

AGREEMENT

BETWEEN
THE KINGDOM OF SPAIN
AND
THE FEDERAL REPUBLIC OF
GERMANY

FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Kingdom of Spain and the Federal Republic of Germany, desiring to conclude an Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, have agreed as follows:

Article 1

PERSONS COVERED

This 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 and on capital imposed on behalf of a Contracting State, of a Land, or a political subdivision or local authority thereof, 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 Agreement shall apply are in particular:

a) in the Kingdom of Spain:

- i) the income tax on individuals;
- ii) the corporation tax;
- iii) the income tax on non residents;
- iv) the capital tax; and
- v) local taxes on income and on capital;
(hereinafter referred to as "Spanish Tax");

b) in the Federal Republic of Germany:

- i) the income tax (Einkommensteuer);
- ii) the corporation tax (Körperschaftsteuer);
- iii) the trade tax (Gewerbesteuer); and
- iv) the capital tax (Vermögensteuer)
including the supplements levied thereon
(hereinafter referred to as "German tax").

4. The Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall

as appropriate for the application of the Agreement, notify each other of any significant changes that 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 terms "a Contracting State" and "the other Contracting State" mean the Federal Republic of Germany, hereinafter referred to as "Germany", or the Kingdom of Spain, hereinafter referred to as "Spain", as the context requires, and, when used in a geographical sense, include the territory of the State concerned as well as the area of the sea-bed, its sub-soil and the superjacent water column adjacent to the territorial sea, in so far as the State concerned may exercise sovereign rights and jurisdiction in conformity with international law and its national legislation for the purpose of exploring, exploiting, conserving and managing the living and non-living natural resources;
 - b) the term "person" includes an individual, a company and any other body of persons;
 - c) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - d) the term "enterprise" applies to the carrying on of any business;
 - e) 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;
 - f) the term "international traffic" means any transport operated through any means of transport by an enterprise that has its place of effective management in a Contracting State, except when the means of transport are operated solely between places in the other Contracting State;
 - g) the term "competent authority" means:
 - i) in the case of Spain: the Minister of Economy and Finance or his authorised representative;
 - ii) in the case of Germany: the Federal Ministry of Finance or the agency to which it has delegated its powers;

- h) the term "national" means:
 - i) in respect of Germany: any German within the meaning of the Basic Law for the Federal Republic of Germany and any legal person, partnership or association deriving its status as such from the laws in force in Germany;
 - ii) in respect of Spain:
 - any individual possessing the nationality of the Kingdom of Spain, and
 - any legal person, partnership or association deriving its status as such from the laws in force in the Kingdom of Spain;
- i) the term "business" includes the performance of professional services and of other activities of an independent character.

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 that it has at that time under the law of that State for the purposes 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, a Land and any political subdivision thereof, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State, a Land 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 or capital situated therein.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

- a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);

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

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

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 an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

- a) a place of management;
- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop, and
- f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

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

Article 6

INCOME FROM IMMOVABLE PROPERTY

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

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

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

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

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

Article 7

BUSINESS PROFITS

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

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

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

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

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

6. Where profits include items of income 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, INLAND WATERWAYS TRANSPORT AND AIR TRANSPORT

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. Profits from the operation of boats engaged in inland waterways transport shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

3. For the purposes of this Article the terms "profits from the operation of ships, aircraft or boats" shall include profits from:

- a) the occasional rental of ships, aircraft or boats on a bare-boat basis, and
- b) the use or rental of containers (including trailers and ancillary equipment used for transporting these containers),

if these activities pertain to the operation of ships or aircraft in international traffic or boats.

4. If the place of effective management of a shipping enterprise or of an inland waterways transport enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.

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

Article 9

ASSOCIATED ENTERPRISES

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

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

2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other State has been charged to tax in that other Contracting State and that other State agrees that the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this 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) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership or a real estate investment company) which holds directly at least 10 per cent of the capital of the company paying the dividends;
- b) 15 per cent of the gross amount of the dividends in all other cases.

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

3. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as other income 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, and income from distributions on certificates of a German "Investmentvermögen".

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11

INTEREST

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

2. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities

and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

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

4. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, 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 beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

2. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright, including cinematographic films and films, tapes and other means of image or sound reproduction, 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. The term "royalties" shall also include payments of any kind received as a consideration for the use of or the right to use a person's name, picture or any other similar personality rights, or for the recording of entertainers' or sportsmen's performances by radio or television.

