

CONVENTION

BETWEEN

BARBADOS

AND

THE KINGDOM OF SPAIN

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

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Barbados and the Kingdom of Spain, desiring to conclude a Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, have agreed as follows:

Article 1

PERSONS COVERED

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

Article 2

TAXES COVERED

1. This Convention 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 Convention shall apply are in particular:

(a) in Barbados:

- (i) the income tax (including premium income tax);
- (ii) the corporation tax (including the tax on branch profits); and
- (iii) the petroleum winning operations tax;

(hereinafter referred to as "Barbados 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 Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of significant changes which have been made in their respective taxation laws.

Article 3

GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:
 - (a) the term "Barbados" means the present territory of Barbados including the territorial sea and any maritime area situated beyond the territorial sea of Barbados which has been or might in the future be designated under the national law of Barbados in accordance with international law as an area within which Barbados may exercise its sovereign rights and jurisdiction to explore, exploit and preserve the seabed, subsoil and the natural resources;
 - (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 inland waters, the air space, the territorial sea and any area outside the 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 Spain or Barbados 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 that is treated as a body corporate for tax purposes;
 - (f) the term "enterprise" applies to the carrying on of any business;
 - (g) 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;

- (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 authorised representative;
 - ii) in Barbados: the Minister responsible for Finance or his authorised representative;
- (j) 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.

2. As regards the application of the Convention 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 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.

Article 4

RESIDENT

1. For the purposes of this Convention, 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 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 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 Convention, 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 or an installation or drilling rig or ship used for the exploration or exploitation of natural resources, constitutes a permanent establishment only if it lasts more than nine 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 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. 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 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 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 Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

SHIPPING AND AIR TRANSPORT

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

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

3. 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 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 Convention 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) 0 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 of the capital of the company paying the dividends;
- (b) 5 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, "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.

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.

6. Where a company, which is a resident of a Contracting State having a permanent establishment in the other Contracting State, derives profits or income from that permanent establishment, any remittances or deemed remittances of such profits or income by the permanent establishment to the company which is a resident of the first-mentioned Contracting State may, notwithstanding any other provisions of the Convention, be taxed in accordance with the law of the other Contracting State, but the rate of tax imposed on such remittance shall not exceed 0 per cent.

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 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, 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.
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-claims 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 a case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being to the other provisions of this Convention.

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, discs or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of,

or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

3. The provisions 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, 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.

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 Convention.

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 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 in which the place of effective management of the enterprise is situated.

4. Gains derived by a resident of a Contracting State from the alienation of shares or comparable interests deriving more than 50% 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 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.

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 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. However, such income may also be taxed in the other Contracting State in the following circumstances:

- (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 any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from the activity exercised in the other Contracting State during the aforesaid period or periods be taxed in that other 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 and 19, 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 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 may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

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

ENTERTAINERS AND SPORTSPERSONS

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 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 entertainer 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, 14

and 15, 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 to income derived from activities performed in a Contracting State by entertainers or sportspersons if the visit to that State is substantially supported by public funds of one or both Contracting States or a political subdivision or a local authority thereof. In such a case the income shall be taxable only in the State of which the entertainer or sportsperson is a resident.

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 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) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration 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 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 15, 16, 17 and 18 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 or a political subdivision or a local authority thereof.

Article 20

STUDENTS

Payments which a student, business apprentice or trainee 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 21

PROFESSORS AND TEACHERS

An individual who has been resident in a Contracting State immediately before travelling to the other Contracting State, and who, at the invitation of a school, university, or other similar non-profit educational institution, remains in that other State for a period not exceeding two years from the date of his first arrival in that State, for the purpose of teaching or carrying out research, or both, in such educational institutions, shall be exempt from tax in that other State with respect to the remuneration received for such teaching or research.

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.

Article 23

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 which, in accordance with the provisions of this Convention, may be taxed in Barbados, 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 Barbados;
 - (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 Barbados;

- (b) where in accordance with any provision of the Convention 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.

2. In the case of Barbados, subject to the provisions of the laws of Barbados regarding the allowance as a credit against Barbados tax of tax payable in a territory outside Barbados double taxation shall be eliminated as follows:

- (a) tax payable under the laws of Spain and in accordance with the Convention, whether directly or by deduction, on profits or income from sources within Spain (excluding, in the case of a dividend tax payable in respect of the profits out of which the dividend is paid), shall be allowed as a credit against any Barbados tax computed by reference to the same profits or income in respect of which the Spain tax is computed;

- (b) in the case of a dividend paid by a company that is a resident of Spain to a company that is a resident of Barbados and which holds directly at least 10 percent of the capital of the company paying the dividend, the credit referred to in sub-paragraph (a) shall take into account the Spanish tax payable by the company paying the dividend in respect of the profits out of which such dividend is paid; and
- (c) the credit, however, shall in no case exceed the part of the tax, as computed before the credit is given, which is appropriate to the income which may be taxed in Spain.

