

1997 Income and Capital Tax Convention and Final Protocol (English Translation)

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

[TRANSLATION]

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

Article 1 Personal Scope

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

Article 2 Taxes Covered

1. This Convention shall apply to taxes on income and on capital imposed by each one of the Contracting States, their political subdivisions, or local entities, 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 elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amount of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which the Convention shall apply are in particular:
 - a) in Spain:
 - i) el Impuesto sobre la Renta de las Personas Físicas (Individual Income Tax);
 - ii) el Impuesto sobre Sociedades (Corporation Tax);
 - iii) el Impuesto sobre el Patrimonio (Capital Tax); and
 - iv) los impuestos locales sobre la renta y sobre el patrimonio (local income taxes and capital taxes). (which shall be hereinafter referred to as the "Spanish tax")
 - b) in Bolivia:
 - i) el Régimen Complementario al Impuesto al Valor Agregado (RC-IVA) (Complimentary Regulations on the Value-Added Tax (CR-VAT));
 - ii) el Impuesto sobre las Utilidades de las Empresas (IUE) (Business Profits Tax (BPT));
 - iii) el Impuesto a la Propiedad de Bienes Inmuebles y Vehículos Automotores (IPBIVA) (Immovable Property and Automotive Vehicle Ownership Tax (PRAVOT)); and
 - iv) el Impuesto a las Transacciones (IT) (Transactions Tax (TT)); (which shall be hereinafter referred to as the "Bolivian tax").
4. The Convention shall apply also to any identical or substantially similar taxes on income which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws, within a reasonable period of time after such changes have been made.

Article 3 General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:
 - a) the term "Spain" means the territory of the Spanish State and, employed in the geographical sense, designates the territory of the Spanish State, including the areas outside of its territorial sea in which, in accordance with International law and by virtue of its domestic law, the Spanish State may exercise jurisdiction or rights of sovereignty with respect to the sea floor and subsoil, their overlaying waters, and their natural resources;
 - b) the term "Bolivia" means the territory of the Bolivian State and, employed in the geographical sense, the Republic of Bolivia where the Bolivian State can exercise jurisdiction or rights of sovereignty with respect to the soil, subsoil, and natural resources;

- c) the terms "a Contracting State" and the "other Contracting State" mean Spain or Bolivia, according to the context;
- d) the term "person" includes an individual, a company, and any other body of persons;
- e) the term "company" means any legal person or any entity which is treated as a body corporate for tax purposes;
- f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- g) the term "national" means:
 - i) any individual possessing the nationality of a Contracting State; and
 - ii) any legal person, association or entity constituted under the laws in force in a Contracting State;
 - h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places located in the other Contracting State;
 - i) the term "competent authority" means:
 - i) in the case of Spain, the Minister of Economy and Treasury or his authorized representative; and
 - ii) in the case of Bolivia, the Minister of Treasury or his authorized representative.

2. In respect of the application of the Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of this Contracting State concerning the taxes to which the Convention applies; the meaning which it has under the tax laws of that State shall prevail over the meaning it may have under other laws of said State.

Article 4 Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income obtained from sources situated in that State or for capital he may possess therein.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
 - a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (center of vital interests);
 - b) if the State in which he has the center of his vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
 - c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
 - d) if he is a national of both States or of neither of them, the competent authorities of both Contracting States shall settle the question by mutual agreement;
3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

Article 5 Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes, especially:
 - a) offices or places of management or business headquarters;
 - b) branches and agencies;
 - c) factories, plants, workshops, and farming establishments;
 - d) a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources;
3. A construction, installation or assembly site only constitutes a permanent establishment if it lasts more than twelve months.
4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
 - a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of doing, for the enterprise, any other activity of auxiliary or preparatory character;
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in the preceding paragraphs, provided that the overall activity of the fixed place of business retains its auxiliary or preparatory character.

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

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

Article 6 Income From Immovable Property

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

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

3. The provisions of paragraph 1 shall also apply to income derived from the direct use, letting, sharecropping or use in any other form of immovable property.

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

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

Article 7 Business Profits

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

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

activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

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

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

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

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

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

Article 8 Air Transport

1. Profits from the operation of 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 from the participation in a "pool", a joint business, or international operating agency.

Article 9 Associated Enterprises

1. Where:

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

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

Article 10 Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

a) 10 percent of the gross amount of the dividends if the beneficial owner is a company (excluding partnerships) which holds directly at least 25 percent of the capital of the company paying the dividends;

b) 15 percent of the gross amount of the dividends in all other cases;

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

This paragraph does not affect the taxation of the company in respect of the profits out of which the dividends are paid.

2. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims,

participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

3. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of one of the Contracting States, carries on an industrial or commercial business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

4. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, this other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising from such other State.

Article 11 Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the Contracting State from which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 15 percent of the gross amount of the interest.