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

4. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, 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 the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains derived by a resident of a Contracting State from the alienation of shares in a company, or comparable interests, at least 50 per cent of whose assets consist directly or indirectly of immovable property situated in the other Contracting State may be taxed in that other State.

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

4. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) may be taxed in that other Contracting State.

5. Gains from the alienation of ships or aircraft operated in international traffic, boats engaged in inland waterways transport or movable property pertaining to the operation of such ships, aircraft or boats, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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.

7. Where an individual was a resident of a Contracting State for a period of 5 years or more and has become a resident of the other Contracting State, paragraph 6 shall

not prevent the first-mentioned State from taxing under its domestic law the capital appreciation of shares in a company for the period of residency of that individual in the first-mentioned State provided that the alienation of shares takes place within 5 years from the date on which the individual gave up residence in the first-mentioned State.

Article 14

INCOME FROM EMPLOYMENT

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

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

- a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- c) the remuneration is not borne by a permanent establishment which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship, aircraft or road vehicle operated in international traffic or aboard a boat engaged in inland waterways transport may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 15

DIRECTORS' FEES

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

Article 16

ARTISTS AND SPORTSPERSONS

1. Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, 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 artist or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.
3. The provisions of paragraphs 1 and 2 shall not apply if the activities exercised by an artist or a sportsperson in a Contracting State are supported wholly or substantially from the public funds of either Contracting State, of a Land or a political subdivision or local authority thereof, within the framework of cultural or sports exchange programs approved by both Contracting States. In such a case, the income derived from those activities shall only be taxed in the Contracting State where the artist or sportsperson is a resident.

Article 17

PENSIONS AND ANNUITIES

1. Subject to the provisions of paragraph 2 of Article 18, pensions, annuities and similar payments arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.
2. However, such payments which are made in accordance with the social insurance legislation of a Contracting State may also be taxed in that State and according to the laws of that State, if the event that gives the right to get the income takes place after 31st December 2014. The tax so charged shall not exceed 5 per cent of the gross amount of the payments, if the event that gives the right to get the income takes place between 1st January 2015 and 31st December 2029. If the event takes place on or after 1st January 2030 the tax so charged shall not exceed 10 per cent of the gross amount of the payments.
3. Paragraph 2 shall also apply to other payments received after 31st December 2014 if

a) in the case of Germany,

i) they are based on assisted contributions which did not form part of the taxable income from employment in that State, which were tax deductible or which were assisted by that State in some other way, and

ii) the contributions have been made for a period of more than twelve years.

The foregoing provision shall not apply if the assistance was clawed back because the person emigrated from that State;

b) in the case of Spain, they are based on contributions which did not form part of the taxable income in that State or which were tax deductible, and the contributions have been made for a period of more than twelve years.

4. Notwithstanding the provisions of paragraph 1, recurrent or non-recurrent payments made by one of the Contracting States, a political subdivision or local authority thereof to a resident of the other Contracting State as compensation for political persecution or as a result of wars and terrorism (including restitution payments) shall be taxable only in the first-mentioned State.

5. The term "annuities" means certain amounts payable periodically at stated times, for life or for a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article 18

GOVERNMENT SERVICE

1.

a) Salaries, wages and other similar remuneration, paid by a Contracting State, a Land, or a political subdivision or a local authority thereof or some other legal entity under public law of that State to an individual in respect of services rendered to that State, Land, subdivision or authority or legal entity under public law shall be taxable only in that State.

b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a national of that State; or

- (ii) did not become a resident of that State solely for the purpose of rendering the services.
- 2.
 - a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State, a Land or a political subdivision or a local authority thereof or some other legal entity under public law of that State to an individual in respect of services rendered to that State, Land, subdivision or authority or legal entity under public law shall be taxable only in that State.
 - b) However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
- 3. The provisions of Articles 14, 15, 16 and 17 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State, a Land or a political subdivision or a local authority thereof or some other legal entity under public law of that State.
- 4. The provisions of paragraphs 1 and 2 shall also apply to salaries, wages, pensions and any similar remuneration paid to an individual in respect of services rendered to the Goethe Institute, the German Academic Exchange Service (Deutscher Akademischer Austauschdienst) and the Instituto Cervantes. Corresponding treatment of the remuneration paid by other comparable institutions of the Contracting States may be arranged by the competent authorities by mutual agreement.

