

**AGREEMENT**

**BETWEEN**

**THE SOCIALIST REPUBLIC OF VIETNAM**

**AND**

**THE KINGDOM OF SPAIN**

**FOR**

**THE AVOIDANCE OF DOUBLE TAXATION**

**AND**

**THE PREVENTION OF FISCAL EVASION**

**WITH RESPECT TO TAXES**

**ON INCOME**

The Government of the Socialist Republic of Vietnam and the Government of the Kingdom of Spain,

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows

## **ARTICLE 1**

### **Persons Covered**

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

## **ARTICLE 2**

### **Taxes Covered**

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, 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 Agreement shall apply are:
  - (a) in Vietnam:
    - (i) the personal income tax;
    - (ii) the business income tax; and
    - (iii) the profit remittance tax;( hereinafter referred to as "Vietnamese tax");
  - (b) in Spain:
    - (i) the income tax on individuals;
    - (ii) the corporation tax;
    - (iii) the income tax on non residents; and
    - (iv) local taxes on income(hereinafter referred to as "Spanish tax").
4. The Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of important changes which have been made in their respective taxation laws.

## **ARTICLE 3**

### **General Definitions**

1. For the purposes of this Agreement, unless the context otherwise requires:
  - (a) the term "Vietnam" means the Socialist Republic of Vietnam; when used in a geographical sense, it means all its national territory, including its territorial sea and any area beyond and adjacent to its territorial sea, within which Vietnam by Vietnamese legislation and in accordance with international law, has sovereign rights of exploration for and exploitation of natural resources of the seabed and its subsoil and superjacent watermass;
  - (b) the term "Spain" means the Kingdom of Spain and, when used in a geographical sense, means the territory of the Kingdom of Spain, including its territorial sea and any area outside its territorial sea upon which, in accordance with international law and on application of its domestic legislation, the Kingdom of Spain exercises or may exercise in the future jurisdiction or sovereign rights with respect to the seabed, its subsoil and superjacent waters, and their natural resources;
  - (c) the terms "a Contracting State" and "the other Contracting State" mean Vietnam or Spain as the context requires;
  - (d) the term "person" includes 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 a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
  - (g) the term "national" means:
    - (i) any individual possessing the nationality of a Contracting State;
    - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
  - (h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State; and
  - (i) the term "competent authority" means:

- (i) in the case of Vietnam, the Minister of Finance or his authorized representative; and
  - (ii) in the case of Spain, the Minister of Finance or his authorized representative.
- 2. As regards the application of the Agreement at any time by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that State for the purpose of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

## **ARTICLE 4**

### **Resident**

- 1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.
- 2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
  - (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
  - (b) if the State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident 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 Contracting States shall settle the question by mutual agreement.
- 3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

## ARTICLE 5

### Permanent Establishment

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of the enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially:
  - (a) a place of management;
  - (b) a branch;
  - (c) an office;
  - (d) a factory;
  - (e) a workshop;
  - (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
  - (g) an installation structure, or equipment used for the exploration of natural resources.
3. The term "permanent establishment" likewise encompasses:
  - (a) a building site, construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than six months;
  - (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue, for the same project, within the country for a period or periods aggregating more than six months within any 12-month period.
4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
  - (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
  - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information for the enterprise;
  - (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
  - (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:
- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
  - (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise, provided that there is another sale-related activity (such as advertising, promotion or after-sales services) taking place also in the first-mentioned State by the enterprise itself or by any other person.
6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.
7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

## **ARTICLE 6**

### **Income from Immovable Property**

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships 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 independent personal services.

## **ARTICLE 7**

### **Business Profits**

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative

expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of banking enterprise by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude such Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

## **ARTICLE 8**

### **Shipping and Air Transport**

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that Contracting State .
2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

## ARTICLE 9

### Associated Enterprises

1. Where

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

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

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

## ARTICLE 10

### Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State the tax so charged shall not exceed:
  - a) 7 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 50 per cent of the capital of the company paying the dividends;
  - b) 10 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent but less than 50 per cent of the capital of the company paying the dividends;
  - c) 15 per cent of the gross amount of the dividends in all other cases.