2. Notwithstanding the provisions of paragraph 1, the interest arising in one of the Contracting States shall be exempt of tax in said State if:

- a) the payer of the interest is that State or one of its political subdivisions or local entities;
- b) the interest is paid to the other Contracting State or to one of its political subdivisions or local entities, or to an institution or organization (including financial institutions) which belongs wholly to that Contracting State or to one of its political subdivisions or local entities;
- c) the interest is paid to other institutions or organizations (including financial institutions) on account of financing agreements with them within the framework of concluded agreements between the Governments of both Contracting States and as long as it is within a time period of no less than five years;
- d) the interest is paid relative to the sale of industrial, commercial, or scientific equipment.

3. The term "interest" as used in this Article means income from debt-claims of any kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from public funds and bonds or debentures, including the premiums and prizes attaching to such securities, as well as any other income subject to the same tax rules as the revenues from capital loaned under the legislation of the Contracting State from which the income proceeds. Penalties charges for late payment shall not be regarded as interest for the purposes of this Article.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on an industrial or commercial business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

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

according to the laws of each Contracting State, due regard being had to the other provisions of the this Convention.

Article 12 Royalties

1. Royalties arising in a Contracting State paid to a resident of the other Contracting State shall be taxable in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 15 percent of the gross amount of the royalties.
2. Notwithstanding the provisions of paragraph 1, royalties for copyrights and other similar remuneration relating to the production of literary, dramatic, musical or artistic works (excluding royalties relating to cinematographic films, video tapes destined for television broadcasting and video disks or tapes) deriving from a Contracting State and paid to a resident of the other Contracting State shall only be taxed in that other State.
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 works including cinematographic films, and motion pictures or tapes for radio and television, any patents, trade marks, designs or models, plans, secret formulas or processes, as well as for the use of, or the right to use, industrial, commercial, or scientific equipment, and for the information relating to industrial, commercial, or scientific experiences.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on an industrial or commercial business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is the State itself, one of its political subdivisions, one of its local authorities or a resident of that State. Where, however, the person paying the royalties, whether it is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base which is effectively connected with the use of the property or right for which the royalties were paid, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.
6. Were by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties paid, having regard to the consideration for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such a relationship, the provisions of this Article shall apply only to the last-mentioned amount. The excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13 Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other Contracting State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. Gains from the alienation of property other than that referred to in the preceding paragraphs of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14 Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall only be taxable in that State unless such resident 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 subject to tax in the other State, but only so much of it as is attributable to that fixed base.

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

Article 15 Dependent Personal Services

1. Subject to the provisions of Articles 16, 18, 19, 20, and 21, salaries, wages, and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is 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 Contracting State if:

- a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate of 183 days during any twelve-month period that begins or ends 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 Contracting State; and
- c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

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

Article 16 Directors' Fees

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

Article 17 Entertainers and Athletes

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

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

3. The provisions of paragraphs 1 and 2 shall not apply if the activities exercised in one Contracting State are substantially financed by the public funds of the other Contracting State or of one of its political subdivisions or local entities, as part of a cultural agreement. In such case, the income derived from such activities shall only be taxed in that other State.

Article 18 Pensions

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

Article 19 Government Service

1.

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

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

- i) is a national of that State; or
- ii) did not become a resident of that State solely for the purposes of rendering services.

2.

a) Any pension paid directly by, or out of funds created by, a State or a political subdivision or a local authority thereof to an individual, in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

b) However, such pensions shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other State.

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

Article 20 Students

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

2. In respect of grants, scholarships, and income for services rendered and not stipulated in paragraph 1, the students and individuals covered by the practices described in this paragraph shall also be entitled, during their period of study or formation, to the same exemptions, tax reductions or tax bonuses as those granted to residents of the State which they are visiting.

Article 21 Teachers or Professors

1. An individual who is or has been a resident of a Contracting State immediately before moving to the other Contracting State and who, by invitation of a university, school or another similar non-profit institution of higher learning, remains in that other State for a period not exceeding two years from the date of first arrival into that State, for the exclusive purpose of teaching or conducting research, or both, in such educational institutions, shall be exempt of tax in that other State on account of such teaching or research.

2. The provisions of paragraph 1 of this Article shall not apply to remuneration received for research work if such work is not carried out for public interest, but rather for the private benefit of such individual or individuals.

Article 22 Other Income

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

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

Article 23 Capital

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

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State for the purpose of performing independent personal services, may be taxed in the Contracting State in which the permanent establishment or fixed base is situated.

3. Capital represented by ships and aircraft operated in international traffic, and by 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 capital of a resident of a Contracting State shall be taxable only in that State.

Article 24 Methods for Elimination of Double Taxation

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

a) Where a resident of Spain obtains income or possesses elements of capital which, in accordance with the provisions of this Convention, may be taxed in Bolivia, Spain shall allow as a deduction from the tax on the income or capital of that resident, an amount equal to the tax actually paid in Bolivia. Nevertheless, such a deduction shall not exceed the part of the income tax or the capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or capital subject to taxation in Bolivia.

b) Where dividends paid by a company which is a resident of Bolivia to a company which is a resident of Spain are involved, in order to determine the deduction there shall be taken into account, in addition to the amount deductible in accordance with sub-paragraph a) of this paragraph, the tax

actually paid by the first-mentioned company in respect of the profits from which the dividends are paid, in the amount pertaining to such dividends, provided that such amount is included, for these purposes, in the taxable basis of the company which receives them.

