

2003 Income and Capital Tax Convention and Final Protocol (English Translation)

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

[TRANSLATION]

The Kingdom of Spain and the Bolivarian Republic of Venezuela, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion and fraud with respect to taxes on income and on capital, 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 and on capital imposed on behalf of a Contracting State, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income or capital or on any elements of income or capital, including taxes on gains from the alienation of movable or immovable property, taxes on total wages and salaries paid by the enterprises, whether individuals or legal persons, as well as taxes on capital appreciation.

3. The existing taxes to which this Convention shall apply are in particular:

a) insofar as the Government of the Bolivarian Republic of Venezuela is concerned:

i) income tax (impuesto sobre la renta), and

ii) tax on corporate assets (impuesto a los activos empresariales)

b) insofar as the Kingdom of Spain is concerned:

i) the tax on the income of legal persons (impuesto sobre la renta de personas físicas);

ii) corporation tax (impuesto sobre sociedades);

iii) the tax on the income of non-residents (impuesto sobre la renta de no residentes), and

iv) capital tax (impuesto sobre el patrimonio).

4. This Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of significant changes which have been made in their respective taxation laws.

Chapter II

Definitions

Article 4 General Definitions

1. For the purposes of this Convention, unless the context requires a different interpretation:

a) the term "Venezuela" refers to the Bolivarian Republic of Venezuela.

b) the term "Spain" refers to the Kingdom of Spain.

c) the terms "Contracting State" or "the other Contracting State" refer to Spain or Venezuela, according to the context herewith.

d) the term "person" refers to any individual or company or other group of people.

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

f) the term "enterprise" refers to the operation of any kind of business.

g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" refer, respectively, to an enterprise carried on by a resident of a Contracting State and to an enterprise carried on by a resident of the other Contracting State.

- h) the term "international traffic" refers to any transport by a ship or aircraft operated by an enterprise having its place of effective management in a Contracting State, except when the ship or aircraft is solely operated between points located in the other Contracting State;
- i) the term "competent authority" refers to:
 - i) in the case of Venezuela, the National Customs and Tax Superintendent (Superintendente Nacional Aduanero and Tributario), or his or her authorized representative.
 - ii) in the case of Spain, the Minister of Finance (Ministro de Hacienda), or his or her authorized representative, and
- j) the term "national" means:
 - i) any individual or legal person having the citizenship of a Contracting State.
 - ii) all bodies corporate, companies, and associations constituted in conformity with the laws in effect in a Contracting State.
- k) the term "business" includes the provision of professional services as well as any other activity of an independent nature.

2. As regards the application of this Convention by a Contracting State, any expression or term not defined therein shall, unless the context requires a different interpretation, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies. The meaning of such term under the tax legislation shall prevail over any meaning this term may have in accordance with other types of laws of this State.

Article 4 Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" refers to any person who, under the laws of that State, is liable to tax therein by reason of his place of establishment, domicile, residence, headquarters or any other criterion of a similar nature and also includes that State itself and any political subdivisions or local entities. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in said State situated therein, or from capital located in the same.

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

- a) such person shall be deemed to be a resident of the State in which he has a permanent home available to him or her; if he or she has a permanent home available to him in both States, such person 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 such person has his or her center of vital interests cannot be determined, or if such person has not a permanent home available to him or her in either State, such person shall be deemed to be a resident of the Contracting State in which he or she has an habitual abode;
- c) if such person has an habitual abode in both States or in neither of them, he or she shall be deemed to be a resident of the State of which he or she is a national;
- d) if such person is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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

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) places of management;
- b) branch offices;
- c) offices;
- d) factories;
- e) workshops, and
- f) mines, oil or gas wells, quarries or all other places that are related with the extraction of natural resources.

3. A construction, installation or assembly site or supervisory activities related with a project of this type only constitute a permanent establishment as long as its duration exceeds nine months.

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

- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise, always provided this does not constitute a sale;
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery, always provided this does not constitute a sale;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of transformation or processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination maintains its preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 7 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 and 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 independent agent, provided that such persons are acting in the ordinary course of their business. However, in case such representative carries out all or almost all of his or her activities on behalf of the company, such representative shall not be deemed an independent representative for the purposes of this paragraph.

