

*Draft Order in Council laid before the House of Commons under section 5(2) of the Taxation (International and Other Provisions) Act 2010 and section 173(7) of the Finance Act 2006, for approval by resolution of that House.*

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DRAFT STATUTORY INSTRUMENTS

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**2013 No. 0000**

**CAPITAL GAINS TAX**

**CORPORATION TAX**

**INCOME TAX**

**The Double Taxation Relief and International Tax Enforcement  
(Spain) Order 2013**

*Made* - - - - - \*\*\*

At the Court at Buckingham Palace, the \*\*\* day of \*\*\*

Present,

The Queen's Most Excellent Majesty in Council

A draft of this Order was laid before the House of Commons in accordance with section 5(2) of the Taxation (International and Other Provisions) Act 2010(a) and section 173(7) of the Finance Act 2006(b) and approved by a resolution of that House.

Accordingly, Her Majesty, in exercising the powers conferred upon Her by section 2 of the Taxation (International and Other Provisions) Act 2010 and section 173(1) to (3) of the Finance Act 2006, by and with the advice of Her Privy Council, orders as follows—

**Citation**

**1.** This Order may be cited as the Double Taxation Relief and International Tax Enforcement (Spain) Order 2013.

**Double taxation and international tax enforcement arrangements to have effect**

**2.** It is declared that—

- (a) the arrangements specified in the Convention and Protocol set out in the Schedule to this Order have been made with the Government of the Kingdom of Spain;

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(a) 2010 c. 8.  
(b) 2006 c. 25.

- (b) the arrangements have been made with a view to affording relief from double taxation in relation to capital gains tax, corporation tax and income tax and taxes of a similar character imposed by the laws of the Kingdom of Spain and for the purposes of assisting international tax enforcement; and
- (c) it is expedient that those arrangements should have effect.

*Name*  
Clerk of the Privy Council

## SCHEDULE 1

Article 2

### PART 1

#### **CONVENTION BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE KINGDOM OF SPAIN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL**

The United Kingdom of Great Britain and Northern Ireland, and the Kingdom of Spain desiring to conclude 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

##### **PERSONS COVERED**

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 or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.
  2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation.
  3. The existing taxes to which the Convention shall apply are in particular:
    - a) in Spain:
      - (i) the income tax on individuals;
      - (ii) the corporation tax;
      - (iii) the income tax on non residents;
      - (iv) the capital tax; and
      - (v) local taxes on income and on capital;
- (hereinafter referred to as “Spanish Tax”);

- b) in the United Kingdom:
  - (i) the income tax;
  - (ii) the corporation tax; and
  - (iii) the capital gains tax;(hereinafter referred to as “United Kingdom tax”).

4. The Convention shall apply also to any identical or substantially similar taxes that 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 that have been made in their taxation laws.

### ARTICLE 3

#### GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:
  - a) the term “Spain” means the Kingdom of Spain and, when used in a geographical sense, means the territory of the Kingdom of Spain, including inland waters, the air space, the territorial sea and any maritime area outside the territorial sea upon which, in accordance with international law and on application of its domestic legislation, the Kingdom of Spain exercises or may exercise in the future jurisdiction or sovereign rights with respect to the sea bed, its subsoil and superjacent waters, and their natural resources;
  - b) the term “United Kingdom” means Great Britain and Northern Ireland, including its inland waters, air space and territorial sea, and any maritime area outside its territorial sea within which, in accordance with international law and on application of its domestic legislation concerning the Continental Shelf, the United Kingdom exercises or may exercise in the future jurisdiction or sovereign rights with respect to the sea bed, its subsoil and superjacent waters, and their natural resources;
  - c) the terms “a Contracting State” and “the other Contracting State” mean Spain or the United Kingdom as the context requires;
  - d) the term “person” includes an individual, a trust, a company, and any other body of persons;
  - e) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - f) the term “enterprise” applies to the carrying on of any business;
  - g) 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;
  - h) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
  - i) the term “competent authority” means:
    - (i) in Spain, the Minister of Economy and Finance or his authorised representative;
    - (ii) in the United Kingdom, the Commissioners for Her Majesty’s Revenue and Customs

or their authorised representative;

j) the term “national” means:

(i) in relation to Spain:

aa) any individual possessing the nationality of Spain;

bb) any legal person, partnership or association deriving its status as such from the laws in force in Spain.

