

1976 No. 1919**INCOME TAX****The Double Taxation Relief (Taxes on Income) (Spain)
Order 1976**

Laid before the House of Commons in draft

Made - - - 15th November 1976

At the Court at Buckingham Palace, the 15th day of November 1976

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order was laid before the Commons House of Parliament in accordance with the provisions of section 497(8) of the Income and Corporation Taxes Act 1970(a), and an Address has been presented to Her Majesty by that House praying that an Order may be made in the terms of this Order:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 497 of the said Income and Corporation Taxes Act 1970, section 98(2) of the Finance Act 1972(b) and section 39 of the Finance Act 1965(c), as amended, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (Spain) Order 1976.

2. It is hereby declared—

(a) that the arrangements specified in the Convention set out in the Schedule to this Order have been made with the Government of Spain with a view to affording relief from double taxation in relation to income tax, corporation tax or capital gains tax and taxes of a similar character imposed by the laws of Spain; and

(b) that it is expedient that these arrangements should have effect.

N. E. Leigh.

(a) 1970 c. 10.

(b) 1972 c. 41.

(c) 1965 c. 25.

SCHEDULE

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

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government 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 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) The taxes which are the subject of this Convention are:

(a) in the United Kingdom of Great Britain and Northern Ireland:

- (i) the income tax;
- (ii) the corporation tax; and
- (iii) the capital gains tax;
(hereinafter referred to as "United Kingdom tax");

(b) in Spain:

- (i) the general income tax on individuals (*el impuesto general sobre la Renta de las personas físicas*);
- (ii) the general corporation tax (*el impuesto general sobre la Renta de Sociedades y demás entidades jurídicas*);
- (iii) the following prepayments: the tax on rural land, the tax on urban land, the tax on earned income, the tax on income from capital, the tax on business and industrial activities (*los siguientes impuestos a cuenta: la Contribución Territorial sobre la Riqueza Rústica y Pecuaria, la Contribución Territorial sobre la Riqueza Urbana, el impuesto sobre los Rendimientos del Trabajo Personal, el impuesto sobre las Rentas del Capital y el impuesto sobre Actividades y beneficios comerciales e industriales*);
- (iv) In Sahara, the income taxes on earned income and on income from capital and the taxes on profits of the enterprises (*en Sahara, los impuestos sobre la renta sobre los rendimientos del trabajo y del patrimonio y sobre los beneficios de las empresas*);
- (v) The "surface royalty" and the tax on corporation profits, regulated by the Law of 27 June 1974 applicable to enterprises engaged in prospecting and exploiting oil wells (*el Canon de superficie y el impuesto sobre los beneficios, regulados por la Ley de 27 de Junio de 1974 aplicable a las empresas que se dedican a la investigación y explotación de hidrocarburos*); and
- (vi) the local taxes on income and capital (*los impuestos locales sobre la renta y el patrimonio*);
(hereinafter referred to as "Spanish tax").

(2) This Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Convention in addition to, or in place of, the existing taxes. At the end of each year, the competent authorities of the Contracting States shall notify to each other any changes which have been made in their respective taxation laws.

ARTICLE 3

General definitions

- (1) In this Convention, unless the context otherwise requires:
- (a) the term “United Kingdom” means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which in accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the sea bed and sub-soil and their natural resources may be exercised;
 - (b) the term “Spain” means the Spanish State and, when used in a geographical sense, Peninsular Spain, the Balearic and Canary Islands, and the Spanish towns and territories in Africa, including any area outside the territorial sea of Spain which in accordance with international law has been or may hereafter be designated, under the laws of Spain concerning the Continental Shelf, as an area within which the rights of Spain with respect to the sea bed and sub-soil and their natural resources may be exercised;
 - (c) the term “national” means:
 - (i) in relation to the United Kingdom, any citizen of the United Kingdom and Colonies who derives his status as such from his connection with the United Kingdom and any legal person, association or other entity deriving its status as such from the law in force in the United Kingdom;
 - (ii) in relation to Spain, any individual possessing the nationality of Spain and any legal person, partnership or association deriving its status as such from the law in force in Spain;
 - (d) 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;
 - (e) the terms “a Contracting State” and “the other Contracting State” mean the United Kingdom or Spain as the context requires;
 - (f) the term “person” comprises an individual, a company and any other body of persons;
 - (g) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - (h) 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;
 - (i) the term “competent authority” means, in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative and, in the case of Spain, the Minister of Finance, the Technical General Secretary or any other authority to whom the Minister delegates.
- (2) As regards the application of this Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of this Convention.