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

3. The term "dividends" as used in this Article means income from shares , mining shares, founders' shares or other rights not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other Contracting State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

## ARTICLE 11

### Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State the tax so charged shall not exceed 10 per cent of the gross amount of the interest.
3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if the recipient is the beneficial owner of the interest and such interest is:
  - (a) derived by the Government of the other Contracting State, including political subdivisions and local authorities thereof;
  - (b) derived by the Central Bank of the other Contracting State;
  - (c) derived by a financial institution owned or controlled by the Government of the other Contracting State, including political subdivisions and local authorities thereof;
  - (d) paid in respect of a loan made by or guaranteed or insured by the Government of that other State including political subdivisions or local authorities thereof, the Central Bank of that other State or any other financial institution owned or controlled by the Government of that other State.
4. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of paragraphs 2 and 3.
5. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as other income assimilated to income from money lent by the taxation laws of the State in which the income arises. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
6. The provisions of paragraphs 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent

personal services from a fixed base situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

7. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
8. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## **ARTICLE 12**

### **Royalties**

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.
2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount of such 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, or films or tapes used 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 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such

permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is 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 or fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, 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 such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## **ARTICLE 13**

### **Capital gains**

1. Gains derived by a resident of a Contracting State from alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State of which the enterprise is a resident.
4. Gains derived by a resident of a Contracting State from the alienation of shares or comparable interests deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.

5. Gains from the alienation of a participation of 25 percent or more in shares, other than those mentioned in paragraph 4, in a company which is a resident of a Contracting State may be taxed in that State.
6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

## **ARTICLE 14**

### **Independent Personal Services**

1. Income derived by an individual who is resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:
  - (a) If he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or
  - (b) If his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that State.
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**

### **Dependent Personal Services**

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

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned 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 in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that Contracting State.

## **ARTICLE 16**

### **Directors' Fees**

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of 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 Sportsmen**

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman 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 sportsman are exercised.
3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by entertainers or sportsmen who are residents of a Contracting State from activities in the other Contracting State under a plan of cultural exchange between the Governments of both Contracting States shall be exempt from tax in that other Contracting State.

## **ARTICLE 18**

### **Pensions**

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

## **ARTICLE 19**

### **Government Service**

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

## **ARTICLE 20**

### **Students and Apprentices**

1. Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.
2. Notwithstanding the provisions of Articles 14 and 15, remuneration for services rendered by a student or a business apprentice in a Contracting State shall not be taxed in that State for the first 15,000 euro or the equivalent in Vietnamese dong per fiscal year, provided that such services are in connection with his studies or training.

## **ARTICLE 21**

### **Teachers, Professors and Researchers**

1. An individual who is, or immediately before visiting a Contracting State was, a resident of a Contracting State and is present in the first-mentioned Contracting State for the primary purpose of teaching, giving lectures or conducting research at a university, college, school or educational institution or scientific research institution of a public nature of the first-mentioned Contracting State shall be exempt from tax in the first-mentioned Contracting State for the first 30,000 euro or the equivalent in Vietnamese dong per fiscal year, for a period of two years from the date of his first arrival in the first-mentioned Contracting State, in respect of remuneration for such teaching, lectures or research.
2. This Article shall only apply to income from research if such research is undertaken by an individual for the public interest and not primarily for the benefit of some other private person or persons.

## **ARTICLE 22**

### **Other Income**

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

## **ARTICLE 23**

### **Methods for Elimination of Double Taxation**

1. In Vietnam, double taxation shall be eliminated as follows:
  - (a) Where a resident of Vietnam derives income, profits or gains which under the law of Spain and in accordance with this Agreement may be taxed in Spain, Vietnam shall allow as a credit against its tax on the income, profits or gains an amount equal to the tax paid in Spain. The amount of credit, however, shall not exceed the amount of the Vietnamese tax on that income, profits or gains computed in accordance with the taxation laws and regulations of Vietnam.
  - (b) Where in accordance with any provision of the Agreement income derived by a resident of Vietnam is exempt from tax in Vietnam, Vietnam may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

2. In Spain, in accordance with the provisions and subject to the limitations of the laws of Spain double taxation shall be eliminated as follows:

- (a) Where a resident of Spain derives income which, in accordance with the provisions of this Agreement, may be taxed in Vietnam, Spain shall allow:
  - (i) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Vietnam;
  - (ii) the deduction of the underlying corporation tax shall be given in accordance with the internal legislation of Spain.

Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in Vietnam.