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, 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.

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 25

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 Convention, 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 24, 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 Convention.

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 Convention. 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 Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

Article 26

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 Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. 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. 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, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the law of the requesting State.

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 27

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

Nothing in this Convention 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

MISCELLANEOUS PROVISIONS

1. The benefits of Articles 10, 11, 12 and 13 of this Convention shall not apply to a person entitled to a tax benefit under a special tax regime in either Contracting State as described in the following paragraphs of this Article.

2. Barbados, at the time of signature of this Convention, has special tax regimes under the following legislation, as amended from time to time:

- (a) International Financial Services Act, Cap 325;
- (b) Societies with Restricted Liability Act, Cap 318B;
- (c) International Business Companies Act, Cap 77; and
- (d) Exempt Insurance Company, Cap 308A.

The provisions of paragraph 1 are also applicable to any identical or substantially similar legislation in addition to or replacing such a special regime enacted after the entry into force of this Convention.

3. Spain, at the time of the signature of this Convention, has no special tax regime such as the ones mentioned for Barbados.

4. Should either Contracting State introduce any special tax regime similar to those mentioned in paragraph 2, both competent authorities shall meet together in order to determine the mode of application of the Convention.

Article 29

ENTRY INTO FORCE

1. The Governments of the Contracting States shall notify each other, through diplomatic channels that the internal procedures required by each Contracting State for the entry into force of this Convention have been complied with.

2. The Convention shall enter into force after the period of three months following the date of receipt of the later of the notifications referred to in paragraph 1 and its provisions shall have effect:

- (i) in respect of taxes withheld at source on amounts paid or credited to non-residents, on or after the date on which the Convention enters into force;
- (ii) in respect of other taxes, for taxation years beginning on or after the date on which the Convention enters into force; and
- (iii) in all other cases, on or after the date on which the Convention enters into force.

Article 30

TERMINATION

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, 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 Convention shall cease to have effect:

- (i) in respect of taxes withheld at source on amounts paid or credited to non-residents, after the end of that calendar year;
- (ii) in respect of other taxes, for taxation years beginning after the end of that calendar year; and
- (iii) in all other cases, after the end of that calendar year.

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

Done in duplicate in _____ on the _____ day of _____, in the English and Spanish languages, each version being equally authentic.

For Barbados

For the Kingdom of Spain

MEMORANDUM OF UNDERSTANDING

At the moment of signing the Convention between the Kingdom of Spain and Barbados 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 Convention.

I Entitlement to treaty benefits

A

1. The Contracting States declare that nothing in this Convention shall prevent the Contracting States from applying their domestic rules and procedures with respect to the prevention of tax evasion or tax avoidance and abuses of law (including tax treaties).
2. This Convention does not prevent Contracting States from applying domestic Controlled Foreign Company rules (CFCs).
3. The provisions of Articles 10, 11 and 12 shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of shares or other rights in respect of which the dividends are paid, the creation or assignment of the debt-claim in respect of which the interest is paid and the creation or assignment of rights in respect of which the royalties are paid to take advantage of these Articles by means of creation or assignment.

B.- With reference to Articles 10 (Dividends), 11 (Interest), 12 (Royalties) and 13 (Capital Gains)

Notwithstanding the remaining provisions of this Convention, the provisions of Articles 10 (Dividends), 11 (Interest), 12 (Royalties) and 13 (Capital Gains) of this Convention shall not apply if:

- (a) the entity of a Contracting State paying the dividends, interests, royalties or capital gains to a resident in the other Contracting State has derived its income from a jurisdiction that does not have a Double Taxation Convention with that other Contracting State, and
- (b) that income is exempt from or not subjected to tax in the first-mentioned Contracting State.

An entity which under the preceding subparagraph would not be entitled to the benefits of the Convention 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 Convention (Mutual Agreement Procedure) that the establishment of the entity 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.

II. AD Article 4

In the case of an individual, he will only be considered as a resident for the purposes of the Convention when such individual:

- (a) In the case of Barbados, obtains a certificate stating that he is resident and domiciled;

Nevertheless the benefits of the Convention will be applied to individuals who are resident and non-domiciled at the time the income is remitted to Barbados provided that the remittance takes place within four years of the date that it was paid. The taxpayer shall be entitled to a refund of the amount of the excess tax paid in Spain.

- (b) In the case of Spain, obtains a certificate of residence of the purposes of the Convention.

III. AD. Article 26

It is understood that Article 26 of the Convention (Exchange of Information) will apply under the following guidelines:

A. Definitions

For the purposes of this Memorandum of Understanding provision, it is understood that:

- (a) the term "information gathering measures" means any provisions of law and administrative or judicial procedures enabling a Contracting State to obtain and provide the requested information;
- (b) the term "information" means any fact, statement or record in whatever form.

