Spain

Convention between the government of the Kingdom of the Netherlands and the government of the state of Spain for the avoidance of double taxation with respect to taxes on income and on capital.

Done at Madrid, on 16 June 1971

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Chapter I. Scope of the Convention

Article 1. Personal scope

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

Article 2. Taxes covered

1. This Convention shall apply to taxes on income and on capital imposed on behalf of each of the States 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, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which the Convention shall apply are, in particular:
   a. in the case of the Netherlands:
      – de inkomstenbelasting (income tax);
      – de loonbelasting (wages tax);
      – de vennootschapsbelasting (company tax);
      – de dividendbelasting (dividend tax);
      – de vermogensbelasting (capital tax);
      (hereinafter referred to as ‘Netherlands tax’);
   b. in the case of Spain:
      – el Impuesto General sobre la Renta de las personas físicas (the general income tax on individuals);
      – el Impuesto General sobre la Renta de Sociedades y demás entidades jurídicas, con inclusión del gravamen especial del 4 por ciento establecido por el artículo 104 de la Ley 41/1964, de 11 de Junio (the general corporation tax including the special charge of 4% established by article 104 of Law 41/1964 of June 11th);
      – 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 (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);
      – en Sahara, los impuestos sobre la renta (sobre los rendimientos del trabajo y del patrimonio) y sobre los beneficios de las empresas (in Sahara, the income taxes on earned income and on income from capital) and the taxes on profits of the enterprises);
      – el Canon de superficie, el impuesto sobre el producto bruto y el impuesto especial sobre los beneficios, regulados por la Ley de 26 de diciembre de 1958 (aplicable a las empresas que se decidan a la investigación y explotación de hidrocarburos) (the ‘surface royalty’, the tax on gross yield and the special tax on corporation profits, regulated by the Law of 26th December 1958 (applicable to enterprises engaged in prospecting and exploiting oil wells));
      – los impuestos locales sobre la renta y sobre el patrimonio (the taxes on income and capital);
      (hereinafter referred to as ‘Spanish tax’).

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

Chapter II. Definitions

Article 3. General definitions

1. In this Convention, unless the context otherwise requires:
    a. the term ‘State’ means the Netherlands or Spain, as the context requires; the term ‘States’ means the Netherlands and Spain;
    b. the term ‘the Netherlands’ means the part of the Kingdom of the Netherlands that is situated in Europe;
    c. the term ‘Spain’ means the Spanish State and, when used in a geographical sense, Peninsular Spain, the Balearic and Canary Islands, the Spanish towns and province in Africa;
    d. the term ‘person’ comprises an individual, a company and any other body of persons;
    e. the term ‘company’ means any body corporate or any entity which is treated as a body corporate for tax purposes;
    f. the terms ‘enterprise of one of the States’ and ‘enterprise of the other State’ mean respectively an enterprise carried on by a resident of one of the States and an enterprise carried on by a resident of the other State;
    g. the term ‘competent authority’ means:
        1. in the Netherlands the Minister of Finance or his duty authorized representative;
        2. in Spain, the Minister of Finance, the General Director of Taxation or any other authority to whom the Minister delegates.

2. As regards the application of the Convention by either of the States any term not otherwise defined shall, unless the context requires, have the meaning which it has under the laws of that 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 one of the States’ means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.
2. For the purposes of this Convention an individual, who is a member of a diplomatic or consular mission of one of the States in the other State or in a third State and who is a national of the sending State, shall be deemed to be a resident of the sending State.
3. Where by reason of the provisions of paragraph 1 an individual is a resident of both States, then this case shall be determined in accordance with the following rules:
    a. he shall be deemed to be a resident of the State in which he has a permanent home available to him. If he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closest (centre of vital interests);
    b. if the 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 State, he shall be deemed to be a resident 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 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 States shall settle the question by mutual agreement.
4. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

Article 5. Permanent establishment

1. For the purposes of this Convention, the term ‘permanent establishment’ means a fixed place of business in which the business of the enterprise is wholly or partly carried on.
2. The term ‘permanent establishment’ shall include especially:
   a. a place of management;
   b. a branch;
   c. an office;
   d. a factory;
   e. a workshop;
   f. a mine, quarry or other place of extraction of natural resources;
   g. a building site or construction or assembly project which exists for more than twelve months.
3. The term ‘permanent establishment’ shall not be deemed to include:
   a. the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
   b. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
   c. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
   d. the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
   e. the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.
4. A person acting in one of the States on behalf of an enterprise of the other State – other than an agent of an independent status to whom paragraph 5 applies – shall be deemed to be a permanent establishment in the first–mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited for the purchase of goods or merchandise for the enterprise.
5. An enterprise of one of the States shall not be deemed to have a permanent establishment in the other 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 one of the States controls or is controlled by a company which is a resident of the other State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Chapter III. Taxation of income

Article 6. Income from immovable property

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

Article 7. Business profits

1. The profits of an enterprise of one of the States shall be taxable only in that State unless the enterprise carries on business in the other State through a permanent establishment situated therein. If the enterprise

carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Where an enterprise of one of the States carries on business in the other State through a permanent establishment situated therein, there shall in each State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.
4. 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. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8. Shipping and air transport

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the State in which the place of effective management of the enterprise is situated.
2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the State of which the operator of the ship is a resident.