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

For the application of the provisions of this sub-paragraph, it shall be necessary that the holding in the company paying the dividends be that determined by the domestic law of Spain, and in any case be at least 25 percent of the capital of the company paying the dividends and be maintained in an uninterrupted fashion during one year prior to the date the dividend is due.

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

2. In the case of a resident of Bolivia, any type of income arising in Spain or any capital situated in Spain which may be taxed according to this Convention shall be excluded from the base on which the Bolivian tax is levied.

Notwithstanding, the Republic of Bolivia maintains the right to include, in determining the applicable aliquot, the income and capital items thus excluded.

Article 25 Non-Discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected, particularly in respect of residence. Notwithstanding the provisions in Article 1, the provisions of this Article shall also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that State than the taxation levied on enterprises of the latter 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, relief and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11, or paragraph 6 Article 12 apply, interest, royalties or 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 that enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. similarly, the debts of an enterprise of a Contracting State owed to a resident of the other Contracting State shall be deductible for the purpose of determining the taxable capital of that enterprise under the same conditions as if they had been contracted for with a resident of the first-mentioned State.

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

5. Notwithstanding the provisions of Article 2, the provisions of this Article shall apply to all taxes of any kind or description.

Article 26 Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or shall result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those Contracting States, present his case to the competent authority of the Contracting State of which he is a resident or, if paragraph 1 of Article 25 is applicable, to the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. That competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the

competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with this Convention.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They shall also come to an agreement to try to avoid double taxation in cases not provided for in this Convention.

4. The competent authorities of the Contracting State may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs of this Article. When it 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 27 Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information shall not be restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secrets, or trade processes, or information, the disclosure of which would be contrary to public policy.

Article 28 Diplomatic Agents and Consular Officers

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

Article 29 Entry Into Force

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

2. The Convention shall enter into force beginning at the point of exchange of the instruments of ratification, and its provisions shall apply to taxes on income or on capital, commencing the first day of January of the natural or calendar year subsequent to the date when the Convention enters into force.

Article 30 Termination

This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention through diplomatic channels, by giving written notice of termination at least six months before the end of any natural or calendar year after the expiration of a period of five years from its entry into force. In such event, the Convention shall cease to have effect with respect to taxes on income and taxes on capital commencing on the first day of January of the natural or calendar year subsequent to that in which termination was notified.

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

Done at La Paz, on the 30th day of June, 1997, in two originals, in the Spanish language.

FOR THE KINGDOM OF SPAIN:

*Manuel Viturro de la Torre
Spanish Ambassador in Bolivia*

FOR THE REPUBLIC OF BOLIVIA:

*Antonio Aranibar Quiroga
Secretary of State for Foreign Affairs*

PROTOCOL

At the time of signing of the Convention between the Kingdom of Spain and the Republic of Bolivia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, the undersigned agreed upon the following provisions which constitute part of the Convention:

1. The tax reductions or exemptions provided for in the Convention with respect to dividends, interest, royalties and profits due to alienation of property or rights, shall not apply when said income is obtained in a Contracting State by a corporation that is resident of the other Contracting State when 50 percent of the capital is held, directly or indirectly, by members who are not residents of that other State. This paragraph shall not apply when the aforementioned corporation carries out, in one or the other of the Contracting States, substantial commercial or industrial activity other than simple transactions of securities or other assets.
2. If after the signing of this Convention, the Republic of Bolivia concludes a Convention for Double Taxation with another country that is a member of the Organization for Economic Cooperation and Development, in which the tax limit on the royalties were less than that provided for in Article 12 of this Convention, the lower rate or exemption established in the Convention concerned shall automatically apply commencing the date of its entry into force, to the residents of both Contracting States with respect to this category of income.
3. In respect of Article 24.1.a and b, the tax actually paid in Bolivia shall be the satisfied Business Profits Tax. According to the domestic laws of Bolivia, the Transactions Tax which exceeds the amount offset by the Business Profits Tax shall be deducted from the latter tax for the same fiscal year.
4. Method of exemption: In respect of Article 24.1.a) and b) inasmuch as the Bolivian Tax continues to be considered comparable to the Spanish Corporation Tax in terms equal or similar to the ones existing at the time of signing of this Convention, the company which is a resident of Spain and receives dividends under the conditions provided in Article 24.1.b of this Convention, or which receives income through a permanent establishment situated in Bolivia and which, in both cases, in agreement with the provisions of this Convention may be subject to tax in Bolivia, may deduct, from the Spanish Tax 100 percent of the total amount corresponding to the taxable base derived from such dividends or income, as stipulated in Articles 29 bis and 30 bis of Law 43/1995, of 27 December, or any other provision which may be adopted in the future that establishes a substantially similar rule.

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

Done at La Paz, on the 30th day of June, 1997, in two originals, in the Spanish language.

FOR THE KINGDOM OF SPAIN:

*Manuel Viturro de la Torre
Spanish Ambassador in Bolivia*

FOR THE REPUBLIC OF BOLIVIA:

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