- (b) Where in accordance with any provision of the Agreement income derived by a resident of Spain is exempt from tax in Spain, Spain may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.
- (c) For the purpose of sub-paragraph 2(a) of this Article, the income tax paid in Vietnam by a resident of Spain in respect of business profits earned through a permanent establishment situated in Vietnam shall be deemed to include any amount of tax which would have been payable as Vietnamese tax for any year but for an exemption or a reduction of tax granted for that year or any part thereof as a result of the application of the provisions of Vietnamese Law designed to extend time limited tax incentives to promote foreign investment for development purpose. The provisions of this subparagraph shall be applied for a period of ten years from the date the Agreement shall have effect. The competent authorities shall consult each other in order to determine whether this period shall be extended or not.
- (d) For the purpose of sub-paragraph 2(a) of this Article, the tax paid in Vietnam on dividends to which paragraph 2 of Article 10 applies, on interest to which paragraph 2 of Article 11 applies and on royalties to which paragraph 2 of Article 12 applies, shall be deemed to be the rates established in relation to Article 10 in the Agreement of the gross amount of such dividends, 10 per cent of the gross amount of such interest and 10 per cent of the gross amount of such royalties. The provisions of this subparagraph shall be applied for a period of ten years from the date the Agreement shall have effect and they shall not have effect when passive income is obtained, as it is understood in the Spanish Corporate Tax Law. The competent authorities shall consult each other in order to determine whether this period shall be extended or not.

## **ARTICLE 24**

### **Non-discrimination**

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.
3. Except where provisions of paragraph 1 of Article 9, paragraph 8 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.
4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.
5. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
6. Notwithstanding the provisions of this Article, for so long as Vietnam continues to grant to investors licenses under the Law on Foreign Investment in Vietnam, which specify the taxation to which the investor shall be subjected, the imposition of such taxation shall not be regarded as breaching the terms of paragraphs 2 and 4 of this Article.
7. The provisions of this Article shall apply only to the taxes which are the subject of this Agreement.

## **ARTICLE 25**

### **Mutual Agreement Procedure**

1. Where a person who is a resident of a Contracting State considers that the actions of the competent authority of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which that person is a resident. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall jointly endeavour to resolve any difficulties or doubts arising as to the application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.
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 26**

### **Exchange of Information**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:
  - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
  - (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
  - (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

## **ARTICLE 27**

### **Diplomatic Agents and Consular Officers**

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

## **ARTICLE 28**

### **Entry into Force**

1. The Governments of the Contracting States shall notify each other that the internal procedures required by each Contracting State for the entry into force of this Agreement have been complied with. This Agreement shall enter into force on the date of the later of these notifications.
2. This Agreement shall have effect:
  - (a) in respect of taxes withheld at source, in relation to taxable amount paid on or after 1 January following the calendar year in which the Agreement enters into force, and in subsequent calendar years;
  - (b) in respect of other taxes, in relation to income, profits or gains arising in the calendar year following the calendar year in which the Agreement enters into force, and in subsequent calendar years.

## **ARTICLE 29**

### **Termination**

This Agreement shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving to the other Contracting State, a written notice of termination at least six months before the end of any calendar year beginning after the expiry of five years from the date of entry into force of the Agreement. In such event, the Agreement shall cease to have effect:

- (a) in respect of taxes withheld at source, in relation to taxable amount paid on or after 1 January following the calendar year in which the notice of termination is given, and in any subsequent calendar years;
- (b) in respect of other taxes, in relation to income, profits or gains arising in the calendar year following the calendar year in which the notice of termination is given, and in subsequent calendar years.

**IN WITNESS WHEREOF** the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

**DONE** in duplicate at.....this.....day of..... of the year two thousand and..... in the Vietnamese, Spanish and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

**FOR THE GOVERNMENT OF THE  
SOCIALIST REPUBLIC OF  
VIETNAM**

**FOR THE GOVERNMENT OF THE  
KINGDOM OF SPAIN**

## **PROTOCOL**

At the moment of signing the Agreement between the Kingdom of Spain and the Socialist Republic of Vietnam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed upon the following provisions which shall be an integral part of the Agreement.

### **I. Ad. Article 5 Paragraph 3**

The term “same project” refers to a project that may consist of various parts; in such a case, each part has to be commercially and geographically linked to the others.

### **II. Ad. Article 5 Paragraph 6**

The second sentence of paragraph 6 of Article 5 shall be interpreted according to the following:

A factor to consider in determining independent status is the number of principals represented by the agent. Independent status is less likely if the activities of the agent are performed wholly or almost wholly on behalf of only one enterprise over the lifetime of the business or a long period of time. However, this fact is not by itself determinative. All the facts and circumstances must be taken into account to determine whether the agent’s activities constitute an autonomous business conducted by him in which he bears risk and receives reward through the use of his entrepreneurial skills and knowledge. Where an agent acts for a number of principals in the ordinary course of his business and none of these is predominant in terms of the business carried on by the agent legal dependence may exist if the principals act in concert to control the acts of the agent in the course of his business on their behalf.