ARTICLE 4**Fiscal domicile**

(1) For the purposes of this Convention, the term "resident of a Contracting State" means, subject to the provisions of paragraphs (2) and (3) of this Article, any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature; the term does not include any individual who is liable to tax in that Contracting State only if he derives income from sources therein. The terms "resident of the United Kingdom" and "resident of Spain" shall be construed accordingly.

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

- (a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
- (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting state of which he is a national;
- (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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

ARTICLE 5**Permanent establishment**

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

- (2) The term "permanent establishment" shall include especially:
- (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) a workshop;
 - (f) a mine, oil well, quarry or other place of extraction of natural resources;
 - (g) a building site or construction or assembly project which exists for more than twelve months.
- (3) The term "permanent establishment" shall not be deemed to include:
- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
 - (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.
- (4) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom the provisions of paragraph (5) of this Article apply—shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.
- (5) An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.
- (6) The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

Income from immovable property

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

ARTICLE 7

Business profits

- (1) The profits of an enterprise of a Contracting State shall be taxable only in that Contracting 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 Contracting State but only so much of them as is attributable to that permanent establishment.

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

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

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

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

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

ARTICLE 8

Shipping and air transport

(1) A resident of a Contracting State shall be exempt from tax in the other Contracting State on profits from the operation of ships or aircraft other than profits from voyages of ships or aircraft confined solely to places in the other Contracting State.

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

ARTICLE 9

Associated enterprises

Where

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

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

ARTICLE 10

Dividends

(1) Dividends derived from a company which is a resident of Spain by a resident of the United Kingdom may be taxed in the United Kingdom. Such dividends may also be taxed in Spain, and according to the laws of Spain, but where such dividends are beneficially owned by a resident of the United Kingdom the tax so charged shall not exceed:

- (a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividends;
- (b) in all other cases 15 per cent of the gross amount of the dividends.
- (2) Dividends derived from a company which is a resident of the United Kingdom by a resident of Spain may be taxed in Spain. Such dividends may also be taxed in the United Kingdom and according to the laws of the United Kingdom, but where such dividends are beneficially owned by a resident of Spain the tax so charged shall not exceed:
- (a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividends;
- (b) in all other cases 15 per cent of the gross amount of the dividends.
- (3) However, as long as an individual resident in the United Kingdom is entitled to a tax credit in respect of dividends paid by a company resident in the United Kingdom, the following provisions of this paragraph shall apply instead of the provisions of paragraph (2) of this Article:
- (a) (i) Dividends derived from a company which is a resident of the United Kingdom by a resident of Spain may be taxed in Spain.
- (ii) Where a resident of Spain is entitled to a tax credit in respect of such a dividend under sub-paragraph (b) of this paragraph, tax may also be charged in the United Kingdom and according to the laws of the United Kingdom, on the aggregate of the amount or value of that dividend and the amount of that tax credit at a rate not exceeding 15 per cent.
- (iii) Except as provided in sub-paragraph (a)(ii) of this paragraph, dividends derived from a company which is a resident of the United Kingdom and which are beneficially owned by a resident of Spain shall be exempt from any tax in the United Kingdom which is chargeable on dividends.
- (b) A resident of Spain who receives dividends from a company which is a resident of the United Kingdom shall, subject to the provisions of sub-paragraph (c) of this paragraph and provided he is the beneficial owner of the dividends, be entitled to the tax credit in respect thereof to which an individual resident in the United Kingdom would have been entitled had he received those dividends, and to the payment of any excess of such credit over his liability to United Kingdom tax.
- (c) The provisions of sub-paragraph (b) of this paragraph shall not apply where the beneficial owner of the dividends is a company which either alone or together with one or more associated companies controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividends. For the purpose of this paragraph two companies shall be deemed to be associated if one controls directly or indirectly more than 50 per cent of the voting power in the other company, or a third company controls more than 50 per cent of the voting power in both of them.
- (4) The term "dividends" as used in this Article means income from shares, or other rights, not being debt-claims, participating in profits, as well as income from corporate rights assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident and also includes any other item (other than interest relieved from tax under the provisions of Article 11 of this Convention) which, under the law of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.
- (5) The provisions of paragraph (1) or, as the case may be, paragraphs (2) and (3) of this Article, shall not apply where the resident of one of the Contracting States has in the other Contracting State a permanent establishment and the holding by virtue of which the dividends are paid is effectively connected with the business carried on through such permanent establishment. In such a case the provisions of Article 7 shall apply.