(ii) in relation to the United Kingdom, any British citizen, or any British subject not possessing the citizenship of any other Commonwealth country or territory, provided he has the right of abode in the United Kingdom; and any legal person, partnership, association or other entity deriving its status as such from the laws in force in the United Kingdom;

k) the term “business” includes the performance of professional services and of other activities of an independent character;

l) the term “pension scheme” means:

(i) in Spain:

any scheme, fund, mutual benefit institution or other entity established in Spain

(aa) which manages the right of its beneficiaries to receive income or capital upon retirement, survivorship, widowhood, orphanhood, or disability; and

(bb) contributions to which are eligible for tax benefits in the form of reductions in the taxable base of personal taxes.

(ii) in the United Kingdom:

any plan, scheme, fund, trust or other arrangement established in the United Kingdom which:

(aa) is generally exempt from income taxation; and

(bb) operates principally to administer or provide pension or retirement benefits or to earn income for the benefit of one or more such arrangements.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that 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, place of incorporation or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income or capital gains from sources in that State or capital situated therein. The term “resident of a Contracting State” includes a pension scheme established in that State.

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 only 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 only of the State with which his personal and economic relations are closer (centre of vital interests);
- b) if the State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident only of the 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 only 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 the Contracting States shall settle the question by mutual agreement.

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

4. For the purposes of applying this Convention:

- a) an item of income, profit or gain:
  - (i) derived from a Contracting State through a partnership, a trust, group of persons or other similar entity that is established in the other Contracting State; and
  - (ii) treated as the income of beneficiaries, members or participants of that partnership, trust, group of persons or other similar entity under the tax laws of that other Contracting State;

shall be eligible for the benefits of the Convention that would be granted if it were directly derived by a beneficiary, member or participant of that partnership, trust, group of persons or other similar entity who is a resident of that other Contracting State, to the extent that such beneficiaries, members or participants are residents of that other Contracting State and satisfy any other conditions specified in the Convention, without regard to whether the income is treated as the income of such beneficiaries, members or participants under the tax laws of the first-mentioned State;

- b) an item of income, profit or gain:
  - (i) derived from a Contracting State through a partnership, a trust, group of persons or other similar entity that is established in the other Contracting State; and
  - (ii) treated as the income of that partnership, trust, group of persons or other similar entity under the tax laws of that other Contracting State;

shall be eligible for the benefits of the Convention that would be granted to a resident of that other Contracting State, without regard to whether the income is treated as the income of that partnership, trust, group of persons or other similar entity under the tax laws of the first-mentioned State, if such partnership, trust, group of persons or other similar entity is a resident of that other Contracting State and satisfies any other conditions specified in the Convention;

- c) an item of income, profit or gain:

(i) derived from a Contracting State through a partnership, trust, group of persons or any other similar entity that is established in that Contracting State;

(ii) treated as the income of beneficiaries, members or participants of that partnership, trust, group of persons or other similar entity under the tax laws of the other Contracting State; and

(iii) treated as the income of that partnership, trust, group of persons or other similar entity under the tax laws of the first-mentioned State;

can be taxed under the tax laws of the first-mentioned State without any restriction;

d) an item of income, profit or gain:

(i) derived from a Contracting State through a partnership, trust, group of persons or other similar entity that is established in that Contracting State; and

(ii) treated as the income of that partnership, trust, group of persons or other similar entity under the tax laws of the other Contracting State;

shall not be eligible for the benefits of the Convention;

e) an item of income, profit or gain:

(i) derived from a Contracting State through a partnership, group of persons or any other similar entity that is established in a State other than the Contracting States; and

(ii) treated as the income of the beneficiaries, members or participants of that partnership, group of persons or other similar entity under the tax laws of the other Contracting State and under the tax laws of the State where the entity is established;

shall be eligible for the benefits of the Convention that would be granted if it were directly derived by a beneficiary, member or participant of that partnership, group of persons or other similar entity who is a resident of that other Contracting State, to the extent that such beneficiaries, members or participants are residents of that other Contracting State and satisfy any other conditions specified in the Convention, without regard to whether the income is treated as the income of such beneficiaries, members or participants under the tax laws of the first-mentioned State provided that the State where the partnership, group of persons or other similar entity is established has concluded with the first-mentioned State an agreement containing a provision for the exchange of information with a view to the prevention of fiscal evasion;

f) an item of income, profit or gain:

(i) derived from a Contracting State through a partnership, group of persons or any other similar entity that is established in a State other than the Contracting States; and

(ii) treated as the income of that partnership, group of persons or other similar entity under the tax laws of the other Contracting State;

shall not be eligible for the benefits of the Convention.

