

PROTOCOL AMENDING THE CONVENTION BETWEEN DENMARK AND  
SPAIN FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO  
TAXES ON INCOME AND ON CAPITAL, SIGNED AT COPENHAGEN THE  
3RD DAY OF JULY 1972.

The Government of the Kingdom of Denmark and the Government of the Kingdom of Spain desiring to conclude a Protocol to amend the Convention between Denmark and Spain for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital, signed at Copenhagen the 3rd day of July 1972 (hereinafter referred to as "the Convention"); have agreed as follows:

1. Article 2 of the Convention shall be deleted and replaced by the following:

“Article 2

### TAXES COVERED

1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, 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 Denmark:

- (i) the income tax to the State  
(indkomsskatten til staten);
- (ii) the income tax to the municipalities  
(den kommunale indkomstskat);
- (iii) the income tax to the county municipalities  
(den amtskommunale indkomstskat); and
- (iv) taxes imposed under the Hydrocarbon Tax Act  
(skatter i henhold til kulbrinteskatteloven);

(hereinafter referred to as "Danish Tax");

b) in Spain:

- i) the income tax on individuals (el Impuesto sobre la Renta de las Personas Físicas);

- ii) the corporation tax (el Impuesto sobre Sociedades);
- iii) the capital tax (el Impuesto sobre el Patrimonio); and
- iv) local taxes on income and on capital;

(hereinafter referred to as "Spanish Tax").

4. This Convention shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes.”

2. Article 3 of the Convention shall be deleted and replaced by the following:

“Article 3

#### GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:

a) the terms "a Contracting State" and "the other Contracting State" mean Spain or Denmark as the context requires;

b) the term "Denmark" means the Kingdom of Denmark including any area outside the territorial sea of Denmark which in accordance with international law has been or may hereafter be designated under Danish laws as an area within which Denmark may exercise sovereign rights with respect to the exploration and exploitation of the natural resources of the sea-bed or its subsoil and the superjacent waters and with respect to other activities for the exploration and economic exploitation of the area; the term does not comprise the Faroe Islands and Greenland;

c) the term "Spain" means the Spanish State, and when used in a geographical sense, the territory of the Spanish State, including any area outside the territorial sea upon which, in accordance with international law and on application of its domestic legislation, the Spanish

State 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;

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 that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

i) the term "competent authority" means:

- i) in Spain, the Minister of Economy and Finance or his authorized representative;
- ii) in the case of Denmark, the Minister for Taxation or his authorized representative.

2. As regards the application of this Convention 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 purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.”

3. Article 9 of the Convention shall be deleted and replaced by the following:

“Article 9

ASSOCIATED ENTERPRISES

1. Where

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

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

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

4. Article 10 of the Convention shall be deleted and replaced by the following:

“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. a) 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 15 per cent of the gross amount of the dividends.

b) Notwithstanding the provisions of subparagraph a), such dividends shall be exempt from tax in the Contracting State of which the company paying the dividends is a resident, under the conditions established by the relevant law of that State which implements the EC Directive on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (90/435/EEC).

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

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, 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 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.”

5. Article 14 of the Convention shall be deleted and replaced by the following:

“Article 14

#### INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other 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.”

6. Article 17 of the Convention shall be deleted and replaced by the following:

“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 from activities referred to in paragraph 1 performed under a cultural agreement or arrangement between the Contracting States shall be exempt from tax in the Contracting State in which the activities are exercised if the visit to that State is wholly or substantially supported by public funds of the other Contracting State or of a political subdivision or a local authority thereof.”

7. Article 19 of the Convention shall be deleted and replaced by the following:

“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 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.”

8. Article 22 of the Convention shall be deleted and replaced by the following:

“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 Convention, shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State carries on 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.”

9. Article 24 of the Convention shall be deleted and replaced by the following:

“Article 24

#### ELIMINATION OF DOUBLE TAXATION

1. In Denmark:

a) Subject to the provisions of sub-paragraph c), where a resident of Denmark derives income which, in accordance with the provisions of this Convention, may be taxed in Spain, Denmark shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Spain;

b) Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Spain;

c) Where a resident of Denmark derives income which, in accordance with the provisions of this Convention, shall be taxable only in Spain, Denmark may include this income in the tax base, but shall allow as a deduction from the income tax that part of the income tax, which is attributable to the income derived from Spain.

## 2. In Spain:

In accordance with the provisions and subject to the limitations of the laws of Spain:

a) Where a resident of Spain derives income or owns elements of capital which, in accordance with the provisions of this Convention, may be taxed in Denmark, 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 Denmark;
- ii) as a deduction from the tax on the capital of that resident, an amount equal to the tax paid in Denmark on the elements of capital.

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

b) Where a resident of Spain derives income which, in accordance with the provisions of this Convention is taxed in Denmark, Spain shall allow the deduction of the underlying corporation tax and of the tax on the income referred to in Article 7 in accordance with its internal legislation.

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

10. Article 25 of the Convention shall be deleted and replaced by the following:

“Article 25

#### NON-DISCRIMINATION

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

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less 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 a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for tax purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article

11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

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

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.”

11. Article 29 of the Convention shall be deleted.

#### ENTRY INTO FORCE

1. The Governments of the Contracting States shall notify to each other that the constitutional requirements for the entry into force of this Protocol have been complied with.

2. The Protocol shall enter into force on the date of the latter of the notifications referred to in paragraph 1 and its provisions shall have effect in respect of taxes on income or on capital relating to any tax year beginning on or after the first day of January in the calendar year next following that in which the Protocol enters into force.

3. The provisions of the Convention between Denmark and Spain for the avoidance of double taxation with respect to taxes on income and capital and the additional protocol,

signed at Copenhagen the 3rd day of July 1972, shall cease to have effect in respect of all Spanish or Danish taxes to which this Protocol and its Annexed Protocol has effect, in accordance with paragraph 2.

4. This Protocol shall remain in force as long as the Convention remains in force.

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

Done in duplicate at ..... this ..... day of ..... in the Spanish, Danish and English languages, each text being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government of

the Kingdom of Denmark

For the Government of

the Kingdom of Spain

## ANNEXED PROTOCOL

At the moment of signing the Protocol amending the Convention between Denmark and Spain for the avoidance of double taxation with respect to taxes on income and capital and the additional protocol, signed at Copenhagen the 3rd day of July 1972, the undersigned have agreed upon the following provisions which shall be an integral part of the Protocol.

I. Ad Article 10, paragraph 3

It is understood that the term "dividends" includes profits on the liquidation of a company.

II. Ad Article 25

It is understood that the provisions of Article 25 shall not prevent the application by a Contracting State of its domestic law concerning thin capitalisation.

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

Done in duplicate at ..... this ..... day of ..... in the Spanish, Danish and English languages, each text being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government of

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the Kingdom of Denmark of the Kingdom of Spain