Article 19

VISITING PROFESSORS, TEACHERS AND STUDENTS

- 1. An individual who visits a Contracting State at the invitation of that State or of a university, college, school, museum or other cultural institution of that State or under an official programme of cultural exchange for a period not exceeding two years solely for the purpose of teaching, giving lectures or carrying out research at such institution and who is, or was immediately before that visit, a resident of the other Contracting State shall be exempt from tax in the first mentioned State on his remuneration for such activity, provided that such remuneration is derived by him from outside that State.
- 2. Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

Article 20

OTHER INCOME

1. Items of income 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 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 and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.
3. Where, by reason of a special relationship between the person referred to in paragraph 1 and some other person, or between both of them and some third person, the amount of the income referred to in paragraph 1 exceeds the amount (if any) which would have been agreed upon between them in the absence of such a relationship, the provisions of this Article shall apply only to the last mentioned amount. In such a case, the excess part of the income shall remain taxable according to the laws of each Contracting State, due regard being had to the other applicable provisions of this Agreement.

Article 21

CAPITAL

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.
2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State may be taxed in that other State.
3. Capital represented by ships or aircraft operated in international traffic and by boats engaged in inland waterways transport and by movable property pertaining to the operation of such ships, aircraft and boats shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. Capital constituted by shares in a company or any other body of persons, or other comparable interests, whose assets consists directly or indirectly at least in a 50 per cent of immovable property situated in a Contracting State or by shares or other

rights which, directly or indirectly, entitle its owner to a right of enjoyment of immovable property situated in a Contracting State, may be taxed in the Contracting State in which the immovable property is situated.

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

Article 22

ELIMINATION OF DOUBLE TAXATION

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

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

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

2. Tax shall be determined in the case of a resident of the Federal Republic of Germany as follows:

- a) Unless foreign tax credit is to be allowed under sub paragraph b), there shall be exempted from the assessment basis of the German tax any item of income arising in the Kingdom of Spain and any item of capital

situated within the Kingdom of Spain which, according to this Agreement, is effectively taxed in the Kingdom of Spain.

In the case of items of income from dividends the preceding provision shall apply only to such dividends as are paid to a company (not including partnerships) being a resident of the Federal Republic of Germany by a company being a resident of the Kingdom of Spain at least 10 per cent of the capital of which is owned directly by the German company and which were not deducted when determining the profits of the company distributing these dividends.

There shall be exempted from the assessment basis of the taxes on capital any shareholding the dividends of which if paid, would be exempted, according to the foregoing sentences.

- b) Subject to the provisions of German tax law regarding credit for foreign tax, there shall be allowed as a credit against German tax payable in respect of the following items of income or of capital situated within the Kingdom of Spain the Spanish tax paid under the laws of the Kingdom of Spain and in accordance with this Agreement:
- i. dividends not dealt with in sub-paragraph a);
 - ii. items of income that may be taxed in the Kingdom of Spain according to paragraphs 2 and 3 of Article 13;
 - iii. items of income that may be taxed in the Kingdom of Spain according to paragraph 3 of Article 14;
 - iv. items of income that may be taxed in the Kingdom of Spain according to the provisions of article 15;
 - v. items of income that may be taxed in the Kingdom of Spain according to the provisions of article 16;
 - vi. items of income that may be taxed in the Kingdom of Spain according to paragraphs 2 and 3 of Article 17;
 - vii. items of income from immovable property (including income from the alienation of such property) or the capital represented by such property to the extent that such property is not effectively connected with a permanent establishment in the Kingdom of Spain.
- c) The provisions of sub-paragraph b) shall apply instead of the provisions of sub-paragraph a) to items of income as defined in Articles 7 and 10 and to the assets from which such income is derived if the resident of the Federal Republic of Germany does not prove that the gross income of the permanent establishment in the business year in which the profit has been realised or of the company resident in the Kingdom of Spain in the business year for which the dividends were paid was derived exclusively or almost exclusively from activities within the meaning of paragraph 1 of

section 8 of the German Law on External Tax Relations (Aussensteuergesetz); the same shall apply to immovable property used by a permanent establishment and to income from this immovable property of the permanent establishment (paragraph 3 of Article 6) and to profits from the alienation of such immovable property (paragraph 1 of Article 13) and of the movable property forming part of the business property of the permanent establishment (paragraph 4 of Article 13).

