain obtains income or possesses elements of capital which, in accordance with the provisions of this Convention, may be taxed in Mexico, Spain shall allow the deduction of the income tax or capital tax of that resident in an amount equal to the tax actually paid in Mexico.

ii) the dividends paid to a company which is a resident of Spain, which is the beneficial owner thereof, by a company which is a resident in Mexico, which does not directly or indirectly control a company which is a resident in a third-party State, nor is controlled by such company, shall be deemed to have satisfied, in Mexico, a tax of 5 percent, in the case of paragraph 2 a) of Article 10.

Nevertheless, the deductions made in accordance with the preceding sub-paragraphs of this paragraph shall not exceed the part of the income tax or capital tax, calculated before the deduction, pertaining to the income obtained in Mexico.

b) When involving dividends paid by a company which is a resident of Mexico to a company which is a resident of Spain and which directly holds at least 25 percent of the capital stock of the company which pays the dividends, in order to determine the tax credit there shall be taken into account (in addition to the amount deductible in accordance with sub-paragraph a) of this paragraph) the tax actually paid by the first-mentioned company with respect to the profits from which the dividends are paid, in the amount pertaining to such dividends, provided that such amount is included, for these purposes, in the taxable basis of the company which receives them.

This deduction, together with the deduction applicable with respect to the dividend in accordance with sub-paragraph a) of this paragraph shall not exceed the part of the income tax, calculated before the deduction, attributable to the income taxed in Mexico.

For the application of the provisions of this sub-paragraph, it shall be necessary that the holding of the company paying the dividends be at least 25 percent and be maintained in an uninterrupted fashion during two years prior to the date of the payment of the dividend.

3. Where, in accordance with any provision of the Convention, the income received by a resident of a Contracting State or the capital possessed thereby is exempt from taxation in that State, that latter may, nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

Article 24 Non-Discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected, particularly in respect of residence.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that 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 Article 9, paragraph 8 of Article 11, or paragraph 7 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. In addition, the debts of an enterprise of a Contracting State relating to a resident of the other Contracting State are deductible for determining the taxable capital of that enterprise under the same conditions as if they had been contracted for with 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 Contracting State are or may be subjected.

5. Notwithstanding the provisions of Article 2, the provisions of this Article shall apply to all taxes, whatever their nature or description, established by the Contracting States.

Article 25 Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those Contracting States, present his case to the competent authority of the Contracting State of which he is a resident or, if paragraph 1 of Article 24 is applicable, to 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 endeavor, 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 this Convention.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. In particular, the competent authorities shall endeavor to reach an agreement for the purposes of Article 9 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. The competent authorities, by means of consultations, may work out unilateral procedures, conditions, methods and techniques appropriate for facilitating the application of the Convention and the mutual agreement procedure. 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 it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are established by the Contracting States. 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 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 in accordance with the respective domestic laws and shall enter into force commencing from the date of the exchange of instruments of ratification.

2. The provisions of this Convention shall take effect:

- a) with respect to taxes withheld at the source, for the amounts paid or attributed commencing from the first day of the month of January subsequent to the date when the Convention enters into force;
- b) with respect to other taxes, for the fiscal years commencing subsequent to the first day of the month of January subsequent to the date when the Convention enters into force.

Article 29 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 notice of termination at least six months before the end of any calendar year after the expiration of a period of five years from its taking effect. In such event, the Convention shall cease to have effect:

- a) with respect to taxes withheld at the source, for the amounts paid or attributed commencing from the first day of the month of January subsequent to the date of the expiration of the mentioned term of six months.
 - b) with respect to other taxes, for the fiscal years commencing on or subsequent to the first day of the month of January subsequent to the date of the expiration of the mentioned term of six months.
- Done at Madrid on the 24th day of July, 1992, in two originals in the Spanish language, both with the same force and effect.

FOR THE UNITED MEXICAN STATES:

Pedro Aspe

FOR THE KINGDOM OF SPAIN:

Carlos Solchaga

PROTOCOL

1. The profits referred to in paragraph 1 of Article 8 are understood not to include the profits obtained from the operation of hotels or a transport activity other than the operation of ships or aircraft in international traffic, unless such activity is carried on by a third-party other than the enterprise.

Among the profits referred to in paragraph 1 of Article 8, there are included those derived from the leasing of containers and the open-hull chartering of aircraft or vessels, provided that they involve income supplementary or accessory to the principal operation.