Article 9. Associated enterprises

Where

a. an enterprise of one of the States participates directly or indirectly in the management, control or capital of an enterprise of the other State, or
b. the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the States and an enterprise of the other State,

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

Article 10. Dividends

1. Dividends paid by a company which is a resident of one of the States to a resident of the other State may be taxed in that other State.
2. However, such dividends may be taxed in the State of which the company paying the dividends is a resident, and according to the law of that State, but the tax so charged shall not exceed 15% of the gross amount of the dividends.
3. Notwithstanding the provisions of paragraph 2,
    a. Netherlands tax on dividends paid by a company which is a resident of the Netherlands to a company the capital of which is wholly or partly divided into shares and which is a resident of Spain, shall not exceed 5% of the gross amount of the dividends:
        1. if the receiving company owns 50% or more of the capital of the company paying the dividends, or
        2. if the receiving company owns 25% or more of the capital of the company paying the dividends, provided that at least one other company which is a resident of Spain also owns 25% or more of that capital;
    b. Spanish tax on dividends paid by a company which is a resident of Spain to a company the capital of which is wholly or partly divided into shares and which is a resident of the Netherlands, shall not exceed 10% of the gross amount of the dividends:
        1. if the receiving company owns 50% or more of the capital of the company paying the dividends, or

2. if the receiving company owns 25% or more of the capital of the company paying the dividends, provided that at least one other company which is a resident of the Netherlands also owns 25% or more of that capital.

4. The provisions of paragraphs 2 and 3 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

5. The term ‘dividends’ as used in this Article means income from shares, ‘jouissance’ shares or ‘jouissance’ rights, mining shares, founders' shares or other rights participating in profits and income from other corporate rights assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident.

6. The provisions of paragraphs 1, 2 and 3 shall not apply if the recipient of the dividends, being a resident of one of the States, has in the other State, of which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provisions of Article 7 shall apply.

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

Article 11. Interest

1. Interest arising in one of the States and paid to a resident of the other State may be taxed in the other State.

2. However, such interest may be taxed in the State in which it arises, and according to the law of that State, but the tax so charged shall not exceed 10% of the 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 but not carrying a right to participate in profits, and 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 shall not apply if the recipient of the interest, being a resident of one of the States, has in the other State in which the interest arises a permanent establishment with which the debt–claim from which the interest arises is effectively connected. In such a case, the provisions of Article 7 shall apply.

5. Interest shall be deemed to arise in one of the States 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 one of the States or not, has in one of the States a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

6. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the 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 recipient in the absence of such relationship, the provisions of this Article shall apply only to the last–mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each State, due regard being had to the other provisions of this Convention.

Article 12. Royalties

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

2. However, such royalties may be taxed in the State in which they arise, and according to the law of that State, but the tax so charged shall not exceed 6% of the gross amount of the royalties.

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

4. A capital sum from the sale of rights or property mentioned in paragraph 3 shall be taxable only in the State of which the alienator is a resident.
5. The provisions of paragraphs 1, 2 and 4 shall not apply if the recipient of the royalties or the capital sum as meant in the preceding paragraph, being a resident of one of the States, has in the other State in which the royalties or the capital sum arise a permanent establishment with which the right or property giving rise to the said income is effectively connected. In such a case, the provisions of Article 7 shall apply.
6. Royalties shall be deemed to arise in one of the States when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of one of the States or not, has in one of the States a permanent establishment in connection with which the contract under which the royalties are paid was concluded, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.
7. Where, owning to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only in the last–mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each State, due regard being had to the other provisions of this Convention.

Article 13. Limitation of Articles 10, 11 and 12

International organisations, organs and officials thereof and members of a diplomatic or consular mission of third State, being present in one of the States, shall not be entitled, in the other State, to the reductions or exemptions from tax provided for in Article 10, 11 and 12 in respect of the items of income dealt with in these Articles and arising in that other State, if such items of income are not subjected to a tax on income in the first–mentioned State.

