

1966 Income and Capital Tax Convention and Notes, as Amended (English Translation)

Signed date: April 26, 1966

In force date:

Effective date:

Status: In Force

This convention, signed April 26, 1966, has been amended by a protocol signed June 29, 2006.

CONVENTION BETWEEN THE SWISS CONFEDERATION AND SPAIN FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND FORTUNE

The Swiss Federal Council and the Head of the Spanish State,
Desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on
income and fortune,

Have for that purpose appointed as plenipotentiaries:

The Swiss Federal Council:

Mr. Willy Spuhler, Federal Councillor, Chief of the Federal Political Department,

The Head of the Spanish State:

His Excellency Mr. Juan Pablo de Lojendio e Irure, Marquis of Vellisca, Ambassador of Spain at Berne,
Who, having communicated to each other their full powers, found in good and due form, have agreed
on the following provisions:

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 and on fortune imposed on behalf of each
Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which
they are levied.

2. There shall be regarded as taxes on income and on fortune all taxes imposed on total income, on
total fortune, or on elements of income or of fortune, including taxes on gains from the alienation of
movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises
(excluding social security premiums), 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 Spain:

(1) The general tax on the income of individuals;

(2) The general tax on the income of companies and other legal entities, including the special tax of 4
per cent instituted by article 104 of Act No. 41/1964 of 11 June 1964;

(3) The following taxes collected in advance: the land tax on agricultural property, the land tax on
urban property, the tax on earnings from personal services, the tax on income from capital and the
tax on commercial and industrial activities and profits;

(4) In Fernando Poo, Rio Muni, Sahara and Ifni, the taxes on income (on earnings from services and
from fortune) and on the profits of enterprises;

(5) In the case of enterprises governed by the Act of 26 December 1958, which are engaged in
prospecting for and extracting oil, over and above the other taxes enumerated in this article, the tax
on surface area, the tax on gross earnings and the special tax on the profits of such enterprises;

(6) The local taxes on income or fortune; (hereinafter referred to as "Spanish tax");

b. In the case of Switzerland: The federal, cantonal and communal taxes:

(1) On income (total income, earned income, income from fortune, industrial and commercial profits,
capital gains and other income);

(2) On fortune (total fortune, movable and immovable property, business assets, capital and reserves
and other elements of fortune; (hereinafter referred to as "Swiss tax").

4. The Convention shall also apply to any identical or substantially similar taxes which are
subsequently imposed in addition to, or in place of, the existing taxes. The competent authorities of

the Contracting States shall notify each other each year of any changes which have been made in their respective taxation laws.

5. The Convention shall not apply to taxes on lottery prizes, deducted at the source.

Chapter II

Definitions

Article 3. General Definitions

1. In this Convention, unless the context otherwise requires:

a. The term "Spain" means the Spanish State (in the geographical sense of the term, namely, peninsular Spain, the Balearic and Canary Islands, the Spanish towns and provinces in Africa, and Equatorial Guinea, consisting of the Territories of Rio Muni and Fernando Poo, both Territories being in the process of self-determination);

b. The term "Switzerland" means the Swiss Confederation;

c. The terms "a Contracting State" and "the other Contracting State" means Spain or Switzerland, as the context requires;

d. The term "person" comprises an individual, a company and any other body of persons;

e. The term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

f. The terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State (including that State itself and political subdivisions and local authorities thereof) and an enterprise carried on by a resident of the other Contracting State (including that State itself and political subdivisions and local authorities thereof);

g. The term "competent authority" means:

(1) In Spain:

The Minister of Finance, the Director-General for direct taxes or any other authority designated by the Minister;

(2) In Switzerland:

The Director of the Federal Tax Administration or his authorized representative.

2. As regards the application of the Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of the Convention.

Article 4. Fiscal Domicile

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management, or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then this case shall be determined in accordance with the following rules:

a. He shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (centre of vital interests);

b. If the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

c. If he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;

d. If he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person 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 in which the business of the enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include especially:

a. A place of management;

b. A branch;

c. An office;

d. A factory;

- e. A workshop;
 - f. A mine, quarry or other place of extraction of natural resources;
 - g. A building site or construction or assembly project which exists for more than twelve months.
3. The term "permanent establishment" shall not be deemed 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 for collecting information, for the enterprise;
 - e. The maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.
4. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State -- other than an agent of an independent status to whom paragraph 5 applies -- shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.
5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.
6. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Chapter III

Taxation of Income

Article 6. Income From Immovable Property

1. Income from immovable property may be taxed in the Contracting State in which such property is situated.
2. The term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional 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. 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 the determination of 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. In so far 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 laid down in this article.

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

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

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

Article 8. Shipping 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 provisions of paragraph 1 shall also apply to the profits of an enterprise of a Contracting State from a pool, a joint operating arrangement or an international operating organization.

Article 9. Associated Enterprises

Where

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

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

Article 10. Dividends

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

2. a) However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

b) Notwithstanding the provisions of the subparagraph above, the Contracting State of which the company paying the dividends is a resident shall exempt from tax the dividends paid by that company to a company the capital of which is wholly or partly divided into shares and which is a resident of the other Contracting State, as long as it holds directly at least 25 per cent of the capital of the company paying the dividends for, at least, two years, and, the paying company is subject to and not exempt from the taxes covered by Article 2 of the Convention and under any double tax agreements with any third State, none of the companies is resident in that third State. Both companies must adopt the form of a limited company.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

The provisions in this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this article means income from shares, jouissance shares or jouissance rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation law 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 recipient of the dividends, being a resident of a Contracting State, has in the other Contracting State, of which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provisions of article 7 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 to persons who are not residents of that other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11. Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.

2. 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 securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, and the debt claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

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

Article 12. Royalties

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

2. However, such royalties may be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax so charged shall not exceed 5 per cent 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, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise a permanent establishment with which the right or property giving rise to the royalties is effectively connected. In such a case, the provisions of article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment with which the use, right or information for which the royalties are paid is connected, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

7. Notwithstanding paragraphs 1 and 2, royalties arising in a Contracting State and paid between associated companies shall not be subject to taxation in the source State, where:

such companies are affiliated by a direct minimum holding of 25 per cent for at least two years or are both held by a third company which has directly a minimum holding of 25 per cent both in the capital of the first company, and in the capital of the second company for at least two years; and such companies are resident in a Contracting State; and under any double tax agreements with any third State none of the companies is resident in that third State; and all companies are subject to corporation tax without being exempted in particular on royalty payments and each adopts the form of a limited company.

Article 13. Capital Gains

1. Gains from the alienation of immovable property, as defined in article 6, paragraph 2, may be taxed in the Contracting State in which such property is situated.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State. However, gains from the alienation of movable property of the kind referred to in article 22, paragraph 3, shall be taxable only in the Contracting State in which such movable property is taxable according to the said article.
3. Gains from the alienation of any property other than those mentioned in paragraphs 1 and 2 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 independent activities of a similar character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.
2. The term "professional services" includes, especially, independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15. Dependent Personal Services

1. Subject to the provisions of articles 16, 18 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
 - a. The recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned, and
 - b. The remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
 - c. The remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16. Directors' Fees

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

Article 17. Artists and Athletes

Notwithstanding the provisions of articles 14 and 15, income derived by public entertainers, such as theatre, motion picture, radio or television artists, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

Article 18. Pensions

Subject to the provisions 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. Governmental Remuneration

Remuneration, including pensions, paid by a Contracting State or a political subdivision or a local authority thereof or by a corporation or autonomous body under the public law of that State, either directly or out of a special fund, to any individual who is a national of that State in respect of present or past services rendered, shall be taxable only in the Contracting State in which such remuneration arises.

Article 20. Students

Payments which a student or business apprentice who is or was formerly a resident of a Contracting State and who is present in the other 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 other State, provided that such payments are made to him from sources outside that other State.

Article 21. Income Not Expressly Mentioned

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing articles of this Convention shall be taxable only in that State.

Chapter IV

Taxation of Fortune

Article 22. Capital

1. Fortune represented by immovable property, as defined in article 6, paragraph 2, may be taxed in the Contracting State in which such property is situated.
2. Fortune represented by movable property forming part of the business property of a permanent establishment of an enterprise, or by movable property pertaining to a fixed base used for the performance of professional services, may be taxed in the Contracting State in which the permanent establishment or fixed base is situated.
3. Ships and aircraft operating in international traffic, and movable property pertaining to the operation of such ships and aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. All other elements of fortune of a resident of a Contracting State shall be taxable only in that State.

Chapter V

Methods for Elimination of Double Taxation

Article 23

1. Where a resident of a Contracting State derives income or owns fortune which, in accordance with the provisions of this Convention, may be taxed in the other Contracting State, the first-mentioned State shall, subject to the provisions of the following paragraphs, exempt such income or fortune from tax but may, in calculating tax on the remaining income or capital of that person, apply the rate of tax which would have been applicable if the exempted income or fortune had not been so exempted.
2. Where a resident of Spain derives income which, in accordance with the provisions of articles 10, 11 and 12, may be taxed in Switzerland, Spain shall allow as a deduction from the tax on the income of that person an amount equal to the tax paid in Switzerland; such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is appropriate to the income derived from Switzerland.

The provisions of this paragraph shall apply both to the general taxes and to the taxes collected an advance.

3. Where a resident of Switzerland derives income which, in accordance with the provisions of articles 10, 11 and 12, may be taxed in Spain, Switzerland shall, on application, grant such person relief from tax. This relief shall consist of:
 - a. A deduction of the tax paid in Spain in accordance with the provisions of articles 10, 11 and 12 from the Swiss tax on the income of the person concerned, provided that such deduction shall not exceed that part of the Swiss tax, as computed before the deduction is given, which is appropriate to the income taxed in Spain, or
 - b. A lump-sum reduction of the Swiss tax, or
 - c. A partial exemption of the income in question from Swiss tax, but at least a deduction of the tax paid in Spain from the gross amount of the income derived from Spain.

Switzerland shall determine the type of relief and the appropriate procedure in accordance with the provisions concerning the application of international conventions entered into by the Confederation for the avoidance of double taxation.

4. A company which is a resident of a Contracting State and which derives dividends from a subsidiary company which is a resident of the other Contracting State shall be granted the same advantages with

regard to tax of the first-mentioned State relating to such dividends as would be granted if the subsidiary company paying the dividends were a resident of the first-mentioned State.

5. For the purpose of paragraph 3, interest from loans contracted after January 1, 1966 and entitled to a reduction of the Spanish tax in accordance with the Decree-Law of October 19, 1961 or any other provisions in addition to or in the place of this Decree, shall be deemed to have been subjected to the Spanish tax at a rate of 10 per cent.

Chapter VI

Special Provisions

Article 24. Non-Discrimination

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

2. In particular, nationals of a Contracting State who are liable to taxation in the territory of the other Contracting State shall be entitled, in the same manner as nationals of the last-mentioned State, to any tax exemptions, basic allowances, deductions and reductions in respect of family responsibilities.

3. The term "nationals" means:

a. All individuals possessing the nationality of a Contracting State;

b. All legal persons, partnerships and associations deriving their status as such from the law in force in a Contracting State.

4. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

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

6. In this article the term "taxation" means taxes of every kind and description.

Article 25. Mutual Agreement Procedure

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Convention.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a commission consisting of representatives of the competent authorities of the Contracting States.

Article 25 bis

1. The competent authorities of the Contracting States shall exchange, on request, such information as is necessary:

a) for carrying out the provisions of this Convention in relation to the taxes which are the subject of this Convention;

b) for the administration or enforcement of the domestic laws in the case of holding companies, in relation to taxes which are the subject of this Convention;

c) for the administration or enforcement of the domestic laws in cases of tax fraud or the like which have been committed by a resident of a Contracting State or by a person subjected to a limited tax liability in a Contracting State, in relation to taxes which are the subject of this Convention.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 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).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In cases of tax fraud or the like the provisions of paragraphs 1 and 3 shall not be construed so as to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 26. Diplomatic and Consular Officials

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

2. For the purposes of the Convention, members of a diplomatic or consular mission of a Contracting State accredited to the other Contracting State or to a third State who are nationals of the sending State shall be deemed to be residents of the sending State if they are subject therein to the same liability with respect to taxes on income and fortune as residents of that State.

3. The Convention shall not apply to international organizations, to the organs or officials thereof or to persons who are members of a diplomatic or consular mission of a third State if they are present in the territory of a Contracting State and are not treated as residents in either Contracting State for the purposes of taxes on income and fortune.

Chapter VII

Final Provisions

Article 27. Entry Into Force

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

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

a. In Spain:

In respect of taxes due for the year 1967 and subsequent years;

b. In Switzerland:

In respect of taxable years beginning on or after 1 January 1967.