### **III. Ad. Article 5**

As soon as both Contracting States’ financial regulatory framework allows insurance companies situated in a Contracting State to provide services in the other Contracting State through a person, other than an independent agent, in a reciprocal basis, both competent authorities may establish, by exchange of letters, the residential status of those companies in order to agree a new paragraph to Article 5 to be included in the Agreement.

### **IV. Ad. Article 5 and Paragraph 1 of Article 7**

- a) In the Contracting State in which the permanent establishment is situated, no profits shall be attributed to a building site or construction or installation project except those which are the result of such activities themselves. Profits derived from the supply of machinery or equipment connected with such activities and effected by the principal permanent establishment or any other permanent establishment of the enterprise or by a third party shall not be attributed to the building site or construction or installation project.

- b) In the absence of appropriate accounting or other data permitting the determination of the profits to be attributed to a permanent establishment, the tax may be assessed in the Contracting State in which the permanent establishment is situated in accordance with the laws of that State, in particular regard being had to the normal profits of similar enterprises engaged in the same or similar conditions, provided that, on the basis of the available information, the determination of the profits of the permanent establishment is consistent with the principles stated in this Article.
- c) The competent authorities of the Contracting States shall exchange letters under Article 25 of this Agreement in order to clarify the application of the benefits of the Agreement in each Contracting State.

#### **V. Ad. Article 10 Paragraph 2**

In relation with paragraph 2 of Article 10, if the beneficial owner of the dividends is a company mentioned in Articles 129-132 of the Spanish Corporate Tax Law, Law 43/1995, of December 27<sup>th</sup> "Entidades de Tenencia de Valores Extranjeros" (Foreign Participation Holding Companies), this company will be granted the benefits of the Agreement. The tax so charged shall not exceed 5 per cent of the gross amount of the dividends, if this company holds directly at least 50% of the capital of the company paying the dividends.

#### **VI. Ad Articles 10, 11 and 12**

With respect to Articles 10, 11 and 12, if after the entry into force of this Agreement, Vietnam has signed an Agreement or Convention for the avoidance of double taxation with a third State which is a member of the European Union, and that Agreement or Convention contains lower withholding tax rates (including zero rates) than those provided for under this Agreement, these rates will automatically replace the rates of this Agreement, from the date of entry into force of the Convention or Agreement between Vietnam and that third State.

#### **VII. Ad. Article 12 Paragraph 3**

With respect to paragraph 3 of Article 12, it is understood that payments for technical, scientific or geological services, such as payments for analyses or special studies of a scientific, geological or technical nature, for special engineering services, or for consultation or advisory services shall not be deemed remuneration for information concerning industrial, commercial or scientific experience. In such cases, the provisions of Article 7 or 14, as the case may be, shall apply.

#### **VIII. Ad Articles 10, 11, 12 and 13**

- a) Notwithstanding the provisions of this Agreement, a company resident in a Contracting State in which persons who are not residents of that State hold, directly or indirectly, a participation of more than 50 per cent of the share capital, shall not be entitled to the reliefs provided for by the Agreement in respect of dividends, interest, royalties and capital gains arising in the other Contracting State. This provision shall not apply where the said Company is engaged in substantive

business operations, other than the mere holding of shares or property, in the Contracting State of which it is a resident.

- b) A company which under the preceding subparagraph would not be entitled to the benefits of the Agreement in respect of the aforementioned items of income, could still be granted such benefits if the competent authorities of the Contracting States agree under Article 25 of the Agreement that the establishment of the company and the conduct of its operations are founded on sound business reasons and thus do not have as its primary purpose the obtaining of such benefits.
- c) It is understood that companies mentioned in Articles 129-132 of the Spanish Corporate Tax Law, Law 43/1995, of December 27<sup>th</sup> "Entidades de Tenencia de Valores Extranjeros" (Foreign Participation Holding Companies), are not affected by the limitations established in subparagraphs a) and b) of paragraph VIII of the Protocol.

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

Done in duplicate in \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, in the Vietnamese, Spanish and English languages, all the texts being equally authentic. In case of divergence between any of the texts, the English text shall prevail.

**FOR THE GOVERNMENT OF THE  
SOCIALIST REPUBLIC OF  
VIETNAM**

**FOR THE GOVERNMENT OF THE  
KINGDOM OF SPAIN**