Article 14. Capital gains

1. Gains from the alienation of immovable property, as defined in paragraph 2 of Article 6, may be taxed in the State in which such property is situated.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of one of the States has in the other State or of movable property pertaining to a fixed base available to a resident of one of the States in the other 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, gains 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 the State in which the place of effective management of the enterprise is situated. For the purposes of this paragraph the provisions of paragraph 2 of Article 8 shall apply.
4. Gains from the alienation of any property other than those mentioned in paragraphs 1, 2 and 3, shall be taxable only in the state of which the alienator is a resident.
5. The provisions of paragraph 4 shall not affect the rights of either State to levy according to its own law a tax on gains from the alienation of shares or 'jouissance' rights in a company, the capital of which is wholly or partly divided into shares and which is a resident of that State, provided that the shares or 'jouissance' rights are owned by an individual being a resident of the other State;

a. who is a national of the first–mentioned State without being a national of the last–mentioned State; and
b. who in the course of the last five years preceding the alienation of the shares or 'jouissance' rights has been a resident of the first–mentioned State; and
c. who, in the course of the same period, directly or indirectly owned, alone or together with his spouse and his relatives in the direct line and in the second degree in the collateral line, at least one third as well as, alone or together with his spouse, more than 7% of the par value of the paid up capital of the said company.

Article 15. Independent personal services

1. Income derived by a resident of one of the States 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 State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other 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 16. Dependent personal services

1. Subject to the provisions of Articles 17, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of one of the States in respect of an employment be taxable only in that State unless the employment is exercised in the other 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, remunerations derived by a resident of one of the States in respect of an employment exercised in the other State shall be taxable only in the first–mentioned State if:
   a. the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned, and
   b. the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
   c. the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of one of the States in respect of an employment exercised aboard a ship or aircraft in international traffic be taxable only in that State.

Article 17. Directors' fees

1. Directors' fees and similar payments derived by a resident of the Netherlands in his capacity as a member of the board of directors of a company which is a resident of Spain may be taxed in Spain.
2. Remuneration and other payments derived by a resident of Spain in his capacity as a ‘bestuurder’ or a ‘commissaris’ of a company which is a resident of the Netherlands may be taxed in the Netherlands.

Article 18. Artistes and athletes

Notwithstanding the provisions of Articles 15 and 16, income derived by public 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 State in which these activities are exercised.

Article 19. Pensions

Subject to the provisions of paragraph 1 of Article 20, pensions and other similar remuneration paid to a resident of one of the States in consideration of past employment shall be taxable only in that State.

Article 20. Governmental functions

1. Remuneration, including pensions, paid by, or out of funds created by, one of the States or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof in the discharge of functions of a governmental nature may be taxed in that State.
2. However, the provisions of Articles 16, 17 and 19 shall apply to remuneration or pensions in respect of services rendered in connection with any trade or business carried on by one of the States or a political subdivision or a local authority thereof.

Article 21. Professors and teachers

Payments which a professor or teacher who is a resident of one of the States and who is present in the other State for the purpose of teaching for a maximum period of two years in a university, college or other teaching establishment in that other State, receives for such State.

Article 22. Students

Payments which a student or business apprentice who is or was formerly a resident of one of the States and who is present in the other State solely for the purpose of his education or training receives for the purposes of his maintenance, education or training shall not be taxed in that other State, provided that such payments are made to him from sources outside that other State.

Article 23. Income not expressly mentioned

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

Chapter IV. Taxation of capital

Article 24. Capital

1. Capital represented by immovable property, as defined in paragraph 2 of Article 6, may be taxed in the 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 State in which the permanent establishment or fixed base is situated.
3. 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 State in which the place of effective management of the enterprise is situated. For the purposes of this paragraph the provisions of paragraph 2 of Article 8 shall apply.
4. All other elements of capital of a resident of one of the States shall be taxable only in that State.

Chapter V. Methods for elimination of double taxation

Article 25

1. The Netherlands, when imposing tax on its residents, may include in the basis upon which such taxes are imposed the items of income or capital, which according to the provisions of this Convention may be taxed in Spain.
2. Without prejudice to the application of the provisions concerning the compensation of losses in the unilateral regulations for the avoidance of double taxation the Netherlands shall allow a deduction from the amount of tax computed in conformity with the first paragraph of this Article equal to such part of that tax which bears the same proportion to the aforesaid tax, as the part of the income or capital which is included in the basis mentioned in the first paragraph of this Article and may be taxed in Spain according to Articles 6, 7, 10, paragraph 6, 11, paragraph 4, 12, paragraph 5, 14, paragraphs 1 and 2, 15, 16, paragraph 1, 17, paragraph 1, 18, 20 and 24, paragraphs 1 and 2, of this Convention bears to the total income or capital which forms the basis meant in the first paragraph of this Article.

