

# **1993 Income Tax Convention and Final Protocol (English Translation)**

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

[TRANSLATION]

The Kingdom of Spain and the Republic of Portugal, desiring to enter into a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

Chapter I. Scope of the Convention

### **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 imposed by each one of the Contracting States, their political or administrative subdivisions or their local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income 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:
  - a) in Spain, individual income tax, company tax and local taxes (hereinafter referred to as the "Spanish tax").
  - b) in the case of Portugal, individual income tax, the company income tax and extraordinary tax on distributions (hereinafter referred to as the "Portuguese tax").
4. The Convention shall apply also to any identical or 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 significant changes which have been made in their respective 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 territory of the State of Spain and, employed in the geographical sense, designates the territory of the State of Spain including the areas outside of its territorial sea in which, in accordance with international law and its domestic law, the State of Spain may exercise jurisdiction or rights of sovereignty with respect to the sea bed, its subsoil and overlying waters, and their natural resources;
  - b) The term "Portugal" means the territory of the Republic of Portugal located in the European continent, the archipelagos of the Azores and of Madeira, the respective territorial sea and the zones where, in accordance with international law and the law of Portugal, the Republic of Portugal has jurisdiction or rights of sovereignty with respect to the prospecting, search and exploration of the natural resources of the sea bed, its subsoil and overlying waters, and their natural resources;
  - c) The terms "a Contracting State" and the "other Contracting State" mean, according to the context, Spain and Portugal.
  - 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 situated in the other Contracting State;
- i) The term "competent authority" means:

In the case of Spain, the Minister of Economy and Treasury or his authorized representative.

In the case of Portugal, the Minister of Treasury, the Director General of Contributions and Taxes or their authorized representatives.

2. As regards the application of the Convention by a Contracting State, any term not defined therein shall, unless the context, 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 from sources situated in it.

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 both States or neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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

#### **Article 5 Permanent Establishment**

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

2. The term "permanent establishment" includes especially:

- a) A place of management;
  - b) A branch;
  - c) An office;
  - d) A factory;
  - e) A workshop; and
  - f) A mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. An installation, assembly or building site shall only constitute a permanent establishment if it lasts for more than twelve months.

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

- a) The use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- b) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- c) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- e) The maintenance of a fixed place of business solely for the purpose of any activity of a preparatory or auxiliary character.

f) The maintenance of a fixed place of business solely for the purpose of the combined carrying on of the activities mentioned in sub-paragraphs a) to e), upon the condition that the activity of the fixed place of business as a whole 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 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. Income Tax

### **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 or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

### **Article 7 Business Profits**

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

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

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

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

### **Article 8 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. The income from the operation of ships devoted to inland waterways shall only be taxed in the Contracting State where the effective management of the enterprise is located.
3. If the place of effective management of a maritime transport enterprise or an enterprise devoted to inland waterway transport is aboard a ship or 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.
4. 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. When a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - the 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 agreed to between the two enterprises had been those agreed to by independent enterprises in the first place, that other State may 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 recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

a) 10 percent of the gross amount of the dividends if the beneficial owner is a company 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.

The competent authorities of the Contracting States shall establish the manner of applying these limitations, by mutual agreement.

This paragraph does not affect the taxation of the company in respect of the profits from 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 one of the Contracting States, carries on an industrial or commercial business in the other State of which the company paying the dividends is a resident, through a permanent establishment situated in that other State, or performs independent personal services from a fixed base situated in that other State, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent

establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

### **Article 11 Interest**

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

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 15 percent of the gross amount of the interest.

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

3. 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 public funds and bonds or debentures, including the premiums and bonuses attaching to such securities, as well as any other income subject to the same tax treatment as that for income from debt-claims under the tax legislation of the State from which such income derives.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on a business in the other Contracting State in which the interest arises, through a permanent establishment situated in the other State, 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.

5. Interest shall be deemed to arise in a Contracting State when the payer is the State itself, a political or administrative 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.

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 interest, considering the loan 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 paid to a resident of the other Contracting State shall only 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 5 percent of the gross amount of the royalties.

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

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films and tapes for radio and television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, and for the information relating to 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 a 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 the State itself, one of its political or administrative 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 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.

6. Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties paid, having regard to the service 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.

### **Article 13 Capital Gains**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains obtained from the alienation of capital stock or shares in the capital of a company the assets of which are principally constituted, whether directly or indirectly, of immovable property located in a Contracting State may be taxed in the Contracting State where the immovable property is located.