2. For the purposes of paragraph 1 of Article 7, when an enterprise which is a resident of one of the Contracting States has a permanent establishment in the other Contracting State and it sells goods or merchandise to persons in that other Contracting State of a type identical or similar to those sold through a permanent establishment, the profits deriving from such alienations shall be attributable to that permanent establishment unless it is demonstrated by the company that such alienations were effected in this manner for valid commercial reasons and not with the exclusive purpose of obtaining benefits under the Convention. For the application of that provided for in this paragraph, the competent authorities shall consult with each other as to the identical or similar nature of the goods.

3. For the purposes of the provisions of paragraph 2 a) of Article 11, the term "bank" shall be understood to include, in the case of Spain, savings banks.

4. If, during the five years subsequent to the date of the entry into force of this Convention, Mexico for the first time enters into a convention for avoidance of double taxation with a country which is a member of the European Communities, in which it limits its taxation at the source on interest or royalties, on determined categories of income, at a rate lower, including the tax exemption, than that established in paragraph 2 of Article 11 or in paragraph 2 of Article 12 of this Convention, respectively, such reduced rate or exemption shall be automatically applicable, with respect to the corresponding items, to the interest and to the royalties commencing from the date of the entry into force of the convention containing it, provided that the highest rate provided for in such convention is identical to the corresponding rate established in this Convention.

5. The provisions of the Convention shall not prevent the Contracting States from applying the provisions of their domestic laws relating to under-capitalization.

6. With respect to paragraph 7 of Article 11 and paragraph 5 of Article 12, it is agreed that the Contracting States must apply these provisions in accordance with commentary on the model convention on double taxation of income and capital of 1977 made by the Committee on Tax Matters of the Organization for Economic Cooperation and Development, extending the application thereof in the case provided for in paragraph 25 sub-paragraph c) of the said commentary to Article 11, to the extent that the corresponding items are deductible for the determination of the profits of the permanent establishment.

7. For the purposes of paragraph 2 of Article 13 and of paragraph 2 of Article 22, "rights relating to such immovable property" shall be deemed to be the rights granting the power to dispose of such property.

8.a) With respect to paragraph 3 of Article 13, the gains from the alienation of shares of companies which are residents in Mexico shall be determined without including the capital contributions made during the period of the holding of the shares and the profits generated in that same period for which the income tax was already paid by the issuer company.

b) The tax applicable in accordance with paragraph 3 of Article 13 in the State of residence of the company whose shares are alienated shall not exceed 25 percent of the taxable gain.

c) When, for the purpose of a reorganization of companies owned by the same group of shareholders, a resident of a Contracting State alienates property for the purpose of a merger or spin-off of companies or of a swapping of shares, there shall be deferral of the realization of the gain derived from the alienation of such property for income tax purposes in the other Contracting State until the time when a subsequent alienation is effected which does not comply with the requirements established in this paragraph for the deferral of the gain.

9. The provisions of Article 16 are also applicable, in the case of Mexico, to the profit-sharing, fees and other remuneration which a resident of Spain obtains in his capacity as a director or shareholders' auditor of a company which is a resident of Mexico.

10. The income referred to in paragraph 1 of Article 17 includes that of an accessory nature derived from services relating to the personal fame of an entertainer or athlete who is a resident of a Contracting State, provided that it is obtained by reason of his presence in the other Contracting State and derives from that other State.

11. The provisions of Article 22 shall only apply, in the case of Mexico, to the capital taxes which, as the case may be, are established subsequent to the signing of the Convention.

12.a) With respect to paragraph 1 a) sub-paragraph ii) of Article 23, if, in any Convention entered into between Mexico and a third-party State which is a member of the European Economic Community subsequent to the signing of this Convention which contains a clause similar to that included in point 4 of this Protocol, a fictitious tax treatment is not established, or is established in terms which limit its duration, such treatment shall be eliminated or shall apply under the same, more restrictive terms, automatically, with respect to the income included in this Convention, commencing from the date of the entry into force of the Convention entered into by Mexico and that third-party State.

b) For the application of the fictitious credit, it shall be understood that direct or indirect control exists when the holding directly or indirectly exceeds 50 percent of the capital stock. Direct control shall not be deemed to arise in the cases where one of a company which is a resident in Mexico holds more than 50 percent of the capital stock of a company which is a resident of a third-party State carrying on an economic activity which is preparatory or supplementary to the principal activity of the company which is a resident in Mexico.

13. The provisions of Article 24 shall be understood to be subject to the application by each Contracting State of its legislation on tax havens.

Done at Madrid on the 24th day of July, 1992, in two originals in the Spanish language, both with the same force and effect.

FOR THE UNITED MEXICAN STATES:

Pedro Aspe

FOR THE KINGDOM OF SPAIN:

Carlos Solchaga