(6) If the beneficial owner of a dividend being a resident of a Contracting State owns 10 per cent or more of the class of shares in respect of which the dividend is paid then paragraph (1) or, as the case may be, paragraphs (2) and (3) of this Article shall not apply to the dividend to the extent that it can have been paid only out of profits which the company paying the dividend earned or other income which it received in a period ending 12 months or more before the relevant date. For the purposes of this paragraph the term "relevant date" means the date on which the beneficial owner of the dividend became the owner of 10 per cent or more of the class of shares in question.

Provided that this paragraph shall not apply if the beneficial owner of the dividend shows that the shares were acquired for *bona fide* commercial reasons and not primarily for the purposes of securing the benefit of this Article.

(7) 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 and beneficially owned by persons who are not residents of the other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State; provided that where a company which is a resident of a Contracting State has a permanent establishment in the other Contracting State it may be subjected therein to any withholding tax provided by the internal law of that other Contracting State but such tax shall not exceed 15 per cent of the distributed profits of the company attributable to the permanent establishment after payment of corporation tax on its profits.

ARTICLE 11

Interest

(1) Interest arising in a Contracting State which is derived and beneficially owned by a resident of the other Contracting State may be taxed in that other State.

(2) However, such interest may also be taxed in the Contracting State in which it arises, and according to the law of that State, but the tax so charged shall not exceed 12 per cent of the gross amount of the interest.

(3) The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and other debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on in the other Contracting State in which the interest arises a trade or business through a permanent establishment situated therein or performs in that other State professional 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 a 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 in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by that permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

(6) Any provisions of the law of one of the Contracting States under which interest paid by one company to another would be treated as a dividend or distribution to be left out of account in computing the taxable profits of the paying company shall not operate where the interest is paid to and beneficially owned by a company which is a resident of the other Contracting State. The preceding sentence shall not apply where more than 50 per cent of the voting power in the last-mentioned company is controlled, directly or indirectly, by a person or persons resident in the first-mentioned State.

(7) The relief from tax provided for in paragraph (2) of this Article shall not apply to interest on any form of debt-claim dealt in on a stock exchange where the beneficial owner of the interest:

- (a) does not bear tax in respect thereof in the Contracting State of which it is a resident; and
- (b) sells (or makes a contract to sell) the debt-claim from which such interest is derived within three months of the date on which such beneficial owner acquired such debt-claim.

(8) Where, owing to 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 that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

(9) The provisions of this Article shall not apply if the debt-claim in respect of which the interest is paid was created or assigned mainly for the purpose of taking advantage of this Article and not for *bona fide* commercial reasons.

ARTICLE 12

Royalties

(1) Royalties arising in a Contracting State which are derived and beneficially owned by a resident of the other Contracting State may be taxed in that other State.

(2) However, such royalties may also be taxed in the Contracting State in which they arise and according to the law of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

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

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on in the other Contracting State in which the royalties arise a trade or business through a permanent establishment situated therein or performs in that other State professional 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 a 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 where the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the royalties was incurred and the royalties are borne by that permanent establishment, then the royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

(6) Where, owing to a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial

owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

(7) The provisions of this Article shall not apply if the right or property giving rise to the royalties was created or assigned mainly for the purpose of taking advantage of this Article and not for *bona fide* commercial reasons.