3. Subject to the provisions of paragraph 2, gains derived from an alienation of capital stock or shares deriving from a substantial [holding] in a company which is a resident of a Contracting State may be taxed in that State. It shall be deemed that there is a substantial holding when the alienator, alone or with associated persons, has held, whether directly or indirectly, at any time during the period of twelve months preceding the alienation, at least 25 percent of the capital stock of that company.

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 said 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, of boats used in inland waterway transport or movable property pertaining to the operation of such ships, boats or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

6. Gains from the alienation of any property other than 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, unless such resident has a fixed base habitually available to him in the other Contracting State for the purpose of performing his activities. If such fixed base is available to him, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State.

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, 20 and 21 salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is exercised in that other Contracting State, 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 during any period of twelve months which starts or ends in the fiscal year concerned;

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, or aboard a boat devoted to inland waterway transport, may be taxed in the Contracting State in which place of the effective management of the enterprise is situated.

4. Notwithstanding the provisions of paragraphs 1 and 2, the remuneration obtained by reason of employment exercised in a Contracting State by a border worker, that is, one who has his habitual abode in the other Contracting State, to which he normally returns each day, shall only be taxed in that other State.

#### **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, provided that such remuneration is established and paid by the company for his participation in the activities of the board of directors or supervisory board. Otherwise, the provisions of Article 15 shall apply.

#### **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. The provisions of paragraphs 1 and 2 shall not be applicable if the activities performed in a Contracting State are principally financed by the public funds of the other Contracting State, of a political or administrative subdivision thereof or local authorities thereof. In such case the income derived from such activities shall only be taxed in that other State.

#### **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 only be taxed in that State.

#### **Article 19 Government Service**

1.

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

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

i) is a national of that State; or

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

2.

a) Any pension paid by, or out of funds created by, a Contracting State or a political or administrative 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 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 in respect of services rendered in connection with an industrial or commercial business carried on by a Contracting State or a political or administrative subdivision or a local authority thereof.

#### **Article 20 Teachers**

Teachers who are, or have been immediately previously, residents of a Contracting State and who receive remuneration for teaching at a university, secondary school, elementary school or other educational establishment in the other Contracting State, for a period of temporary residence not exceeding two years, shall be exempt from taxation in that latter State for such remuneration, provided that such establishments belong to the State or to a not-for-profit legal person and that the mentioned remuneration is not taxed in the first State.

#### **Article 21 Students**

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

2. Nor shall the persons to whom the previous paragraph refers be taxed in the State where they are present for the purposes mentioned for the amounts they receive as remuneration for part-time activities performed in that State in order for them to continue their studies or professional training, provided that they do not exceed 7,000 ecus per annum.

### **Article 22 Other Income**

1. Items of income of a resident of a Contracting State 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 one of the States, carries on a 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 case the provisions of Article 7 or Article 14, as the case may be, shall apply.

Chapter IV. Elimination of Double Taxation

### **Article 23 Methods**

1. In the case of a resident of Spain, double taxation is to be avoided, in accordance with the applicable provisions contained in the law of Spain (provided that they do not contradict the general principles established in this paragraph), in the following manner:

a) Where a resident of Spain obtains income which, in accordance with the provisions of this Convention, may be taxed in Portugal, Spain shall allow the deduction of the income tax of that resident in an amount equal to the tax actually paid in Portugal.

Nevertheless, such deduction shall not exceed the part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Portugal.

b) In respect of dividends paid by a company which is a resident of Portugal 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 deduction 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 respective amount of such dividends, provided that such amount is included, for these purposes, in the taxable basis of the company which receives them.

Such 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 which may be taxed in Portugal.

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 for a continuous period of two years prior to the date of the payment of the dividends.

2. In the case of a resident of Portugal, double taxation is to be avoided, in accordance with the applicable provisions of the law of Portugal (provided that they do not contradict the general principles established in this paragraph), in the following manner:

a) Where a resident of Portugal obtains income which, in accordance with the provisions of this Convention, may be taxed in Spain, Portugal shall allow the deduction of the income tax of that resident in an amount equal to the tax paid in Spain.

Nevertheless, such deduction shall not exceed the part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Spain.

b) When a company which is a resident of Portugal receives dividends from a company which is a resident of Spain in which the first-mentioned directly holds at least 25 percent of the capital stock, Portugal shall deduct, in order to determine the profits taxable under the company income tax, 95 percent of such dividends included in the taxable basis, in accordance with the terms and conditions of Portuguese law.

3. Where, in accordance with any provision of this Convention, the income received by a resident of a Contracting State is exempt from taxation in that Contracting State, the said State may,



notwithstanding, take into account the exempt income for the purposes of calculating the tax on the rest of the income of that resident.