B. Exchange of Information upon Request

1. The competent authority of a Contracting State shall provide upon request information for the purposes referred to in Article 26 (Exchange of Information). Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of that Contracting State if such conduct occurred therein.
2. If the information in the possession of the competent authority of a Contracting State is not sufficient to enable it to comply with a request for information, that Contracting State shall use all relevant information gathering measures to provide the other Contracting State with the information requested, notwithstanding that the first mentioned Contracting State may not need such information for its own tax purposes.
3. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under Article 26 (Exchange of Information), to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.
4. Each Contracting State shall ensure that its competent authorities for the purposes specified in Article 26 (Exchange of Information) have the authority to obtain and provide upon request:
 - (a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
 - (b) information regarding the legal and beneficial ownership of companies, partnerships, foundations, "Anstalten" and other persons, including, within the constraints of Article 1 any other persons in an ownership chain, including in the case of collective investment schemes, information on shares, units and other interests;
 - (c) in the case of trust information on settlors, trustees and beneficiaries;
 - (d) in the case of foundations, information on founders, members of the foundation council and beneficiaries.
5. The competent authority of a Contracting State shall forward the requested information as promptly as possible to the other Contracting State. To ensure a prompt response, the competent authority of the first mentioned Contracting State shall:

- (a) confirm receipt of a request in writing to the competent authority of the other Contracting State and shall notify the competent authority of the other Contracting State of deficiencies in the request, if any, within 60 days of the receipt of the request;
- (b) if the competent authority of the first mentioned Contracting State has been unable to obtain and provide the information within 90 days of the receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the other Contracting State, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

In the event that the first mentioned Contracting State has not provided the information within 6 months of the receipt of the request, it shall inform the other Contracting State of the progress made in obtaining the requested information and provide with its best estimate within what period of time the request can be complied with. If the first mentioned Contracting State is unable to comply with the request it will so inform the other Contracting State, while providing the reasons for its inability. The other Contracting State shall subsequently decide whether or not to rescind its request. If it decides not to rescind its request the Contracting States shall informally and directly, through Mutual Agreement or otherwise, discuss the possibilities to achieve the purpose of the request and consult with each other the manner in which to achieve that objective.

The time restrictions mentioned in this Article do not in any way affect the validity and legality of information exchanged under this Convention.

6. The Competent Authorities of the Contracting States may by mutual agreement settle the mode in which requests for information shall be submitted.

C. Possibility of Declining a Request

- 1. The provisions of this Convention shall not impose on a Contracting State the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:
 - (a) produced for the purposes of seeking or providing legal advice or
 - (b) produced for the purposes of use in existing or contemplated legal proceedings.
- 2. A Contracting State may decline a request for information if the information is requested by the other Contracting State to administer or enforce a provision of the tax law of the other Contracting State, or any requirement connected therewith,

which discriminates against a national of the first mentioned Contracting State as compared with a national of the other Contracting State in the same circumstances.

3. The rights and safeguards secured to persons by the laws or administrative practice of the Contracting State which has been requested to provide the information under this Article remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

D. Tax Examinations Abroad

It is understood that co-operation between both Contracting States includes tax examinations abroad within the following framework:

- (a) at the request of the competent authority of one Contracting State, the competent authority of the other Contracting State may allow representatives of the competent authority of the first-mentioned Contracting State to be present at the appropriate part of a tax examination in the second-mentioned Contracting State;
- (a) if the request is acceded to, the competent authority of the Contracting State conducting the examination shall, as soon as possible, notify the competent authority of the other Contracting State about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned State for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Contracting State conducting the examination.

E. Request for Notifications

It is understood that co-operation between both Contracting States includes assistance for notifications within the following framework:

- (a) the authority of a Contracting State, at the request of the Competent authority of the other Contracting State, and in accordance with the laws which govern the notification of such instruments in the first mentioned Contracting State, shall notify, when possible, decisions and any other instrument which emanate from the administrative authorities of the other Contracting State and concern the application of taxes of every kind and description imposed on behalf of the Contracting States;
- (b) the competent authority of a Contracting State shall inform the competent authority of the other Contracting State of the name, address and any

other relevant information of the addressee, when making a request for notification, if such information is available;

- (c) the competent authority of a Contracting State shall confirm receipt of a request in writing to the competent authority of the other Contracting State and shall notify its Competent Authority of any deficiencies in the request;
- (d) the Competent Authorities of the Contracting States may by mutual agreement settle the mode in which requests for notification shall be submitted;
- (e) the term "notification" means the delivery of documents to residents of either Contracting State according to the rules that govern the delivery of documents in that State.

F. Language

Requests for assistance and answers thereto shall be drawn up in English or in Spanish.

In witness whereof the undersigned, duly authorised thereto, have signed this Memorandum of Understanding.

Done in duplicate in _____ on the _____ day of _____, in the English and Spanish languages, all the texts being equally authentic.

For Barbados

For the Kingdom of Spain