ARTICLE 13

Capital gains

(1) Capital gains from the alienation of immovable property, as defined in paragraph (2) of Article 6, may be taxed in the Contracting State in which such property is situated.

(2) Capital gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State.

(3) Notwithstanding the provisions of paragraph (2) of this Article, capital gains derived by a resident of a Contracting State from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in that Contracting State.

(4) Capital gains from the alienation of any property other than those mentioned in paragraphs (1), (2) and (3) 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 independent activities of a similar character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.

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

ARTICLE 15

Employments

(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) of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year of that other State; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

(3) Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic may be taxed in the Contracting State of which the person deriving the profits from the operation of the ship or aircraft is a resident.

ARTICLE 16

Directors' fees

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

ARTICLE 17

Artistes and athletes

(1) Notwithstanding the provisions of Articles 14 and 15, income derived by entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which those activities are exercised.

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

ARTICLE 18

Pensions and annuities

(1) Subject to the provisions of Article 19 pensions and other similar remuneration paid in consideration of past employment to a resident of a Contracting State and any annuity paid to such a resident shall be taxable only in that State.

(2) The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

ARTICLE 19

Government service

(1) Remuneration, other than a pension, paid out of public funds of the United Kingdom or Northern Ireland or of the funds of any local authority in the United Kingdom to any individual in respect of services rendered to the Government of the United Kingdom or Northern Ireland or a local authority in the United Kingdom,

shall be taxable only in the United Kingdom. However, such remuneration shall be taxable only in Spain if the services are rendered in Spain and the recipient is a resident of Spain who:

- (a) is a national of Spain; or
- (b) did not become a resident of Spain solely for the purpose of performing the services.

(2) Remuneration, other than a pension, paid by Spain or a political subdivision or a local authority thereof to any individual in respect of services rendered to the Government of Spain or a political subdivision or a local authority thereof, shall be taxable only in Spain. However, such remuneration shall be taxable only in the United Kingdom if the services are rendered in the United Kingdom and the recipient is a resident of the United Kingdom who:

- (a) is a national of the United Kingdom; or
- (b) did not become a resident of the United Kingdom solely for the purpose of performing the services.

(3) Any pension paid by, or out of funds created by, the United Kingdom or Northern Ireland or a local authority in the United Kingdom to any individual in respect of services rendered to the Government of the United Kingdom or Northern Ireland or a local authority in the United Kingdom shall be taxable only in the United Kingdom. However, such pensions shall be taxable only in Spain if the recipient is a national of and a resident of Spain.

(4) Any pension paid by, or out of funds created by, Spain or a political subdivision or a local authority thereof to any individual in respect of services rendered to Spain or a political subdivision or a local authority thereof shall be taxable only in Spain. However, such pensions shall be taxable only in the United Kingdom if the recipient is a national of and a resident of the United Kingdom.

(5) The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with any business carried on by a Contracting State (including in the case of the United Kingdom, any business carried on by the Government of Northern Ireland) or a political subdivision or a local authority thereof.

ARTICLE 20

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 Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in the first-mentioned State, provided that such payments are made to him from sources outside that State.

ARTICLE 21

Teachers

An individual who, at the invitation of a university, college, school or other similar recognised educational institution in one of the Contracting States, visits that Contracting State for a period not exceeding two years solely for the purpose of teaching at such educational institution and who is, or was immediately before that visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching.

ARTICLE 22**Other income**

(1) Items of income of a resident of a Contracting State, wherever arising, being income of a class or from sources not expressly mentioned in the foregoing Articles of this Convention shall be taxable only in that State.

(2) The provisions of paragraph (1) of this Article shall not apply if the recipient of the income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State professional 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 a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

ARTICLE 23**Capital**

(1) Capital represented by immovable property, as defined in paragraph (2) of Article 6, may be taxed in the Contracting State in which such property is situated.

(2) Capital represented by movable property forming part of the business property of a permanent establishment of an enterprise, or by movable property pertaining to a fixed base used for the performance of professional services, may be taxed in the Contracting State in which the permanent establishment or fixed base is situated.