## ARTICLE 5

### PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially:
  - a) a place of management;
  - b) a branch;
  - c) an office;
  - d) a factory;
  - e) a workshop; and
  - f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. A building site or construction or installation project constitutes a permanent establishment only 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 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 is of a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts on behalf of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.



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

## ARTICLE 6

### INCOME FROM IMMOVABLE PROPERTY

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

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

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

4. Where the ownership of shares or other rights directly or indirectly entitles the owner of such shares or rights to the enjoyment of immovable property, the income from the direct use, letting or use in any other form of such right to the enjoyment may be taxed in the Contracting State in which the immovable property is situated.

5. The provisions of paragraphs 1, 3 and 4 shall also apply to the income from immovable property of an enterprise.

## ARTICLE 7

### BUSINESS PROFITS

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

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

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

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

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

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

## ARTICLE 8

### SHIPPING AND AIR TRANSPORT

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

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

## ARTICLE 9

### ASSOCIATED ENTERPRISES

1. Where

- a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. 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 State has been charged to tax in that other Contracting State and that other State agrees 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 the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

## ARTICLE 10

### DIVIDENDS

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

2. However, such dividends:

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

- (i) 10 per cent of the gross amount of the dividends, except as provided in subparagraph a) (ii);
  - (ii) 15 per cent of the gross amount of the dividends where those dividends are paid out of income (including gains) derived directly or indirectly from immovable property within the meaning of Article 6 by an investment vehicle which distributes most of this income annually and whose income from such immovable property is exempted from tax;
- b) shall, notwithstanding the provisions of subparagraph a), be exempt from tax in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is:
- (i) a company which is a resident of the other Contracting State and controls, directly or indirectly, at least 10 per cent of the capital in the company paying the dividends (other than where the dividends are paid by an investment vehicle as mentioned in subparagraph a) (ii)); or
  - (ii) a pension scheme which is a resident of the other Contracting State.

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

3. The term “dividends” as used in this Article means income from shares, “jouissance” shares or “jouissance” rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as any other item which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, 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 such case the provisions of Article 7 shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, 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 subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

## ARTICLE 11

### INTEREST

1. Interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other Contracting State.

2. The term “interest” as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as all other income assimilated to income from money lent by the taxation laws of the State in which the income arises. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article. The term shall not include any item which is treated as a dividend under the provisions of Article 10.

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

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

## ARTICLE 12

### ROYALTIES

1. Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

2. 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, patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience, or for payments of any kind in respect of cinematograph films and recordings for radio and television.

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

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

## ARTICLE 13

### CAPITAL GAINS

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

2. Gains 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 (alone or with the whole enterprise) may be taxed in that other Contracting State.

3. Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic by an enterprise of that State or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

4. Gains derived by a resident of a Contracting State from the alienation of shares, other than shares in which there is substantial and regular trading on a Stock Exchange, or comparable interests, deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.

5. Gains from the alienation of shares or other rights, which directly or indirectly entitle the owner of such shares or rights to the enjoyment of immovable property situated in a Contracting State, may be taxed in that State.

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

#### ARTICLE 14

##### **INCOME FROM EMPLOYMENT**

1. Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and

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

c) the remuneration is not borne by a permanent establishment 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 in which the enterprise operating the ship or aircraft is resident.

#### ARTICLE 15

##### **DIRECTORS' FEES**

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

#### ARTICLE 16

##### **ARTISTES AND SPORTSMEN**

1. Notwithstanding the provisions of Articles 7 and 14, 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 a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman but to another person, that

income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

#### ARTICLE 17

##### **PENSIONS**

Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration paid to an individual who is a resident of a Contracting State, shall be taxable only in that State.

#### ARTICLE 18

##### **GOVERNMENT SERVICE**

1.
  - a) Salaries, wages and other similar remuneration 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 salaries, wages 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) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created 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 pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
3. The provisions of Articles 14, 15, 16 and 17 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

#### ARTICLE 19

##### **STUDENTS**

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

#### ARTICLE 20

##### **OTHER INCOME**

1. Items of income beneficially owned by a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention, shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, where an amount of income is paid to a resident of a Contracting State out of income received by trustees or personal representatives administering the estates of deceased persons and those trustees or personal representatives are residents of the other Contracting State, that amount shall be treated as arising from the same sources, and in the same proportions, as the income received by the trustees or personal representatives out of which that amount is paid.