Further the Netherlands shall allow a deduction from the Netherlands tax so computed for such items of income, as may be taxed in Spain according to Articles 10, paragraph 2, 11, paragraph 2, and 12, paragraph

2, and are included in the basis meant in the first paragraph of this Article. The amount of this deduction shall be the lesser of the following amounts:

a. the amount equal to the Spanish tax;
b. the amount of the Netherlands tax which bears the same proportion to the amount of tax computed in conformity with the first paragraph of this Article, as the amount of the said items of income bears to the amount of income which forms the basis meant in the first paragraph of this Article.

3. Where a resident of Spain derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in the Netherlands, Spain shall, subject the provisions of paragraph 4, exempt such income or capital from tax but may, in calculating tax on the remaining income or capital of that person, apply the rate of tax which would have been applicable if the exempted income or capital had not been so exempted.

4. Where a resident of Spain derives income which, in accordance with the provisions of Articles 10, paragraphs 2 and 3, 11, paragraph 2, and 12, paragraph 2, may be taxed in the Netherlands and is not exempt from Spanish tax, Spain shall allow as a deduction from the tax on the income of that person an amount equal to the tax paid in the Netherlands. 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 Netherlands. In these cases the tax paid in the Netherlands shall also be allowed as a deduction against the corresponding Spanish prepayment taxes, in accordance with the provisions of the preceding sentences.

5. If, in conformity with the Spanish legislation, losses suffered by an enterprise in a permanent establishment situated in the Netherlands, have effectively been deducted from the profits of that enterprise for the determination of its tax in Spain, the exemption provided for in paragraph 3 shall not apply to the profits of other taxable periods, attributable to that permanent establishment, in so far as such profits have also been exempted from tax in the Netherlands in any taxable period, by reason of the deduction of the losses referred to above from such profits.

Chapter VI. Special provisions

Article 26. Non–discrimination

1. The nationals of one of the States, whether they are residents of that State or not, shall not be subjected in the other 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 State in the same circumstances are or may be subjected.

2. The term ‘nationals’ means:

a. all individuals possessing the nationality of one of the States;
b. all legal persons, partnerships and associations deriving their status as such from the law in force in one of the States.

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

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

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

5. In this Article the term ‘taxation’ means taxes of every kind and description.

Article 27. Mutual agreement procedure

1. Where a resident of one of the States considers that the actions of one or both of the 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 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 State, with a view to the avoidance of taxation not in accordance with this Convention.
3. The competent authorities of the State 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 this Convention.
4. The competent authorities of the States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 28. Exchange of information

1. The competent authorities of the States shall exchange such information (being information which such authorities have in proper order at their disposal) as is necessary for the carrying out of this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes which are the subject of this Convention.
2. In no case shall the provisions of paragraph 1 be construed so as to impose on one of the States the obligation:

a. to carry out administrative measures at variance with the laws or the administrative practice of that or of the other 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 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.

Article 29. 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 30. Regulations

1. The competent authorities of the States shall by mutual agreement settle the mode of application of Article 10, paragraphs 2 and 3, and of Article 11, paragraph 2.
2. The competent authorities of each of the States, in accordance with the practices of that State, may prescribe regulations necessary to carry out the other provisions of this Convention.

Article 31. Territorial extension

1. This Convention may be extended, either in its entirety or with any necessary modifications, to either or both of the countries of Surinam or the Netherlands Antilles, if the country concerned 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 in notes to be exchanged through diplomatic channels.
2. Unless otherwise agreed the termination of the Convention shall not also terminate the application of the Convention to any country which it has been extended under this Article.

Chapter VII. Final provisions

Article 32. Entry into force

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

2. The Convention shall enter into force on the date on which the instruments of ratification are exchanged and, except as provided in paragraph 3, its provisions shall have effect for taxable years and periods beginning on or after the first day of January in the year following the year in which such exchange takes place.
3. The provisions of this Convention relating to dividends, interest and royalties shall have effect with respect to dividends, interest and royalties paid beginning on the thirtieth day after the date of exchange of instruments of ratification.

Article 33. Termination

This Convention shall remain in force until the denounced by one of the States. Either State may denounce the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the year 1975. In such event the Convention shall cease to have effect for taxable years and periods beginning after the end of the calendar year in which the notice of termination has been given.

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

DONE in duplicate, this day the sixteenth of June of nineteen hundred and seventy–one at Madrid in the Spanish, Netherlands and English languages. In case of divergency the English text shall prevail.

Protocol

I.