(3) Notwithstanding the provisions of paragraph (2) of this Article, ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in the Contracting State of which the operator is a resident.

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

ARTICLE 24**Elimination of double taxation**

(1) 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 (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 the Spanish tax is computed.

(b) In the case of a dividend 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 shall take into account (in addition to any Spanish tax creditable under the provisions of sub-paragraph (a) of this paragraph) the Spanish tax payable by the company in respect of the profits out of which such dividend is paid.

(2) In the case of Spain:

- (a) Where a resident of Spain derives income which, in accordance with the provisions of this Convention, may be taxed in the United Kingdom, Spain shall allow as a deduction from the tax on the income of that person an amount equal to the tax paid in the United Kingdom; such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is appropriate to the income derived from the United Kingdom. The tax paid in the United Kingdom shall also be allowed as a deduction against the corresponding Spanish prepayment taxes, in accordance with the provisions of this paragraph.
- (b) Where the profits of a company which is a resident of Spain include dividends from a company which is a resident of the United Kingdom, the first-mentioned company shall be entitled to the same relief as would have been applicable if both companies were residents of Spain.
- (c) In the case of a dividend paid by a company which is a resident of the United Kingdom to a company which is a resident of Spain, in respect of which, in accordance with the provisions of sub-paragraph (c) of paragraph (3) of Article 10, the last-mentioned company is not entitled to the tax credit referred to in sub-paragraph (b) of that paragraph, such dividends shall, for the purposes of this paragraph, be deemed to have borne United Kingdom tax of an amount equal to fifteen eighty-fifths of that dividend.

(3) For the purposes of paragraph (1) of this Article, the term "Spanish tax payable" shall be deemed to include any amount which would have been payable as Spanish tax for any year but for a reduction of tax granted for that year or any part thereof under:

- (a) paragraph (2) A of Article 20 or Article 31 of the Decree 3357/67 of 23 December 1967, so far as they were in force and have not been modified since the date of signature of this Convention or have been modified only in minor respects so as not to affect their general character; or
- (b) any other provision which may subsequently be made granting an exemption or reduction of tax which is agreed by the competent authorities of the Contracting States to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.

Provided that:

- (i) in determining the "amount which would have been payable as Spanish tax" referred to in this paragraph, the provisions of paragraph (2) of Article 11 and paragraph (2) of Article 12 shall be taken into account; and
- (ii) relief from United Kingdom tax shall not be given by virtue of this paragraph in respect of income from any source if the income arises in a period starting more than 10 years after the exemption from, or reduction of, Spanish tax was first granted in respect of that source.

(4) For the purposes of paragraphs (1) and (2) of this Article profits, income and capital 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 Contracting State.

ARTICLE 25

Non-discrimination

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

(2) Stateless persons who are residents of one of the Contracting States shall not be subjected in either 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 the State concerned in the same circumstances are or may be subjected.

(3) Subject to the provisions of paragraph (7) of Article 10, 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.

(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 Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

(5) Nothing 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.

(6) In this Article the term "taxation" means taxes of every kind and description.

ARTICLE 26

Mutual agreement procedure

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

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

(3) The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention.

(4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

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 for the prevention of fraud or for the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than persons (including a court or administrative body) concerned with the assessment or collection of, or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Convention.

(2) In no case shall the provisions of paragraph (1) be construed so as to impose on the competent authority of either Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws or administrative practice prevailing in either Contracting State;
- (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

ARTICLE 28

Diplomatic and consular officials

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

ARTICLE 29

Territorial extension

(1) This Convention may be extended, either in its entirety or with modifications, to any territory for whose international relations either Contracting State is responsible and which imposes taxes substantially similar in character to those to which this Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed between the Contracting States in Notes to be exchanged through diplomatic channels.

(2) Unless otherwise agreed by both Contracting States, the termination of this Convention shall terminate the application of this Convention to any territory to which it has been extended under the provisions of this Article.