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 of the two companies a permanent establishment of the other.

Chapter III

Taxation

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 laws of the Contracting State in which the property is situated. Said 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 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 income from immovable property of an enterprise.

Article 7 Business Profits

1. The profits of an enterprise of a Contracting State shall be subject to tax 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 subject to tax in the other State but only so much of them as is attributable to such permanent establishment.
2. Pursuant 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 commercial or industrial 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 after year, unless there are good and sufficient reasons to proceed otherwise.
6. Where profits include items of income that 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 Transport by Sea or Air

1. Profits derived from the operation of ships or aircraft in international traffic shall be taxable only in that Contracting State in which the place of effective management of the enterprise is located.
2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbor of the ship is situated, or, in case there is no such home harbor, in the Contracting State of which the operator of the ship is a resident.
3. The provisions of paragraph 1 shall also apply to profits from the participation in a consortium or pool, a joint business, or an international operating agency.
4. Paragraph 1 of this Article notwithstanding, profits obtained by a resident of a Contracting State from the operation of vessels used in the transportation of hydrocarbons may be subject to tax in the other Contracting State.

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, whether 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 subjected to tax accordingly.
2. Where a Contracting State includes in the profits of an enterprise of that State, and taxes accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State, and such other State acknowledges that the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of 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 of the dividends is the beneficial owner, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.
- The provisions of the preceding paragraph notwithstanding, the Contracting State of which the company paying the dividends is a resident shall exempt dividends that are paid to a company which is a resident of the other Contracting State whose capital is divided, whether as a whole or in part, into shares and which controls at least twenty-five per cent (25%) of the capital of the company paying the dividends.

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

3. The term "dividends" as used in this Article refers to income from shares, "jouissance" shares, 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 Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, an entrepreneurial activity through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In this 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 Contracting 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 situated in that other State, nor may such other Contracting State 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, whether as a whole or in part, of profits or income arising in such other State.

Article 11 Interest

1. Interest arising in a Contracting State and which is 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 in case the recipient of the interest is the beneficial owner, the tax so charged shall not exceed:

- a) 4.95 per cent of the gross amount of interest, in the case of financial institutions;
- b) 10 per cent of the gross amount of interest, in all other cases.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from taxes in such State as long as:

- (a) such interest is paid by the Government of a Contracting State, the Central Bank of a Contracting State, or a political subdivision or a local entity thereof;
- (b) the beneficial owner of such interest is one of the persons mentioned in subparagraph (a), or
- (c) the interest is paid in connection with a loan granted or guaranteed by a public financial institution for the purpose of export and development promotion.
- d) the beneficial owner of such interest is a recognized pension or retirement fund, always provided such income is actually not taxed in the other Contracting State, or
- e) the interest is paid in conjunction with the sale on credit of industrial, commercial or scientific equipment to an enterprise of a Contracting State.

4. The term "interest" as used in this Article refers to income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits and, in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, as well as any other income which the laws of the State in which the interest arises treat similar to amounts loaned. Surcharges for late payments shall not be considered interest for the purposes of this Article.

5. The provisions of paragraphs 1, 2, and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on an entrepreneurial activity 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 this case, the provisions of Article 7 shall apply.

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

7. Where, by reason of a special relationship which exists between the payer and the beneficial owner or between both of them and some third party, 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 debtor and