3. 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 beneficial owner of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

4. Where, by reason of a special relationship between the resident referred to in paragraph 1 and some other person, or between both of them and some third person, the amount of the income referred to in that paragraph exceeds the amount (if any) which would have been agreed upon between them in the absence of such a relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the income shall remain taxable according to the laws of each Contracting State, due regard being had to the other applicable provisions of this Convention.

## ARTICLE 21

### 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 may be taxed in that other State.

3. Capital represented by ships and aircraft operated in international traffic by an enterprise of a Contracting State and by movable property pertaining to the operation of such ships and aircraft shall be taxable only in that Contracting State.

4. Capital constituted by shares or other rights in a company or any other body of persons, deriving more than 50 per cent of their value directly or indirectly from immovable property situated in a Contracting State or by shares or other rights which entitle its owner to a right of enjoyment of immovable property situated in a Contracting State, may be taxed in the Contracting State in which the immovable property is situated.

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

## ARTICLE 22

### ELIMINATION OF DOUBLE TAXATION

1. In Spain, double taxation shall be avoided following either the provisions of its internal legislation or the following provisions in accordance with the internal legislation of Spain:

a) Where a resident of Spain derives income or owns elements of capital which, in accordance with the provisions of this Convention, may be taxed in the United Kingdom, Spain shall allow:

(i) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in the United Kingdom;



- (ii) as a deduction from the tax on the capital of that resident, an amount equal to the tax paid in the United Kingdom on the same elements of capital;
- (iii) the deduction of the underlying corporation tax, which shall be given in accordance with the internal legislation of Spain.

Such deduction shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the same elements of capital which may be taxed in the United Kingdom.

- b) Where in accordance with any provision of the Convention income derived or capital owned by a resident of Spain is exempt from tax 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. Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom or, as the case may be, regarding the exemption from United Kingdom tax of a dividend or of the profits of a permanent establishment arising in a territory outside the United Kingdom (which shall not affect the general principle hereof):

- a) Spanish tax payable under the laws of Spain and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within Spain (excluding in the case of a dividend tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which Spain's tax is computed;
- b) a dividend which is paid by a company which is a resident of Spain to a company which is a resident of the United Kingdom shall be exempted from United Kingdom tax, when the exemption is applicable and the conditions for exemption under the law of the United Kingdom are met;
- c) the profits of a permanent establishment in Spain of a company which is a resident of the United Kingdom shall be exempted from United Kingdom taxation where the exemption is applicable and the conditions for exemption under the law of the United Kingdom are met;
- d) in the case of a dividend not exempted from tax under subparagraph b) above which is paid by a company which is a resident of Spain to a company which is a resident of the United Kingdom and which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend, the credit mentioned in subparagraph a) above shall also take into account the Spanish tax payable by the company in respect of its profits out of which such dividend is paid.

3. For the purposes of paragraphs 1 and 2, profits, income and gains owned by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Convention shall be deemed to arise from sources in that other State.

## ARTICLE 23

### MISCELLANEOUS PROVISIONS

1. Where under any provision of this Convention a Contracting State reduces the rate of tax on, or exempts from tax, an item of income, profit or gain of a resident of the other Contracting State and under the laws in force in that other Contracting State that resident in respect of that item is subject to tax in that other State only on that part of such income, profit or gain which is remitted to or received in that other State and not by reference to the full amount thereof, then the



reduction or exemption shall apply only to so much of the income, profit or gain as is taxed in that other State.

2. No relief shall be available under this Convention if the main purpose or one of the main purposes of any person concerned with the creation, assignment or alienation of any shares, debt-claims, assets or other rights in respect of which income or gains arise was to take advantage of this Convention by means of that creation, assignment or alienation.

#### 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, in particular with respect to residence, are or may be subjected.

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

3. Except where the provisions of paragraph 1 of Article 9, paragraph 4 of Article 11, paragraph 4 of Article 12, paragraph 4 of Article 20, or paragraph 2 of Article 23 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. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted 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. Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident or to its nationals.

6. The provisions of this Article shall apply to the taxes referred to in Article 2 of this Convention.

#### ARTICLE 25

##### **MUTUAL AGREEMENT PROCEDURE**

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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

implemented notwithstanding any time limits or other procedural limitations in the domestic law of the Contracting States, except such limitations as apply to claims made in pursuance of such an agreement.