- d) The Federal Republic of Germany, however, retains the right to take into account in the determination of its rate of tax the items of income and capital, which are under the provisions of this Agreement exempted from German tax.
- e) Notwithstanding the provisions of sub-paragraph a) double taxation shall be avoided by allowing a tax credit as laid down in sub-paragraph b)
 - i. if in the Contracting States items of income or capital are placed under different provisions of this Agreement or attributed to different persons (except pursuant to Article 9) and this conflict cannot be settled by a procedure in accordance with paragraph 3 of Article 24 and if as a result of this difference in placement or attribution the relevant income or capital would remain untaxed or be taxed lower than without this conflict or
 - ii. if after due consultation with the competent authority of the Kingdom of Spain the Federal Republic of Germany notifies the Kingdom of Spain through diplomatic channels of other items of income to which it intends to apply the provisions of sub-paragraph b). Double taxation is then avoided for the notified income by allowing a tax credit from the first day of the calendar year, next following that in which the notification was made.

Article 23

NON-DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. 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 taxation 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 4 of Article 11, or paragraph 4 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 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. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 24

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this 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 he is a resident or, if his case comes under paragraph 1 of Article 23, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the 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 the 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 endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or 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, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 25

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, of a Land or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

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

Notwithstanding the foregoing provisions, the information may be used for other purposes, if under the law of both States it may be used for these other purposes and the competent authority of the supplying State has agreed to this use.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the laws and

administrative practice of that or of the other Contracting State;

b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 26

ASSISTANCE IN THE COLLECTION OF TAXES

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, of a Land or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the

other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be

- a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
- b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article 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 carry out measures which would be contrary to public policy (ordre public);
- c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
- d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

Article 27

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

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

Article 28

LIMITATION OF BENEFITS

1. This Agreement shall not be interpreted to mean that
 - a) a Contracting State is prevented from applying its domestic legal provisions on the prevention of tax evasion or tax avoidance;
 - b) the Federal Republic of Germany is prevented from taxing the amounts which are to be included in the items of income of a resident of the Federal Republic of Germany under the Fourth, Fifth and Seventh Part of the German Law on External Tax Relations (“Aussensteuergesetz”), or the Kingdom of Spain is prevented from applying Controlled Foreign Companies rules under Chapter XI of Title VII of the Spanish Corporate Income Tax (texto refundido de la Ley del Impuesto sobre sociedades, aprobado por Real Decreto Legislativo 4/2004, de 5 de marzo).
2. The benefits under this Agreement shall not be granted to a person, which is not the beneficial owner of the items of income derived from the other Contracting State or items of capital situated therein.

3. If the foregoing provisions result in double taxation, the competent authorities shall consult each other pursuant to paragraph 3 of Article 24 on how to avoid double taxation.

Article 29

PROTOCOL

The attached Protocol forms an integral part of this Agreement.

Article 30

ENTRY INTO FORCE

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

2. The Agreement shall enter into force after the period of three months following on the day of the exchange of instruments of ratification and its provisions shall have effect:
 - i. in the case of taxes withheld at source, in respect of amounts paid on or after the first day of January of the calendar year next following that in which the Agreement entered into force;
 - ii. in the case of other taxes, in respect of taxes levied for periods beginning on or after the first day of January of the calendar year next following that in which the Agreement entered into force.

3. Upon the entry into force of this Agreement, the Agreement between the Federal Republic of Germany and the State of Spain for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, signed at Bonn on 5th of December, 1966 shall cease to have effect as regards taxes to which this Agreement applies in accordance with the provisions of paragraph 2.

4. Notwithstanding the provisions of this Article, the provisions of Articles 23, 24, 25, 26 and 28 of this Agreement shall apply in respect of any taxes, mutual agreement procedure, information, or revenue claims referred to in these Articles even if such information, taxes or revenue claims pre-date the entry into force of this Agreement or the effective date of any of its provisions.