#### Chapter V. Special Provisions

### **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, in particular with respect to residence. This provision shall, notwithstanding the provisions of Article 1, also apply to the nationals of either of the Contracting States even though they are not residents of one or both of the States.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. 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 6 of Article 11, or paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.
4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other enterprises of the first-mentioned State are or may be subjected.
5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

### **Article 25 Mutual Agreement Procedure**

1. Where a person considers that the 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 two 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 the 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 addition, they may also consult together for the elimination of double taxation in cases not provided for in the Convention.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs of this Article. When it is deemed that this agreement may be facilitated by means of personal contacts, the exchange of viewpoints may take place within a committee comprised 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 Contracting State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes

covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed 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 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 VI. Final Provisions

### **Article 28 Entry Into Force**

1. This Convention shall be ratified and the instruments of ratification shall be exchanged as soon as possible.

2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall first take effect:

a) in Spain:

with respect to taxes withheld at the source, for which the taxable event occurs commencing from the first day of the month of January of the year subsequent to the date when the Convention enters into force;

with respect to other taxes relating to income from the tax periods commencing from the first day of the month of January of the year subsequent to the date when the Convention enters into force;

b) in Portugal:

with respect to taxes withheld at the source, for which the taxable event occurs commencing from the first day of January of the year immediately subsequent to the date when the Convention enters into force;

with respect to other taxes relating to income obtained in tax periods commencing from the first day of January of the year immediately subsequent to the date when the Convention enters into force;

3. The provisions of the convention between Spain and Portugal for avoidance of double taxation with respect to income taxes signed in Madrid on May 29, 1968, shall cease to apply when the provisions of this Convention take effect.

### **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. In such event, the Convention shall cease to have effect:

a) in Spain:

with respect to taxes withheld at the source, for which the taxable event occurs commencing from the first day January of the year subsequent to the date when notice of termination is given;

with respect to other taxes relating to income from the tax periods commencing from the first day of January of the year subsequent to the date when notice of termination is given;

b) in Portugal:

with respect to taxes withheld at the source, for which the taxable event occurs commencing from the first day January immediately subsequent to the date when the mentioned period for notice of termination expires;

with respect to other taxes relating to income obtained in tax periods commencing from the first day of January immediately subsequent to the date when the mentioned period for notice of termination expires.

In witness whereof, the signatories, duly authorized for such purpose by their respective governments, have signed his Convention.

Done in duplicate at Madrid, on the 26th day of October 1993, in the Spanish and the Portuguese languages, both with the same force and effect.

**FOR THE GOVERNMENT OF THE KINGDOM OF SPAIN:**

*Pedro Solbes Mira,  
Minister of Economy and Treasury*

**FOR THE GOVERNMENT OF THE REPUBLIC OF PORTUGAL:**

*Jorge Braga de Macedo,  
Minister of Finance*

**PROTOCOL**

At the time of the signing of the Convention between the Kingdom of Spain and the Republic of Portugal for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, the signatories have agreed that the following provisions shall form an integral part of the Convention.

1. With respect to Article 6, the provisions thereof shall also apply to income derived from movable property which, in accordance with the tax law of the Contracting State in which such property is located, is attached to income from immovable property.

2.

a) With respect to Article 10, paragraph 3, it shall be understood that the term "dividends" includes the profits from the liquidation of a company.

b) It shall be understood that the term "dividends" includes income from joint accounts or ventures.

3. With respect to Articles 10, 11, 12 and 13, the tax reductions or exemptions provided for by the Convention with respect to dividends, interest, royalties and capital gains shall not be applicable when such income is obtained in a Contracting State by a company which is a resident of the other Contracting State, the capital stock of which is held, whether directly or indirectly, by more than 50 percent by partners who are not residents of that other State. The provisions of this paragraph shall not apply when such company carries on, in the Contracting State in which it is a resident, substantive commercial or industrial activities other than the mere management of securities or other assets.

4. With respect to Article 24, it shall be understood that the provisions of the Convention do not prevent the application by a Contracting State of its domestic rules on under-capitalization or excessive indebtedness.

5. With respect to Article 28, the provisions of Article 11 shall apply commencing from January 1, 1993.

In witness whereof, the signatories, duly authorized for such purpose by their respective governments, have signed this Convention.

Done in duplicate at Madrid, on the 26th day of October 1993, in the Spanish and the Portuguese languages, both with the same force and effect.

**FOR THE GOVERNMENT OF THE KINGDOM OF SPAIN:**

*Pedro Solbes Mira,  
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