the creditor 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 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 can be subjected to tax in that other State.
2. These royalties, however, may also be taxable in the Contracting State in which they arise and in accordance with the laws of this State; however, in case the recipient of the royalties is the beneficiary owner, the tax levied in such a manner can not exceed 5 per cent of the gross amount of the royalties.
3. The term "royalties" as used in this Article refers to payments of any kind received as a consideration for the use of, or the right to use, any patent, design or model, plan, secret formula or process, information pertaining to industrial, commercial, or scientific know-how, industrial or commercial trademarks or trade names, and any copyright of literary, artistic or scientific work, including cinematograph films or films or tapes for radio and television.
4. The provisions of paragraphs 1 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on an industrial or commercial activity in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, and the property or right in respect of which the royalties are paid is effectively connected with such permanent establishment. In this case, the provisions of Article 7 shall apply.
5. The royalties are deemed to arise in a Contracting State in case the payer is that State itself, one of its political subdivisions or local entities, or a resident of that State. In case the payer of the royalties, whether a resident of a Contracting State or not, however, has a permanent establishment in a Contracting State with respect to which the duty of payment of the royalties arises and which as such incurs the charge thereof, such royalties are deemed to arise in the State in which the permanent establishment is situated.
6. Where, by reason of a special relationship which exists between the payer and the beneficial owner of the royalties or between both of them and some third party, the amount of the royalties, 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. In such case, the excess part 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, as defined in Article 6 of this Convention, that is situated in the other Contracting State may be subjected to tax in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (whether alone or together with the whole enterprise), may be subjected to tax in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is located.
4. Gains from the alienation of shares or other rights in a company whose assets are made up, whether directly or indirectly, of immovable property not related with its business activity that are situated in a Contracting State or rights inherently related with such immovable property can be taxed in such State.
5. Gains from the alienation of elements of property that are different from those mentioned in the preceding paragraphs shall be taxed in the Contracting State of which the seller is a resident.

Article 14 Independent Personal Services

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Article 15 Dependent Personal Services

1. Subject to the provisions of Articles 16, 18, 19, and 20, wages, salaries, and similar remuneration received by a resident of a Contracting State in respect of employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. In case the employment is so exercised, such remuneration as is received therefor can be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration obtained 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 not present in the other State for a period or periods exceeding in the aggregate one hundred and eighty-six days during any twelve-month period commencing or ending during the fiscal year in question, 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 which the employer has in the other State.
3. The preceding provisions of this Article notwithstanding, remuneration obtained in respect of employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State where the place of effective management of the enterprise is located.

Article 16 Directors' Fees

Directors' fees and other similar payments received by a resident of a Contracting State in his or her capacity as a member of the board of directors or any body of a company which has identical functions which is a resident of the other Contracting State may be taxed in that other State.

Article 17 Artistes and Sportsmen

1. Notwithstanding the provisions of Articles 7 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be subjected to tax in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or athlete himself or herself but to another person, such income may, notwithstanding the provisions of Articles 7 and 15, be subjected to tax 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 apply to income obtained by a resident of a Contracting State through the exercise of his or her personal activities in the other Contracting State in case his or her stay in such other Contracting State is financed, whether totally or substantially, by public funds of one or both of the Contracting States or one of its political subdivisions or local entities. In this case, such income may only be taxed in the Contracting State in which the artiste or athlete resides.

Article 18 Pensions

1. Pursuant to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration that are paid to a resident of a Contracting State for prior employment shall only be taxable in that State.

Article 19 Government Service or Public Functions

1. a) Wages, salaries and other similar remuneration, other than pensions, paid by a Contracting State or by one of its political subdivisions or local entities to an individual in respect of services rendered to that State, political subdivision or local entity thereof shall be taxable only in that State.
b) However, such wages, salaries and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
 - i) is a national of that State; or
 - ii) did not become a resident of that State solely for the purpose of rendering the services.
2. a) Any pensions paid by a Contracting State or one of its political subdivisions or local entities, whether directly or by drawing on funds created for that purpose, to an individual in respect of services rendered to that State or a political subdivision or local entity thereof shall be taxable only in that State.
b) However, such pensions shall only be taxable in the other Contracting State if the individual is a resident and a national of that State.
3. The provisions of Articles 15, 16, 17, and 18 shall apply to wages, salaries and other similar remuneration and pensions paid in respect of services rendered in connection with an entrepreneurial activity carried on by a Contracting State or one of the political subdivisions or local entities of such State.