Where in one of the States the income of a body of persons, such as a partnership or an undivided estate, is treated as income of the entity, while in the other State such income is treated as income of the individuals participating in the body of persons, the competent authorities of the States shall consult together to resolve the difficulties which may arise therefrom.

II. Ad Article 2

It is understood that the term ‘taxes on the total amounts of wages or salaries’ does not include social security premiums.

III. Ad Article 2, paragraph 3(b)

It is understood that the Spanish ‘Arbitrio de radicación’ is included in ‘los impuestos locales sobre la renta y sobre el patrimonio’ (the local taxes on income and capital).

IV. Ad Article 3, paragraphs 1(a) and (b)

1. The term ‘the Netherlands’ also comprises the part of the sea bed and its sub–soil under the North Sea, over which the Kingdom of the Netherlands has sovereign rights in accordance with international law.
2. The term ‘Spain’ also comprises 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.

V. Ad Article 4

The provisions of Article 4, paragraph 2, shall not apply to honorary consuls.

VI. Ad Articles 10, 11 and 12

Notwithstanding provisions to the contrary in the national law of either State restitution of tax levied contrary to the provisions of Articles 10, 11 and 12 shall be granted if the claim concerned has been lodged with the competent authority of the State having levied the tax within a period of two years after the expiration of the calendar year in which the tax has been levied.

VII. Ad Article 10

Notwithstanding the provisions of Article 10, paragraph 3, sub–paragraph (b), Spanish tax on dividends as meant in that subparagraph shall not exceed 5% of the gross amount of the dividends if the receiving company does not suffer company tax in the Netherlands on those dividends.

VIII. Ad Article 10

The provision of Article 10 shall also apply to income from bonds or debentures participating in profits.

IX. Ad Article 11

Where an enterprise of one of the States has a permanent establishment in the other State, that other State may not impose any tax on the interest paid by the enterprise to persons who are not residents of that other State, unless the indebtedness on which the interest is paid was incurred in connection with that permanent establishment, and such interest is borne by that permanent establishment.

X. Ad Article 12

The provisions of paragraph 4 of Article 12 shall not apply if the sale of rights or property has taken place under the condition that the buyer is obliged to resell the rights or property.

XI. Ad Article 20

For the purposes of Article 20, Spanish public autonomous institutions such as ‘Consejo Superior de Investigaciones Científicas’ and ‘Instituto Español de Moneda Extranjera’ shall be assimilated to the Spanish State or a political subdivision or a local authority of Spain.

XII. Ad Article 25

It is understood that, in so far as the Netherlands income tax or company tax is concerned, the basis meant in the first paragraph of Article 25 is the ‘onzuivere inkomen’ or ‘winst’ in terms of the Netherlands income tax law or company tax law, respectively.

XIII. Ad Article 25

For the purposes of paragraph 2, second subparagraph, letter (a), of Article 25, interest from loans contracted after January 1st, 1968, for which reduction of Spanish tax is granted by application of Decreto Ley 19/1961 of October 19th, 1961, as in force on January 1st, 1968, shall be deemed to be subjected to Spanish Tax under the conditions referred to in Article 11, paragraph 2,

XIV. Ad Articles 12 and 25

1. Notwithstanding the provisions of Article 12, paragraph 2, and Article 25, paragraph 2, second sub–paragraph, letter (a), the following provisions shall apply to royalties arising in Spain and paid to a resident of the Netherlands under a contract concluded within a period of five years after the date on which the Convention becomes effective with respect to royalties:

a. the rate of tax charged by Spain shall not exceed 5% of the gross amount of such royalties;
b. subject to the provisions of Article 25, paragraph 2, second subparagraph, letter (b), the Netherlands shall allow, in addition to the amount equal to the Spanish tax, a deduction to the amount of 5% of the gross amount of such royalties; provided that the provisions sub (a) and (b) shall only apply for a period of five years after the date on which the contract was concluded.

2. The provisions of paragraph 1 shall not apply to payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films.

XV. Ad Article 28

The competent authorities are not obliged to supply information of a general character.

XVI. Ad Article 28

The obligation to exchange information does not include information obtained from banks or from institutions assimilated therewith. The term ‘institutions assimilated therewith’ means inter alia insurance companies.

XVII. Ad Article 32

Notwithstanding the provisions of Article 32, paragraph 2, the provisions of Articles 8, 14, paragraph 3, and 24, paragraph 3, shall have effect for the calendar year 1965 and subsequent years.

DONE in duplicate this day the sixteenth of June of nineteen hundred and seventy–one at Madrid in the Spanish, Netherlands and English languages. In case of divergency the English text shall prevail.