Article 31

TERMINATION

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

- a. in the case of taxes withheld at source, in respect of amounts paid on or after the first day of January of the calendar year next following that in which notice of termination is given;
- b. in the case of other taxes, in respect of taxes levied for periods beginning on or after the first day of January of the calendar year next following that in which notice of termination is given.

Notice of termination shall be regarded as having been given by a Contracting State on the date of receipt of such notice by the other Contracting State.

Article 32

REGISTRATION

Registration of this Agreement with the Secretariat of the United Nations, in accordance with Article 102 of the United Nations Charter, shall be initiated by the Contracting State where the Agreement was signed, immediately following its entry into force. The other Contracting State shall be informed of registration, and of the UN registration number, as soon as this has been confirmed by the Secretariat.

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

Done in duplicate in _____ on the ____ day of _____, in the Spanish and German language, both texts being equally authentic. In case of divergence of interpretation between both texts, it shall be resolved in accordance with the procedure regulated under Article 24 of this Agreement.

For the Kingdom of Spain

For the Federal Republic of Germany

PROTOCOL TO THE AGREEMENT BETWEEN THE KINGDOM OF SPAIN AND THE FEDERAL REPUBLIC OF GERMANY FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

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

I. With reference to Articles 4 and 24

If a Collective Investment Vehicle cannot be considered as a resident according to Article 4, both competent authorities may settle by mutual agreement the requirements for the entitlement to claim the benefits of this Agreement.

II. With reference to Article 4

Articles 4, 6 to 21 of this Agreement shall not apply to Spanish taxpayers who have opted for being taxed according to non resident tax Law, as is provided by article 93 of the Spanish individual Income Tax (Ley 35/2006, de 28 de noviembre, del Impuesto sobre la Renta de las Personas Físicas y de modificación parcial de las Leyes de los Impuestos sobre Sociedades, sobre la Renta de no Residentes y sobre el Patrimonio). The same would apply in the case that Germany introduces a similar regime.

III. With reference to Article 7

When new Article 7 is adopted by the OECD, both delegations will meet again in order to analyse the possibility of incorporating a new text of this Article under the Authorised OECD Approach.

IV. With reference to Article 8

Paragraph 3 of Article 8 will be interpreted along the lines of paragraphs 5 and 9 of the Commentaries to Article 8 of the OECD Model Tax Convention on Income and on Capital.

V. With reference to Articles 10 and 11

Notwithstanding the provisions of Articles 10 and 11 of this Agreement, dividends and interest may be taxed in the Contracting State in which they arise, and according to the law of that State,

a) if they are derived from rights or debt-claims carrying a right to participate in profits, including income from “jouissance” shares or “jouissance” rights, income derived by a silent partner (in the case of Germany “stiller Gesellschafter”) from his participation as such, or from a loan with an interest rate linked to borrower’s profit (in the case of Germany “partiarisches Darlehen“) or from profit sharing bonds (in the case of Germany “Gewinnobligationen”), and

b) under the condition that they are deductible in the determination of profits of the debtor of such income,

but if the beneficial owner is a resident of the other Contracting State, the tax so charged shall not exceed 15 per cent of the gross amount of that dividends and interest.

VI. With reference to paragraph 2 of Article 17

The “event” will be considered to take place on the first date the person, who is entitled to obtain the benefits, gets the payment.

VII. With reference to paragraph 3 of Article 17

In the case of Germany the term “assisted contributions” applies to the following state-subsidised pension contributions:

1. pension contributions within the meaning of the Pension Contract Certification Act (Altersvorsorgeverträge-Zertifizierungsgesetz) and paragraph 2 of section 82 of the Income Tax Act (Einkommensteuergesetz), and

2. pension contributions for schemes named in Chapter 1 of Part 1 of the Act to Improve Occupational Pension Insurance (Betriebsrentengesetz – BetrAVG). These are statutory pension funds (Pensionskassen) pursuant to paragraph 3 of Section 1b BetrAVG, private pension funds (Pensionsfonds) pursuant to paragraph 3 of Section 1b BetrAVG, direct insurance companies (Direktversicherungen) pursuant to the first sentence of paragraph 2 of Section 1b BetrAVG, relief funds (Unterstützungskassen) according to paragraph 4 of Section 1b BetrAVG and schemes implemented directly by the employer (direct pension commitment - Direktzusagen) pursuant to Section 1 BetrAVG.