ARTICLE 30

Entry into force

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

(2) This Convention shall enter into force on the thirtieth day following the date on which the instruments of ratification are exchanged^(a) and shall thereupon have effect:

(a) in the United Kingdom:

- (i) as respects income tax and capital gains tax, for any year of assessment beginning on or after the sixth day of April in the calendar year in which this Convention enters into force;
- (ii) as respects corporation tax, for any financial year beginning on or after the first day of April in the calendar year in which this Convention enters into force;

(b) in Spain:

as respects Spanish tax, for any year beginning on or after the first day of January in the calendar year in which this Convention enters into force.

^(a) Instruments of ratification were exchanged on 26th October 1976.

(3) The Agreement between the Contracting States constituted by Exchange of Notes dated 21 December 1968 for the reciprocal exemption from tax of air transport undertakings, shall cease to have effect in relation to any tax for any period for which the present Convention has effect as respects that tax.

ARTICLE 31

Termination

This Convention shall remain in force until denounced by one of the Contracting States. Either Contracting State may denounce the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year. In such event, the Convention shall cease to have effect:

- (a) in the United Kingdom:
- (i) as respects income tax and capital gains tax, for any year of assessment beginning on or after the sixth day of April in the calendar year next following that in which the notice is given;
 - (ii) as respects corporation tax, for any financial year beginning on or after the first day of April in the calendar year next following that in which the notice is given:
- (b) in Spain:
- as respects Spanish tax, for any year beginning on or after the first day of January in the calendar year next following that in which the notice is given.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Convention.

Done in duplicate at London this 21st day of October 1975, in the English and Spanish languages both texts being equally authoritative.

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

For the Government of Spain:

ROY HATTERSLEY

MANUEL FRAGA IRIBARNE

EXPLANATORY NOTE

(This Note is not part of the Order.)

Under the Convention with Spain scheduled to this Order, shipping and air transport profits, certain trading profits not arising through a permanent establishment, pensions (other than Government pensions) and the earnings of temporary business visitors are (subject to certain conditions) to be taxed only in the country of the taxpayer's residence. Government salaries and pensions are normally to be taxed by the paying Government only. The remuneration of visiting teachers and certain payments made to visiting students are (subject to certain conditions) to be exempt in the country visited.

Where income continues to be taxable in both countries, relief from double taxation is to be given by the country of the taxpayer's residence. The credit to be given in the United Kingdom for tax payable in Spain is to include credit for tax spared under certain provisions of the Spanish law.

The rate of tax on dividends flowing from one country to the other is normally not to exceed 10 per cent where the dividend is paid to a company which controls directly or indirectly at least 10 per cent of the voting power in the paying company and 15 per cent in all other cases. The Convention also makes specific provision for dividends paid by a United Kingdom company to a resident of Spain as long as under United Kingdom law an individual resident in the United Kingdom is entitled to a tax credit in respect of dividends paid by a company resident in the United Kingdom. It prescribes that where a United Kingdom company pays a dividend to a resident of Spain other than a company which controls directly or indirectly at least 10 per cent of the voting power in the paying company, the recipient is (subject to certain conditions) to receive the tax credit to which an individual resident in the United Kingdom and in receipt of such a dividend would be entitled, less income tax at a rate not exceeding 15 per cent on the aggregate of the dividend and the tax credit.

The rate of tax in the source country on interest and royalties flowing from one country to the other is, in general, not to exceed 12 per cent and 10 per cent respectively.

There is provision for the taxation of capital gains on immovable property by the country in which the property is situated. Capital gains arising from the disposal of movable property are normally to be taxed only in the country of the taxpayer's residence unless they arise from the disposal of assets of a permanent establishment or fixed base which the taxpayer has in the other country.

There are also provisions safeguarding nationals and enterprises of one country against discriminatory taxation in the other country—though an additional tax not exceeding 15 per cent may be charged on the net distributed profits attributable to a permanent establishment in one country of a company which is a resident of the other country—and for the exchange of information and consultation between the taxation authorities of the two countries.

The Convention is to take effect in the United Kingdom as respects income tax and capital gains tax for any year of assessment beginning on or after 6th April in the calendar year in which the Convention enters into force and as respects corporation tax for any financial year beginning on or after 1st April in that calendar year. The Convention is to enter into force on the thirtieth day following the date on which the instruments of ratification are exchanged.

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