Article 20 Students, Trainees, Professors, and Researchers

1. An individual who is or has been a resident of a Contracting State immediately prior to visiting the other Contracting State and who temporarily resides in the other Contracting State for the main purpose of:
 - (a) studying in such other Contracting State at a university or another educational institution that has been approved by the pertinent educational authorities of said Contracting State;
 - (b) obtaining the required training which qualifies such individual for exercising a profession or for acquiring a vocational, professional, or technical specialty, or
 - (c) studying, teaching, or conducting research as a recipient of financial aid, a stipend or prize awarded by a governmental, religious, charitable, scientific, literary or educational organization or as a participant in other programs sponsored by an organization of this kind shall be exempt from taxes in such other Contracting State with respect to:
 - (i) sums transferred from abroad for his or her maintenance, education, training, or internship;
 - (ii) remuneration received for personal services rendered in such other Contracting State for the purpose of receiving practical training, it being understood that such benefit may in no cases exceed a period of two (2) consecutive years;
 - (iii) the amount of such financial aid, stipend, or prize.

The total amount of the sums to which subparagraphs ii and iii refer shall be exempt up to a maximum amount not exceeding twenty thousand (20,000) Euros per year, or its equivalent in Venezuelan Bolivares.

2. The provisions of this Article shall not be applicable to income obtained through research activities whose purpose is not public interest, but which primarily benefit one or more specific private persons.

Article 21 Other Income

1. Items of income of a resident of a Contracting State, wherever arising, whose type or sources are not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.
2. The provisions of paragraph 1 above shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the beneficial owner of such income, being a resident of a Contracting State, carries on an entrepreneurial activity in the other Contracting State through a permanent establishment situated in such other State, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In this case, the provisions of Article 7 shall apply.

Chapter IV

Taxation of Capital

- ## **Article 22 Capital**
1. Capital represented by immovable property as defined by Article 6 that is held by a resident of a Contracting State and which is located in the other Contracting State may be taxed in such other State.
 2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State may be taxed in that other State.
 3. Capital consisting of ships or aircraft operated in international traffic as well as movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
 4. All other elements of capital of a resident of a Contracting State shall only be taxable in that State.

Chapter V

Methods for the Elimination of Double Taxation

Article 23 Elimination of Double Taxation

Double taxation shall be avoided as outlined below:

1. Insofar as Venezuela is concerned:

Venezuelan residents who receive income which, in accordance with the provisions of this Convention, can be taxed in Spain shall receive, for the taxes applied in Spain, a credit against the Venezuelan taxes on such income, in accordance with the provisions of Venezuelan laws.
However, such credit may not exceed that part of the tax on income or capital calculated prior to determining the credit which applies to the income or capital which can be subjected to taxation in Venezuela.
Where, in accordance with any provision of this Convention, income obtained by a resident of Venezuela is exempt from taxes in Venezuela, Venezuela may, however, include the exempted income in calculating the amount of tax on the remaining income of such resident.
2. In Spain:

In accordance with the provisions of, and without prejudice to the limitations imposed by Spanish laws:

- a) Where a resident of Spain obtains income or holds elements of capital which, in accordance with the provisions of this Convention, may be subjected to tax in Venezuela, Spain shall allow:
 - i) a deduction from the tax on income of such resident, in an amount that is equivalent to that of the income tax paid in Venezuela;
 - ii) a deduction from the tax on capital of such resident, in an amount that is equivalent to that of the tax paid in Venezuela on such elements of capital;
 - iii) a deduction from the tax on corporations actually paid by the company distributing the dividends pertaining to the profits for which such dividends are paid, in accordance with domestic Spanish laws. Such deduction, however, may not exceed that part of the tax on income or tax on capital, calculated prior such deduction, which corresponds to the income or elements of capital which may be subjected to tax in Venezuela.
- b) Where, in accordance with any provision of this Convention, income obtained by a resident of Spain, or the capital held by such resident, is exempt from taxes in Spain, Spain may, however, include the exempt income or capital in calculating the amount of tax on the remaining income or capital of such resident.