3. The Agreement of 27 November 1963 between the Swiss Federal Council and the Government of Spain concerning the taxation of air transport enterprises shall be abrogated upon the entry into force of this Convention and shall apply for the last time to taxes due for the year 1966.

Article 28. Termination

This Convention shall remain in force until denounced by one of the Contracting States. Either Contracting State may denounce the Convention, through the diplomatic channel, 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:

In respect of taxes due for calendar years subsequent to the year in which the notice is given;

b. In Switzerland:

In respect of taxable years beginning on or after the first day of January of the calendar year following the year in which the notice is given.

In witness whereof the aforementioned plenipotentiaries have signed this Convention and have thereto affixed their seals.

Done at Berne, in duplicate, on 26 April 1966, in the French and Spanish languages, both texts being equally authentic.

FOR THE SWISS CONFEDERATION:

Spuhler

FOR THE SPANISH STATE:

J. P. De Lojendio

PROTOCOL

to the Convention of 26 April 1963 between the Swiss Confederation and Spain for the avoidance of double taxation with respect to taxes on income and on capital.

On the occasion of signing the Amending Protocol to the Convention for the avoidance of double taxation with respect to taxes on income and on capital signed by the Swiss Confederation and Spain on 26 April 1966, the authorized signatories hereto agreed upon the following provisions, which form an integral part of the Convention:

I. Entitlement to treaty benefits

(i) The Contracting States declare that their domestic rules and procedures with respect to the abuses of law (including tax treaties) may be applied to the treatment of such abuses. In the case of Spain, abuses of law include situations covered by Article 15 of Ley General Tributaria (Law 58/2003 of 17th December), (General Tax Code) or any other similar provision in any tax law in force or to be enacted.

(ii) It is understood that the benefits under this Convention shall not be granted to a person, which is not the beneficial owner of the items of income derived from the other Contracting State or items of capital situated therein.

(iii) This Convention does not prevent Contracting States to apply domestic Controlled Foreign Company rules.

II. Ad Article 10, paragraph 2, subparagraph b)

With reference to Article 10, paragraph 2, subparagraph b) of this Convention, a company resident of a Contracting State shall not benefit from the total relief of the withholding tax regarding dividends from the other Contracting State, where the majority of its shares is held principally, directly or indirectly by persons that are not resident of a Contracting State or of a Member State of the European Union, unless the company receiving the dividends;

- exercises directly a real business activity in relation with the business of the company paying the dividends, or

- has as a main object the control and management of the company paying the dividends through sufficient material and human means, or

- proves that it has been constituted for valid economic reasons and not just in order to benefit from this Article 10, paragraph 2, subparagraph b).

Regarding the abovementioned limitation on benefits in this Protocol provision, in any case, Spain will grant to a company resident of Switzerland the same treatment as to a company, resident of an European Union Member State, which is in a comparable situation.

III. Ad Article 10, paragraph 2, subparagraph b) and Article 12, paragraph 7

As regards the application of Article 10, paragraph 2, subparagraph b) and of Article 12, paragraph 7, the terms used therein shall be defined according to Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States and Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.

With regard to Switzerland, the term "limited company" covers:

- societate anonime/Aktiengesellschaft/societa anonima;

- societate a raspunsabilitate limitee/Gesellschaft mit beschränkter Haftung/societa a raspunsabilitate limitata;

- societate en commandite par actions/Kommanditaktiengesellschaft/societa in accomandita per azioni.

IV. Ad Article 25 bis

1. Both Contracting States agree that under subparagraph b) of paragraph 1 of Article 25 bis, only information may be exchanged which are in possession of the Tax Authorities and which do not necessitate specific investigation measures.
2. It is understood that, as regards subparagraph b) aforementioned, Swiss companies covered by Article 28, paragraph 2 of the Federal Law on Harmonization of direct taxes of 14 December 1994 and the Spanish companies covered by Articles 116 to 119 of the Spanish Corporate Income Tax Law, (Legislative Royal Decree 4/2004, of 5th March) are considered as holding companies.
3. It is understood that the term "tax fraud" means fraudulent conduct, which is deemed to be an offence under the laws of both States, and is punishable by imprisonment either at the time where the fraud has been committed or where the request has been submitted.
4. The term "tax fraud or the like" includes:
 - a) Cases below the monetary limit as provided for in Article 305 of the Spanish Criminal Code (Organic Law 10/1995, of 23rd November) which imply the same fraudulent conduct as it is the case for tax fraud under the law of the requested State.
 - b) Cases substantiated under the simulation procedure as provided for in Article 16 of the Spanish Ley General Tributaria (Law 58/2003 of 17th December), (General Tax Code); simulation would be understood only with reference to Article 1275 of the Spanish Civil Code "(Codigo Civil espanol)".
5. In particular, fraudulent conduct is assumed in situations when a taxpayer uses, or has the intention to use a false piece of documentary evidence, and in situations where the taxpayer uses, or has the intention to use a scheme of lies ("Lugengebaude") to deceive the tax authority.
6. It is understood that, in determining whether tax fraud or the like exists in a case involving the active conduct of a profession or business (including a profession or business conducted through a sole proprietorship, partnership or similar entity), the requested State shall assume that the record keeping requirements applicable under the laws of the requesting State are the recordkeeping requirements of the requested State.
7. In any case, the provision of information presupposes a direct connection between the fraudulent conduct and the requested administrative assistance measure.
8. It is understood moreover that the administrative assistance provided for in paragraph 1 of this Article does not include measures aimed only to simply collect pieces of evidence ("fishing expeditions").
9. Notwithstanding paragraph 2 of Article 25 bis, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of the supplying State. In case of doubt, the competent authorities shall endeavour to resolve by mutual agreement any divergence related to the interpretation of the laws of the requested State.
10. The requested State shall provide information where the requesting State has a reasonable suspicion that a certain conduct would constitute tax fraud or the like. The requesting State's suspicion of tax fraud or the like may be based on:
 - (a) Documents, whether authenticated or not, and including but not limited to business records, books of account, or bank account information;
 - (b) Testimonial information from the taxpayer;
 - (c) Information obtained from an informant or other third person that has been independently corroborated or otherwise is likely to be credible; or
 - (d) Circumstantial evidence.
11. a) Should Switzerland conclude with a Member State of the European Union, in relation to exchange of information, any Agreement of whatever kind and nature or any provision in a Double Taxation Agreement, related to taxes covered by this Convention, Switzerland shall give to Spain the same level of co-operation as in such Agreement or provision or the part of them and Spain will act accordingly.
b) Notwithstanding paragraph 11, sub-paragraph a) here above, where Switzerland has defined in a Double Taxation Agreement with an other Member State of the European Union one or more individual categories of cases falling under tax fraud or the like according to Article 10, paragraph 4 of the Agreement between the Swiss Confederation and the European Community providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments and the respective Memorandum of Understanding and Spain would consider that there is a similar situation under the Spanish domestic laws, then the Spanish competent authorities will address the Swiss competent authorities in order to find an agreement to adapt that Protocol accordingly. The agreement will be submitted for approval to the respective Parliament of both Contracting States.

12. As regards the procedures followed in Spain for obtaining information, including banking information, in the case of tax fraud or the like under Article 25 bis, the Spanish competent authorities will apply the internal procedures provided for by the Spanish internal law in order to comply with the information request of the Swiss competent authorities.

The person involved in a Spanish proceeding may not invoke irregularities in the Swiss procedure for appealing his case before a Spanish Court.

Should the taxpayer appeal the decision of the Swiss Federal Tax Administration concerning the transmission of the information to the Spanish competent authority, any delay derived therefrom will not be considered in computing the applicable time-limits established by the Spanish Tax Legislation concerning fiscal tax administration proceedings.

In witness whereof the undersigned being duly authorised thereto have signed this Protocol and have affixed thereto their seals.

Done in duplicate at Madrid on the 29th day of June 2006 in the French, Spanish and English languages, all texts being equally authoritative, in case of any divergence of interpretation, it shall be resolved in accordance with the English text.

FOR THE SWISS CONFEDERATION:

Spuhler

FOR THE SPANISH STATE:

J. P. De Lojendio

EXCHANGE OF NOTES

Berne, 26 April 1966

Sir,

I acknowledge receipt of your letter of today's date, which reads, in translation, as follows:

"With reference to the Convention between Spain and the Swiss Confederation for the Avoidance of Double Taxation with respect to Taxes on Income and Fortune, signed today, it is understood that article 2 of the Convention covers both ordinary and extraordinary taxes on income and fortune.

"I would request you, Sir, to be good enough to confirm your Government's agreement to the foregoing."

I have the honour, Sir, to confirm my Government's agreement to the foregoing.

Accept, Sir, the assurances of my highest consideration.

Spuhler