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

4. The competent authorities of the Contracting States may communicate with each other directly, including by means of face to face meetings, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

5. Where,

- a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention, and
- b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the presentation of the case to the competent authority of the other Contracting State,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests.

These unresolved issues shall not, however, be submitted to arbitration if any person directly affected by the case is still entitled, under the domestic law of either State, to have courts or administrative tribunals of that State decide these issues or if a decision on these issues has already been rendered by such a court or administrative tribunal or if the case has been presented to either competent authority under the European convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, signed on 23rd July 1990. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.

## ARTICLE 26

### EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Convention, in particular, to prevent fraud and to facilitate the administration of statutory provisions against tax avoidance. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. 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. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such

information may be used for such other purposes under the law of the requesting State and the competent authority of the supplying State authorises such use.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
  - a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
  - b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
  - c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*).
4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.
5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

#### ARTICLE 27

##### **MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS**

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

#### ARTICLE 28

##### **ENTRY INTO FORCE**

1. The Governments of the Contracting States shall notify each other, through diplomatic channels when the internal procedures required by each Contracting State for the entry into force of this Convention have been complied with.
2. The Convention shall enter into force after the period of three months following the date of receipt of the later of the notifications and its provisions shall have effect:
  - (i) in respect of taxes withheld at source, on or after the date on which the Convention enters into force;
  - (ii) in respect of other taxes, for taxation years beginning on or after the date on which the Convention enters into force;
  - (iii) for all other matters, on or after the date on which the Convention enters into force.
3. The Convention between the United Kingdom of Great Britain and Northern Ireland and Spain for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital signed at London on 21st October 1975, as modified by a subsequent exchange of notes (“the prior Convention”), shall cease to have effect in respect of any

tax with effect from the date upon which this Convention has effect in respect of that tax in accordance with the provisions of paragraph 2 and shall terminate on the last such date.

4. Notwithstanding the provisions of this Article, the provisions of Articles 25 (Mutual Agreement Procedure) and 26 (Exchange of Information) shall, in accordance with subparagraph iii) of paragraph 2, have effect from the date of entry into force of this Convention, without regard to the taxable year or chargeable period to which the matter relates. However, paragraph 5 of Article 25 shall apply only to cases first presented to the competent authority on or after the date on which this Convention enters into force.

5. Notwithstanding the entry into force of this Convention, an individual who is benefiting from Article 21 (Teachers) of the prior Convention at the time of entry into force of this Convention shall continue to be entitled to that benefit as if the prior Convention had remained in force.

#### ARTICLE 29

#### TERMINATION

This Convention shall remain in force until terminated by a Contracting State. 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 calendar year beginning on or after the expiration of a period of five years from the date of its entry into force. In such event, the Convention shall cease to have effect

- (i) in respect of taxes withheld at source, on amounts paid or credited after the end of that calendar year;
- (ii) in respect of other taxes, for taxation years beginning after the end of that calendar year;
- (iii) for all other matters, after the end of that calendar year.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Convention.

DONE in duplicate at London this Fourteenth day of March 2013 in the English and Spanish languages, both texts being equally authoritative.

**For the United Kingdom of Great Britain  
and Northern Ireland:**

*David Gauke*

**For the Kingdom of Spain:**

*H.E Mr Federico Trillo-Figueroa Martínez-  
Conde*

## PART 2

### **PROTOCOL TO THE CONVENTION BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE KINGDOM OF SPAIN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL**

At the moment of signing the Convention between the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, the undersigned have agreed upon the following provisions which shall be an integral part of the Convention:

#### **I. With reference to subparagraph l) of paragraph 1 of Article 3 (General Definitions), paragraph 1 of Article 4 (Residence) and sub-subparagraph (ii) of subparagraph b) of paragraph 2 of Article 10 (Dividends)**

It is understood that the term “pension scheme” includes:

- a) in the case of Spain,
  - (i) any fund regulated under the Amended Text of the Law on pension funds and pension schemes (Texto refundido de la Ley sobre fondos y planes de pensiones), passed by Legislative Royal Decree 1/2002 of 29th November;
  - (ii) any entity defined under Article 64 of the Amended Text of the Law on the regulation and monitoring of private insurances (Texto refundido de la Ley de ordenación y supervisión de los seguros privados) passed by Legislative Royal Decree 6/2004 of 29th October, provided that in the case of mutual funds all participants are employees; promoters and sponsoring partners are the companies, institutions or individual entrepreneurs to which the employees are engaged; and benefits are exclusively derived from the social welfare agreement between both parties, as well as any other comparable entity to them regulated within the scope of the political subdivisions (Comunidades Autónomas);
  - (iii) insurance companies regulated under the Amended Text of the Law on the regulation and monitoring of private insurances passed by Legislative Royal Decree 6/2004 of 29th October whose activity is the coverage of the contingencies provided for in the Amended Text of the Law on pension funds and pension schemes;
- b) in the case of the United Kingdom, pension schemes (other than a social security scheme) registered under Part 4 of the Finance Act 2004, including pension funds or pension schemes arranged through insurance companies and unit trusts where the unit holders are exclusively pension schemes.

The competent authorities may agree to include in the above, pension schemes of identical or substantially similar economic or legal nature which are introduced by way of statute or legislation in either State after the date of signature of the Convention.

#### **II. With reference to Article 3 (General definitions), paragraph 4 of Article 4 (Resident) and Article 20 (Other income)**

It is understood that the term “trust” means a trust that is a resident of the United Kingdom under its domestic law.

**III. With reference to subparagraph a) (ii) of paragraph 2 of Article 10 (Dividends)**

It is understood that the term “investment vehicle” means:

- (i) In Spain, any entity regulated under the Law 11/2009 of 26th October on Sociedades Anónimas Cotizadas de Inversión en el Mercado Inmobiliario;
- (ii) In the United Kingdom, a real estate investment trust within the meaning of Part 12 of Corporation Tax Act 2010 and a property authorised investment fund within the meaning of Part 4A of the Authorised Investment Funds (Tax) Regulations 2006 (SI 2006/964).

**IV. With reference to paragraph 4 of Article 6 (Income from immovable property)**

No income derived from an immovable property shall be attributable to owners of rights to the enjoyment of such immovable property on a time-sharing agreement, when such enjoyment does not exceed two weeks in a calendar year.

**V. With reference to Articles 20 (Other income) and 22 (Elimination of double taxation)**

Residents of Spain who are beneficiaries of a United Kingdom trust will be taxed in Spain on the gross amount of income they receive or are entitled to receive from the trust.

In such a case, Spain shall allow as a deduction from the tax on the income of that resident, an amount equal to the effective income tax paid in the United Kingdom by the beneficiary as a consequence of the income distribution after all relevant repayment claims have been made by the beneficiary. Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in the United Kingdom.

In witness whereof the undersigned, duly authorised thereto, have signed this Protocol.

Done in duplicate at London this Fourteenth day of March 2013 in the English and Spanish languages, both texts being equally authoritative.

**For the United Kingdom of Great Britain  
and Northern Ireland**

*David Gauke*

**For the Kingdom of Spain**

*H.E Mr Federico Trillo-Figueroa Martínez-  
Conde*

## EXPLANATORY NOTE

*(This note is not part of the Order)*

The Schedule to this Order contains a Convention and a Protocol (“the Arrangements”) between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Spain dealing with the avoidance of double taxation and the prevention of fiscal evasion. This Order brings the Arrangements into effect.

The Arrangements aim to eliminate the double taxation of income and gains arising in one country and paid to residents of the other country. This is done by allocating the taxing rights that each country has under its domestic law over the same income and gains, and/or by providing relief from double taxation. There are also specific measures which combat discriminatory tax treatment and provide for assistance in international tax enforcement.

Article 1 provides for citation.

Article 2 makes a declaration as to the effect and content of the Arrangements.

The Arrangements will enter into force after the period of three months following the date of the later of the notifications by each country of the completion of its legislative procedures. They will take effect as follows:

- (i) in respect of taxes withheld at source, on or after the date on which the Convention enters into force;
- (ii) in respect of other taxes, for taxation years beginning on or after the date on which the Convention enters into force;
- (iii) for all other matters, on or after the date on which the Convention enters into force.

Until such time as the Arrangements enter into force the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Spain) Order 1976 (S.I. 1976/1919), as amended by the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Spain) Order 1995 (S.I. 1995/765), continue to have effect.

The date of entry into force will, in due course, be published in the *London, Edinburgh and Belfast Gazettes*.

A Tax Information and Impact Note has not been produced for this Order as it gives effect to a previously announced policy to enact a double taxation agreement.

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