Chapter VI

Miscellaneous 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, especially in terms of residence. The provisions of Article 1 notwithstanding, this provision shall also apply to persons who are not residents of one or of neither of the Contracting States.
- 2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision may not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
- 3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Accordingly, liabilities assumed by a company of a Contracting State with respect to a resident of the other Contracting State shall be deductible in determining the capital that is subject to tax of such company under the same conditions as if such liabilities had been assumed with respect to a resident of the first-mentioned State.
- 4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.
- 5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 25 Mutual Agreement Procedure

- 1. In the event that a person believes that the actions of one or both of the Contracting States result or will result for him or her in taxation that is not in accordance with the provisions of this Convention, he or she may, irrespective of the remedies provided for by the domestic law of those States, submit his case to the competent authority of the Contracting State of which he or she is a resident or, if such case comes under paragraph 1 of Article 24, to the competent authority of the Contracting State of which he or she is a national. The case must be submitted within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.
- 2. The competent authority shall endeavor, if the objection appears to it to be justified and if such competent authority 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, in order to avoid taxation

which is not in accordance with this Convention. Any agreement reached shall be implemented notwithstanding any time limits set forth in the domestic Law of the Contracting States.

3. The competent authorities of the Contracting States shall to everything in their power to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Convention. They may also reach an agreement in an attempt to eliminate double taxation in cases not provided for in this Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching agreements in the sense of the preceding paragraphs of this Article. In the event that it is believed that such agreement can be facilitated by personal contacts, such exchange of opinions can take place within the scope of a commission consisting of representatives of the competent authorities of the Contracting States.

Article 26 Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention, especially for the purpose of avoiding tax fraud and fiscal evasion.

The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic Laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this 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, industrial, or professional secrets or trade processes or information, the disclosure of which would be contrary to public policy (ordre public).

Article 27 Members of Diplomatic Missions and Consular Posts

No provision of this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international Law or by virtue of the provisions of special agreements.

Chapter VII

Final Provisions

Article 28 Entry Into Force

1. The Contracting States shall notify each other, in writing and through diplomatic channels, as soon as the legal and constitutional procedures for the approval of this Convention have been accomplished in accordance with their domestic laws.

2. This Convention shall come into force and effect on the date on which the last of the notices referred to in paragraph 1 is received, and its provisions shall apply to taxes levied on income or on capital pertaining to the fiscal year commencing on or after the first day of January of the calendar year following the calendar year during which the Convention came into force and effect.

Article 29 Termination

This Convention shall remain in force and effect indefinitely unless terminated by one of the Contracting Parties. Five (5) years after the date of entry into force of this Convention, either Contracting State may terminate this Convention by providing a written notice of termination through diplomatic channels at least six (6) months prior to the end of each calendar year. In this case, the Convention shall cease to apply to taxes levied on income or on capital pertaining to the fiscal year commencing on or after the first day of January of the calendar year following the calendar year during which the termination notice was communicated.

In witness whereof the undersigned, duly authorized to that effect, have signed this Convention. Done in two original copies in Madrid on the 8th day of the month of April of 2003 in the Spanish language; both texts shall be equally binding.

FOR THE KINGDOM OF SPAIN:

FOR THE BOLIVARIAN REPUBLIC OF VENEZUELA:

PROTOCOL

During the signing of the Convention between the Bolivarian Republic of Venezuela and the Kingdom of Spain for the avoidance of double taxation and the prevention of fiscal evasion and fraud with respect to taxes on income and on capital, the undersigned have agreed to the following provisions, which shall be deemed an integral part of this Convention:

I. Insofar as Article 4 is concerned:

To document residence in a Contracting State for the purposes of this Convention, a certificate of residence shall be issued which must expressly specify that the person is a resident in the Contracting State for the purposes of this Convention. The competent authorities for the issuance of such certificates are listed below:

In the case of Venezuela, the Superintendente Nacional Aduanero and Tributario (National Customs and Tax Superintendent) of the Servicio Nacional Integrado de Administración Aduanera and Tributaria (National Integrated Customs and Tax Administration Service; SENIAT), or to whoever such duty is delegated.

In the case of Spain, the Delegate of the Agencia Estatal de la Administración Tributaria (State Tax Administration Agency; AEAT) having territorial jurisdiction, or to whoever such duty is delegated. The fiscal domicile of the person shall determine territorial jurisdiction.