VIII. With reference to Articles 17 and 25

The implementation of paragraphs 2 and 3 of Article 17 will demand the setting up of an information exchange mechanism on pensions and annuities paid by each Contracting State to residents of the other Contracting State. The information exchanged shall include all the data necessary in order to identify the payee (e.g. TIN, name, date of birth, place of residence), the amounts paid and the concept or the name of the pension scheme for which they are paid. The specific requirements of such a procedure shall be agreed using the mechanism provided by paragraph 3 of Article 24 (exchange of letters) in order for paragraphs 2 and 3 of Article 17 to be applicable.

IX. With reference to Article 18 and 30

The provision of Article 18 shall apply to remunerations paid to local staff of diplomatic missions, consular posts, Instituto Cervantes and Goethe Institut who, on the date of the entry into force of this Agreement, were already rendering the services therein unless they elect the rules, which were already applied, of the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, signed in Bonn, 5th December 1966. This option can only be exercised once during the first six months from the entry into force of this Agreement.

X. With reference to Article 25

Insofar as personal data are supplied under Article 25, the following additional provisions shall apply:

- a) In general terms, there shall be no restrictions to the use of information apart from the ones mentioned in paragraph 2 of Article 25. Only in extraordinary cases the supplying agency may establish certain restrictions for the use of information. Such restrictions of use may only be imposed by the supplying agency where the particular request could not be complied with in the absence of such restrictions. The receiving agency shall be informed as soon as possible of any change of circumstances.
- b) The supplying agency shall be obliged to ensure that the data to be supplied are accurate and their foreseeable relevance within the meaning of the first sentence of paragraph 1 of Article 25 and that they are proportionate to the purpose for which they are supplied. Data are foreseeably relevant if in the concrete case at hand there is the serious possibility that the other Contracting State has a right to tax and there is nothing to indicate that the data are already known to the competent authority of the other Contracting State or that the competent authority of the other Contracting State would learn of the taxable object without the information. If it emerges that inaccurate data or data which should not have been supplied have been supplied, the receiving agency shall be informed of this without delay. That agency shall be obliged to correct or erase such data in

accordance with the transposed directive 95/46/EG. If data have been supplied spontaneously, the receiving agency shall check without delay whether the data are needed for the purpose for which they were supplied; that agency shall immediately erase any data which is not needed.

- c) The receiving agency, according to its domestic law, shall inform the person concerned of the data collection by the supplying agency, unless the data were supplied spontaneously. The person concerned need not be informed if and as long as on balance it is considered that the public interest in not informing him outweighs his right to be informed.
- d) Upon application the person concerned shall be informed of the supplied data relating to him and of the use to which such data are to be put according to the domestic legislation of the supplying Contracting State. The second sentence of paragraph c) shall apply accordingly.
- e) The supplying and the receiving agencies shall be obliged to keep official records of the supply and receipt of personal data.
- f) Where the domestic law of the supplying agency contains special provisions for the deletion of the personal data supplied, that agency shall inform the receiving agency accordingly. In any case, supplied personal data may be erased in accordance with the transposed directive 95/46/EG once they are no longer required for the purpose for which they were supplied.

XI. Procedural Rules for Taxation at Source

1. The competent authorities may by mutual agreement implement the provisions for the relief of source taxation and if necessary establish other procedures for the implementation of tax reductions or exemptions provided for under this Agreement
2. The Contracting State in which the items of income arise shall ask for a certificate of residence in the sense of the Agreement issued by the competent authority of the other Contracting State.
3. For the purposes of Article 4, any person holding a certificate of residence for the purposes of this Agreement issued by the competent authority of a Contracting State shall be entitled to the benefits of this Agreement. This provision shall also be applied to Sociedades Colectivas (established according to the Spanish legislation) where the shareholders are not residents of Germany. If, among the shareholders, there are German residents, the Sociedad Colectiva should be entitled to apply the Agreement only to the income which is not deemed to be attributed to the German resident.

Done in duplicate in _____ on the _____ day of _____, in the Spanish and German languages, both texts being equally authentic. In case of divergence of

interpretation between both texts, it shall be resolved in accordance with the procedure regulated under Article 24 of this Agreement.

For the Kingdom of Spain

For the Federal Republic of Germany