II. Insofar as Article 5, paragraph 2, letter f) is concerned:

It shall be understood that the exploration of natural resources constitutes a permanent establishment as long as exploration is the habitual and main activity of the enterprise. III. Insofar as Article 7, paragraph 3 is concerned:

For the purpose of determining the profits of a permanent establishment, no deduction of fictitious expenditures shall be permitted which are not in considered of services that were actually received.

IV. Insofar as Article 8 is concerned:

As soon as this Convention comes into force and effect, the International Convention between the Government of the Republic of Venezuela and the Government of Spain regarding the avoidance of double taxation in respect of Sea and Air Traffic, signed in Caracas on March 6, 1986 shall be superseded.

V. Insofar as Article 10 is concerned:

Permanent establishments in a Contracting State which belong to an enterprise which is a resident in the other Contracting State shall not be subject to the following:

a) In the case of Spain: the Impuesto Complementario (Complementary Tax) to which letter 2 of Article 18 of the Law 41/1998 dated December 9 refers, the Impuesto sobre la Renta de No Residentes (Tax on the Income of Non-Residents) and Tax Guidelines ("BOE" dated December 10), or an essentially similar duty that may be created or which may replace the same.

b) In the case of Venezuela: the Impuesto sobre las Ganancias de Capital (Capital Gains Tax) to which Article 72 of the Ley de Impuesto sobre la Renta (Income Tax Law) refers, published in the Special Edition of the Official Gazette of the Bolivarian Republic of Venezuela Nº 5.390 dated October 22, 1999, or an essentially similar duty that may be created or which may replace the same.

VI. Insofar as Article 10, paragraph 3:

The exemption contained in paragraph 3 of Article 10 of this Convention shall not apply in case the company distributing the dividends has been established in that State for the sole purpose of taking advantage of said exemption.

A company shall not be deemed to have been established in a State for the sole purpose of benefiting from the exemption mentioned in the preceding paragraph as long as the stake in the capital that is required for its application was held uninterruptedly for a period of one year prior to the day on which the profit that is distribution may be claimed or, otherwise, is held for a period of time that is necessary to complete one year.

VII. Insofar as Article 11 is concerned

Where, after the signing of this Convention, a Contracting State enters into a Double-Taxation Convention with a member State of the European Union pursuant to which taxation is agreed upon which is lower than that set forth in Article 11, the provisions of the Convention signed later shall also apply, as of the date on which it comes into force and effect, to this Convention.

VIII. Insofar as Article 11, paragraph 3, letter c) is concerned:

It shall be understood that the public institutions mentioned herein include the following:

In Spain:

ICO: Instituto de Crédito Oficial (Official Credit Institute).

CESCE: Compañía Española de Seguros de Crédito a la Exportación (Spanish Export Credit Insurance Company).

COFIDES: Compañía Española de Financiación del Desarrollo (Spanish Development Funding Company).

In Venezuela:

Banco de Desarrollo (Development Bank).

Banco de Comercio Exterior (Foreign Trade Bank).

Banco del Pueblo Soberano (Bank of the Sovereign People).

Banco de la Mujer (The Woman's Bank).

IX. Insofar as Article 12 is concerned:

Insofar as paragraph 3 of Article 12 is concerned, remuneration for special analyses or studies of a scientific, geological, or technical type,
or for special engineering services,

or for consulting and advisory services shall not be considered

received in consideration for information pertaining to know-how in the industrial, commercial, or scientific fields. In these cases, the provisions of Article 7 shall apply.

X. Insofar as Article 19 is concerned:

The provisions of this Article shall not apply to workers whose contract has been entered into prior to the entry into force of the same.

XI. Insofar as Article 22 is concerned:

It shall be understood that the same shall come into effect as soon as Venezuela establishes a tax on capital.

XII. Insofar as Articles 2 and 23 are concerned:

It shall be understood that in the case of Venezuela, the tax on corporate assets shall be considered, for the purposes of this Convention, as a tax on income.

In witness whereof the undersigned, duly authorized to that effect, have signed this Convention.

Done in two original copies in Madrid on the 8th day of the month of April of 2003 in the Spanish language; both texts shall be equally binding.

FOR THE KINGDOM OF SPAIN:

FOR THE BOLIVARIAN REPUBLIC OF VENEZUELA: