

IMPLEMENTING ARRANGEMENT REGARDING PARAGRAPHS 5 AND 6 OF ARTICLE 26 OF THE CONVENTION BETWEEN THE KINGDOM OF SPAIN AND THE UNITED STATES OF AMERICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, AND ITS PROTOCOL, SIGNED AT MADRID ON FEBRUARY 22, 1990 AS AMENDED BY THE PROTOCOL SIGNED JANUARY 14, 2013 AND THE MEMORANDUM OF UNDERSTANDING ACCOMPANYING THE 2013 PROTOCOL WHICH FORMS AN INTEGRAL PART OF THE CONVENTION

The competent authorities of Spain and the United States of America have established this arrangement (hereinafter referred to as the “Arrangement”) to implement the arbitration process provided for in paragraphs 5 and 6 of Article 26 of the Convention between the Kingdom of Spain and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, and its Protocol, signed at Madrid on February 22, 1990 (hereinafter referred to as “the Convention” and “the Protocol”), as amended by the Protocol signed January 14, 2013 (hereinafter referred to as “the 2013 Protocol”) and the Memorandum of Understanding accompanying the 2013 Protocol which forms an integral part of the Convention.

Subject to certain exceptions described in paragraph III, this arbitration process applies to cases that the competent authorities of Spain and the United States have determined are suitable for assistance under the mutual agreement procedure of Article 26 of the Convention in accordance with published guidance, in the case of Spain, Royal Decree 1794/2008 of 3 November, or any amendment or successor provisions thereof, and in the case of the United States, Revenue Procedure 2015-40, or any amendment or successor provisions thereof.

This Arrangement is adopted in accordance with subparagraph (g) of paragraph 6 of Article 26 of the Convention.

Both competent authorities intend to follow the procedures in this Arrangement in good faith, and ensure that the presenter of the case and the arbitrators follow the procedures in this Arrangement in good faith.

I. Definitions and General Matters

A. “MAP” is the abbreviation for the Mutual Agreement Procedure proceedings, which are proceedings of the competent authorities under Article 26 of the Convention.

B. The term “Concerned Person” means the presenter of a case to a competent authority for consideration under Article 26 of the Convention and all other persons, if any, whose tax liability to either Contracting State may be directly affected by a mutual agreement arising from that consideration.

C. The “Commencement Date” for a case is the earliest date on which the information necessary to undertake substantive consideration for a mutual agreement has been received by both competent authorities. The Commencement Date should be determined in accordance with paragraph IV.

II. Cases Eligible for Arbitration

A. According to paragraphs 5 and 6 of Article 26 of the Convention, arbitration should be available where:

1. the case has been presented to the competent authority of the Contracting State of which the presenter is a resident or national on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of the Convention, and the competent authorities have endeavoured but are unable to reach an agreement to resolve the case; and
2. all the requirements prescribed in paragraphs 5 and 6 of Article 26 of the Convention and in this Arrangement are satisfied.

B. In determining whether arbitration is available for a case, it is understood that:

1. for the purpose of paragraph 5 of Article 26 of the Convention, an action of either Contracting State that has resulted in taxation not in accordance with the provisions of the Convention includes a Notice of Proposed Adjustment, a Notification of the Administrative Act of Assessment, or in the case of taxes at source, a payment or withholding of tax;
2. the fact that tax collection procedures may have been suspended during MAP should not affect a determination that taxation not in accordance with the provisions of the Convention has resulted from the actions of one or both Contracting States; and
3. the fact that there have been discussions between the competent authorities regarding tax years of a Concerned Person in connection with a request for an Advance Pricing Agreement should not preclude a MAP proceeding under Article 26 of the Convention, including the possible application of paragraphs 5 and 6, following a Notice of Proposed Adjustment, a Notification of the Administrative Act of Assessment, or in the case of taxes at source, a payment or withholding of tax, regarding those tax years.

III. Cases Not Eligible for Arbitration

According to paragraphs 5 and 6 of Article 26 of the Convention, arbitration should not be available:

A. for non-taxpayer specific cases;

B. for a case for which both competent authorities have decided that the case is not suitable for resolution through arbitration and have notified the presenter of the case of such decision before the date on which arbitration proceedings would otherwise have begun;

C. for a case if a decision with respect to such case has been rendered by a court or administrative tribunal of either Contracting State;

D. for a case concerning the application of paragraph 3 of Article 4 (Residence) of the Convention; or

E. for the elimination of double taxation in cases not provided for in the Convention.

IV. Commencement Date

A. The term "information necessary to undertake substantive consideration for a mutual agreement" in subparagraph (b) of paragraph 6 of Article 26 of the Convention means:

1. in the United States, the information required to be submitted to the Internal Revenue Service under section 3 (Procedures for Filing Competent Authority Requests) of Revenue Procedure 2015-40 (or any applicable subsequent guidance); and
2. in Spain, the information is that which would be required under Article 9 of the Royal Decree 1794/2008 of 3 November (or any applicable subsequent guidance).

B. Both competent authorities should confirm to each other the date on which all the information referred to in this paragraph was received by both competent authorities, i.e., the Commencement Date of a case.

C. Once the Commencement Date of a case has been confirmed by both competent authorities under subparagraph B, the competent authority to whom that case has been presented under paragraph 1 of Article 26 of the Convention should notify the presenter of the case of that date.

V. Request for Submission of Case to Arbitration

A. An arbitration proceeding with respect to a case should begin on a date (hereinafter referred to as the "Date Arbitration Proceedings Begin") as identified according to subparagraph (c) of paragraph 6 of Article 26 of the Convention. The Date Arbitration Proceedings Begin with respect to a case is the latest of:

1. two years after the Commencement Date of that case, unless both competent authorities have decided on a different date and notified the presenter of the case (as provided in subparagraphs E and F);
2. the date upon which the presenter of the case to a competent authority of a Contracting State has submitted a written request to that competent authority for a resolution of the case through arbitration, in the format specified in subparagraph B;
3. the date upon which all Concerned Persons and their authorized representatives or agents agree in writing not to disclose to any other person any information received during the course of the arbitration proceeding from either Contracting State or the arbitration panel, other than the determination of such panel, as provided for in subparagraph C; and
4. the date on which all legal actions or suits pending before the courts of either Contracting State concerning any issue involved in the case are suspended or withdrawn as applicable under the laws of the Contracting State in which such legal actions or suits are pending.

B. A request for arbitration must be made in writing and accompanied by the documents described in subparagraph C. Any request for arbitration made prior to the date established in clause 1 of subparagraph A should not be accepted.

C. The request for arbitration must be accompanied by:

1. sufficient information to identify the case;
2. a written confirmation that no decision with respect to such case has already been rendered by a court or administrative tribunal of either Contracting State;
3. written statements regarding confidentiality as required in clause 3 of subparagraph A from all the Concerned Persons and their authorized representatives or agents according to the formats specified by both competent authorities; and
4. written agreements from all Concerned Persons authorizing the release of information relating to the case to non-tax administration personnel insofar as is necessary to reach and implement the arbitration panel determination according to the formats specified by the competent authorities.

D. After the receipt of the request for arbitration, the competent authority who received it should immediately inform the other competent authority of the fact that the request was submitted and send a copy of the request and the accompanying information and statements within 10 days to the other competent authority.

E. According to clause (i) of subparagraph (c) of paragraph 6 of Article 26 of the Convention, both competent authorities may decide in appropriate situations that the Date Arbitration Proceedings Begin with respect to a case should be earlier or later than what it would have been without such decision. Such appropriate situations could be, for example, where the competent authorities are close to reaching a mutual agreement to resolve the case or where they are certain they cannot reach an agreement, where there has been a delay by a Concerned Person in providing information in the MAP of the case, where MAP is suspended by a request from the presenter of the case, or where a Concerned Person has provided significant new information after the Commencement Date of the case. Unless otherwise decided between the competent authorities, the competent authorities should make the decision by the later date of:

1. two years after the Commencement Date of the case; or
2. the date when the request for arbitration is received by at least one competent authority.

F. If both competent authorities decide the Date Arbitration Proceedings Begin with respect to a case under subparagraph E, then the competent authority to whom that case has been presented should immediately notify the presenter of the case of the date so decided.

G. If both competent authorities determine that the case is not suitable for resolution through arbitration, the competent authority to whom that case has been presented should immediately notify the presenter of the case of that determination.

VI. Confidentiality

According to subparagraph (e) of paragraph 5 and clause (iii) of subparagraph (c) of paragraph 6 and subparagraphs (e) and (f) of paragraph 6 of Article 26 of the Convention, the confidentiality of a case is expected to be maintained in the following manner:

A. All Concerned Persons and their authorized representatives or agents must agree, when the request for arbitration is submitted, not to disclose to any other person (except other Concerned Persons) any information received during the course of the arbitration proceeding from either competent authority or the arbitration panel, other than the determination of the panel.

B. For purposes of an arbitration proceeding under paragraphs 5 and 6 of Article 26 of the Convention, the members of the arbitration panel (hereinafter referred to as “arbitrators”) and their staffs should be considered to be “persons or authorities” to whom information may be disclosed under Article 27 of the Convention.

C. No information relating to an arbitration proceeding (including the determination of the arbitration panel) may be disclosed by the competent authorities, except as permitted by the Convention and the domestic laws of the Contracting States. In addition, all material prepared in the course of, or relating to, an arbitration proceeding should be considered to be information exchanged between the competent authorities pursuant to Article 27 of the Convention.

D. Both competent authorities should ensure that all arbitrators (and any of their staff which are expected to assist them in carrying on the arbitration), prior to their acting in an arbitration proceeding, agree in the form(s) specified by both competent authorities not to disclose any information relating to an arbitration proceeding (including the determination of the arbitration panel), and to abide by and be subject to the confidentiality and nondisclosure provisions of Article 27 of the Convention and similar provisions of relevant domestic laws of the Contracting States. However, the arbitrators or their staff are expected to disclose the determination of the arbitration panel to the competent authorities. In the event those provisions conflict, the most restrictive condition should apply.

VII. Eligibility of Arbitrators

A. According to subparagraph (a) of paragraph 21 of the Protocol, in order for an individual to be eligible as an arbitrator:

1. the individual is not an employee nor has been an employee within the twelve-month period prior to the Date Arbitration Proceedings Begin of the tax administration, the Treasury Department, or Ministry of Finance of the Contracting State which identifies him or her;
2. the individual does not have any prior involvement with the specific matters at issue in the arbitration proceeding for which he or she is being considered as an arbitrator; and

3. in addition, the individual who is expected to serve as the chair of the arbitration panel (hereinafter "the Chair") is not a national, citizen or lawful permanent resident of either Contracting State.

B. Both competent authorities should each prepare and exchange a list of individuals who may be eligible and are willing to serve as the Chair. The competent authorities should prepare and exchange such list every two years or more often as necessary.

C. Both competent authorities should ensure that the staff person of an arbitrator meets the same requirements described in subparagraph A.

VIII. Appointment of Arbitrators

A. According to subparagraph (a) of paragraph 21 of the Protocol, the arbitration panel should consist of three individual members.

B. Each competent authority should select one arbitrator to the arbitration panel by sending a copy of the form(s) identified in subparagraph D of paragraph VI, signed by the arbitrator, to the other competent authority within 60 days after the Date Arbitration Proceedings Begin.

C. In the event that the competent authority fails to make such selection in the manner and within the time period in subparagraph B, the other competent authority should, within 90 days after the Date Arbitration Proceedings Begin, select a second arbitrator from the list of possible Chair persons prepared in accordance with subparagraph B of paragraph VII.

D. The procedure in subparagraph C should not apply, where the failure of such selection within the time period in subparagraph B is due to the fact that an individual who had agreed to serve as an arbitrator becomes unable to serve because of circumstances outside of his or her control (for example, death, serious illness or natural disaster). Both competent authorities should determine the appropriate time period for the selection of an arbitrator in such a case.

E. Within 60 days after the latter appointment of the two initial arbitrators who were selected by the competent authorities under subparagraphs B, C, and D (hereinafter referred to as "two initial arbitrators"), the two initial arbitrators so appointed should select a third arbitrator, who should serve as the Chair. The two initial arbitrators should contact each other to discuss the selection of the third arbitrator who should serve as Chair within 5 business days after the latter appointment of the two initial arbitrators. The third arbitrator so selected should inform both competent authorities of his or her appointment as soon as possible. In order to help the two initial arbitrators make that selection, the competent authorities should provide the two initial arbitrators with a consensus list of individuals derived from the list described in subparagraph B of paragraph VII (that is, candidates to be the Chair) who appear to be best qualified to decide the case under consideration.

F. If the two initial arbitrators fail to select the third arbitrator in the manner and within the time period in subparagraph E, the two initial arbitrators should be dismissed, and each competent authority should select a new arbitrator of the arbitration panel.

G. The procedure in subparagraph F should not apply, where the failure of such selection within the time period in subparagraph E is due to the fact that the individual selected to serve as Chair becomes unable to serve because of circumstances outside of his or her control (for example, death, serious illness or natural disaster). In such a case, unless otherwise decided, both competent authorities should provide the two initial arbitrators with a revised consensus list of candidates to be Chair within 20 days after the end of the period in subparagraph E. The two initial arbitrators should select a third arbitrator from among the candidates so proposed within 10 days after the receipt of the list of candidates.

H. The arbitrators should be selected from individuals who:

1. satisfy the eligibility requirements identified in subparagraph A of paragraph VII at the time of accepting an appointment to serve, and are reasonably expected to remain so during the entire Arbitration Proceeding and for a reasonable time thereafter; and
2. have significant experience in international tax matters (he or she need not, however, have experience as either a judge or arbitrator).

I. An arbitrator should be deemed appointed on the date on which he or she signs the agreements required by subparagraph D of paragraph VI.

J. Where one of the two initial arbitrators becomes ineligible for service as an arbitrator or for any other reason it is necessary to replace an arbitrator after the arbitrator was appointed, the competent authority who had selected that individual should select a replacement as soon as possible and no later than 60 days after the position becomes vacant.

K. Where the third arbitrator (the Chair) becomes ineligible for service as an arbitrator or for any other reason it is necessary to replace the Chair after he or she was appointed, the two initial arbitrators should select a replacement as soon as possible and no later than 30 days after the position becomes vacant.

L. If any arbitrator is unable to fulfill his or her duties, the competent authorities should consult with the remaining panel members to determine a new timetable, if necessary.

M. Should it come to light that an arbitrator (including the Chair) has a conflict of interest which would prevent that arbitrator's original appointment, the arbitrator must recuse himself or herself from consideration of the case and inform both competent authorities. In such cases if an arbitrator has not already recused himself or herself, the competent authority who had selected the individual may remove him or her, informing the other competent authority and the Chair. If it is the Chair who has not recused himself or herself, he or she can be removed by decision of both competent authorities, informing the two initial arbitrators.

IX. Procedures and Terms of Reference

A. As soon as possible after the Date Arbitration Proceedings Begin, both competent authorities should develop a brief Statement of Information which should identify the Concerned Persons and contain a general description of the proposed adjustments or similar issues to be resolved in a case. The competent authority, or an arbitrator appointed by the competent authority, may disclose the Statement of Information, if the confidentiality of the information is ensured by first obtaining a Nondisclosure Statement of Candidate to be an Arbitrator (see, e.g., Attachment 5 to this Arrangement) and such disclosure is permitted by the law of the Contracting State, to a potential arbitrator of the case to check whether that person satisfies the eligibility requirements identified in subparagraph A of paragraph VII.

B. Both competent authorities should undertake to develop, within sixty (60) days after the Date Arbitration Proceedings Begin, an mutually decided “Terms of Reference” for a case to include:

1. a description of the relevant business activities of the Concerned Persons;
2. a description of the adjustments or similar issues in dispute in the case;
3. a description of the matters to be considered for the resolution of the case, including identification of all matters in the case previously decided between the competent authorities; and
4. a description of the final position taken by each competent authority in the negotiation of the unresolved matters which prevent the mutual agreement between the competent authorities.

The competent authorities may also provide logistical or procedural information in the Terms of Reference.

C. The Terms of Reference should be communicated to the Chair on the date his or her appointment is communicated to both competent authorities, or as soon thereafter as possible.

D. If the Terms of Reference has not been completed by the date for submission of the proposed resolutions and position papers, both competent authorities should send to each other and to the Chair their most recent written proposals for the Terms of Reference along with their proposed resolutions and position papers. All the matters identified as unresolved in these draft Terms of References should be treated as unresolved for the purpose of the subsequent proceedings.

E. According to subparagraph (c) of paragraph 21 of the Protocol, each of the competent authorities should be permitted to submit a proposed resolution, not to exceed five pages, addressing each adjustment or similar issue raised in a case. Such proposed resolution should be a resolution of the entire case, and should reflect, without modification, all matters in the case previously decided between both competent authorities. Such proposed resolution should be limited to a disposition of specific monetary amounts (for example, income, profit, gain or expense) or, where specified, the maximum rate of tax charged pursuant to the Convention, for each adjustment or similar issue in the case, based on the application of the Convention to the case. Each of the competent authorities should also be permitted to submit a supporting position paper, not to exceed 30 pages plus annexes, for consideration by the arbitration panel.

F. The submission of a proposed resolution and supporting position paper by the competent authority should be made by posting it (or similarly sending via express delivery service) to the Chair within 60 days after the appointment of the Chair. Unless alternative arrangements are made, the Chair should in turn send a copy of each competent authority's proposed resolution and supporting position paper to the other panel members and the other competent authority within 5 days after the receipt of the later submission by the panel. If the competent authority submits a proposed resolution (and supporting position paper) within the allotted time and chooses to submit a translation of the proposed resolution (and supporting position paper) in the official language of the other Contracting State, the submission of the translation should be made by posting it to the Chair within 90 days after the appointment of the Chair.

G. In the event that only one of the competent authorities submits a proposed resolution within the allotted time, then that proposed resolution should be deemed to be the determination of the arbitration panel in that case.

H. According to subparagraph (f) of paragraph 21 of the Protocol, each of the competent authorities should be permitted to submit a reply submission, not to exceed 10 pages, plus annexes, to the arbitration panel in order to address any points raised by the proposed resolution or supporting position paper submitted by the other competent authority. In this reply submission, the competent authority may also comment upon any Presenter Position Paper submitted under the provisions of paragraph X. If the competent authority exercises its option to also comment upon a Presenter Position Paper, its reply submission should not exceed 20 pages, plus annexes. The submission of a reply submission by the competent authority should be made by posting it (or similarly sending it via express delivery service) to the Chair within 120 days of appointment of the Chair. Unless alternative arrangements are made, the Chair should send a copy of each competent authority's reply submission paper to the other panel members and the other competent authority within 5 days of receipt of the later reply by the panel. If the competent authority submits a reply submission within the allotted time and chooses to submit a translation of the reply submission in the official language of the other Contracting State, the submission of the translation should be made by posting it to the Chair within 150 days after the appointment of the Chair.

I. In a particular case, both competent authorities may decide to use a different presentation or page limitation for the proposed resolutions, supporting position papers or reply submissions, such as is provided in paragraphs XV and XVI.

J. Any annex to a supporting position paper or reply submission must be a document previously made available for both competent authorities to use in negotiation. Any factual information used in a supporting position paper or reply submission must be what was contained in a document previously made available for both competent authorities to use in negotiation, or otherwise reflect information widely available to the general public.

K. Except with respect to the final position taken by the other competent authority as described in clause 4 of subparagraph B of paragraph IX, the competent authority

should only be permitted to refer to a proposal for resolution made by either competent authority during negotiations if that proposal is submitted to the arbitration panel for consideration as a proposed resolution.

L. Within 90 days after receipt of the proposed resolutions from both competent authorities, the arbitration panel may ask both competent authorities in writing for additional information. Such additional information may be submitted to the arbitration panel only at its request, and should be provided within 90 days after the request. If the competent authority submits additional information within the allotted time and chooses to submit a translation of the additional information in the official language of the other Contracting State, the submission of the translation should be provided within 90 days after the request. Copies of the arbitration panel's request and the competent authority's response should be provided to the other competent authority on the date on which the request or the response is submitted. If the panel requests information or analyses that have not previously been available or considered for purposes of the negotiation, the competent authorities should consult with each other to determine how to respond to the panel's request. The panel should not request additional information from the presenter of the case.

M. Unless otherwise decided between both competent authorities and the Chair, the competent authorities should send to the Chair four copies of each document submitted to the arbitration panel, for distribution to the other panel members and other competent authority.

N. Unless otherwise decided between both competent authorities, any information (including any information provided by the presenter of a case or his or her authorized representatives or agents in writing or orally) that was not available to both competent authorities before the Date Arbitration Proceedings Begin should not be taken into account for purposes of the arbitration decision. Furthermore, any reply submission or any additional information that was provided to the panel after the deadlines specified in subparagraphs H and L respectively should not be taken into account for purposes of the arbitration decision.

O. To the extent needed, the arbitration panel may adopt any additional procedures necessary for the conduct of its business, provided that the procedures are not inconsistent with any provision of Article 26 of the Convention, paragraphs 18 and 21 of the Protocol or this Arrangement or any other procedural rules decided between both competent authorities. If the arbitration panel adopts any additional procedures, the Chair should provide a written copy of them to the competent authorities.

X. Participation of the Person Who Requested the Arbitration

A. According to subparagraph (g) of paragraph 21 of the Protocol, the presenter of a case is permitted to submit for consideration by the arbitration panel a paper setting forth its analysis and views of the case (a "Presenter Position Paper") by transmitting it to the competent authority of which the presenter is resident within 30 days after a request for arbitration made in conformance with the provisions of paragraph V.

B. Both competent authorities should advise the presenter that the Presenter Position Paper should not exceed 30 pages, plus annexes. The information, positions,

arguments, or analyses contained in the Presenter Position Paper must have been previously presented, and any annexes must be documents previously made available, to both competent authorities for their consideration prior to the beginning of arbitration. The competent authorities may decide a specific format, on a case by case basis, for the Presenter Position Paper.

C. The competent authority which receives the Presenter Position Paper should coordinate distribution of the copies with the Chair and other the competent authority immediately. That competent authority may ask the presenter of the case to submit additional copies as necessary.

XI. Communication

A. Before the Chair is appointed, both competent authorities should send any correspondence concurrently to both arbitrators. After the Chair is appointed, unless otherwise decided between the Chair and competent authorities, the competent authorities should send any correspondence to the Chair. Similarly, the Chair should send any correspondence concurrently to the competent authorities.

B. Except for administrative or logistical matters, no competent authority should have any *ex parte* communications with an arbitrator.

C. All communication, except for logistical matters, between both competent authorities and the arbitration panel should be in writing. Written communication by facsimile or email is allowed, however, no information that may identify the taxpayer(s) may be included in an email unless other security precautions to protect taxpayer information are decided upon by both competent authorities. Express mail or air mail should be used for all correspondence other than that sent via facsimile or email.

D. The arbitrators may communicate by telephone, videoconference, facsimile or face-to-face meetings. Arbitrators may communicate by email; however, they must not include any taxpayer information in the email.

E. No substantive discussion should be done, unless all arbitrators are present (physically or remotely).

F. No arbitrator should have communications regarding the issues or matters before the arbitration panel with the presenter of the case, the taxpayers involved in the case, or their representatives during or subsequent to the arbitration process.

XII. Costs and Logistical Arrangements

A. According to subparagraph (j) of paragraph 21 of the Protocol, the fees and expenses of the arbitrators, as well as any costs incurred in connection with the proceeding by the Contracting States, should be borne equitably by the Contracting States in the following manner:

1. each competent authority of the Contracting States should bear the cost of its selected arbitrator and its own expenses, and

2. the cost of the Chair and other expenses associated with the conduct of the proceedings should be borne by the competent authorities in equal shares. The term "other expenses associated with the conduct of the proceedings" does not include indirect costs incurred for any logistical arrangements described in subparagraph D.

B. The fees and expenses of members of the arbitration panel should be set in accordance with the International Centre for Settlement of Investment Disputes (ICSID) Schedule of Fees for arbitrators, as in effect on the Date Arbitration Proceedings Begin. This applies in particular for hotel, meals, travel expenses, and incidental costs.

C. Neither competent authority should charge any Concerned Person for costs associated with arbitration.

D. Unless otherwise decided by both competent authorities, the competent authority to which a case giving rise to the arbitration was initially presented should be responsible for the logistical arrangements for any face-to-face meetings of the arbitration panel and should provide the administrative personnel necessary for the support of such meetings. The administrative personnel so provided should report only to the Chair concerning any matter related to that process. In the event that both competent authorities have received a MAP request, the competent authority the actions of which resulted in taxation not in accordance with the provisions of the Convention should carry out the logistical arrangements described in this subparagraph. The competent authority responsible for the logistical arrangements may arrange meeting facilities in a location that minimizes the panel's travel time and expenses. Each competent authority may arrange a meeting in the other's meeting facilities, as needed.

E. In general, each arbitrator should be compensated for no more than seven days of work on the arbitration (e.g., five days of preparation and for two meeting days). If the arbitrators feel they require additional time to properly consider the case, the Chair should contact both competent authorities to request additional time. Both competent authorities anticipate that panel members should be able to perform their duties without the use of staff. Both competent authorities should not compensate a staff member of an arbitrator.

F. As a general rule, both competent authorities should encourage the arbitration panel to complete their joint consideration of the case through telecommunications. The Chair must obtain approval from both competent authorities prior to incurring any expenses relating to a face-to-face meeting.

XIII. Arbitration Panel Determination

A. Within 180 days after the appointment of the Chair (or, where subparagraph J or K of paragraph VIII applies, unless otherwise decided by both competent authorities, within 180 days after the appointment of the new arbitrator), the Chair should transmit the written determination of the arbitration panel, concurrently to each competent authority. This period may be extended up to 270 days where subparagraph L of paragraph IX applies. As soon as possible after the receipt of the determination, the

competent authority to which the request for arbitration was submitted should write to the presenter of the case to request whether that person accepts the determination.

B. In the event that the determination has not been communicated to both competent authorities within the period provided for in subparagraph A, the competent authorities should consult to determine whether to extend the period for the arbitration panel to transmit a determination, or to dismiss the panel and appoint new arbitrators in accordance with paragraph VIII.

C. Issues should be decided by the arbitrators in accordance with the Convention and applicable rules of international law.

D. According to subparagraph (d) of paragraph 6 of Article 26 of the Convention, unless the presenter of the case does not accept the determination of the arbitration panel, such determination should constitute a resolution by mutual agreement of the entire case under Article 26 of the Convention at the time it is timely accepted by the presenter and be binding on both Contracting States.

E. A mutual agreement that results from the determination of an arbitration panel should be implemented notwithstanding any time limits or procedural limitations in the law of the Contracting States, concluded through an exchange of letters, and implemented as expeditiously as possible in the same manner as a mutual agreement that results from a negotiated mutual agreement.

F. The determination of the arbitration panel should be decided on the basis of a majority vote.

G. The arbitration panel should not determine the treatment of any associated interest or penalties; rather that treatment should be determined under the respective taxation laws of the Contracting States.

H. According to subparagraph (h) of paragraph 21 of the Protocol:

1. The arbitration panel should deliver a determination in writing to both competent authorities.
2. The determination of the arbitration panel should be limited to one of the proposed resolutions submitted by the competent authorities for each adjustment or similar issue and any threshold questions, and should not include a rationale or any other explanation of the determination.
3. The determination of the arbitration panel has no precedential value with respect to the application of the Convention in any other case.

I. According to subparagraph (i) of paragraph 21 of the Protocol:

1. Unless both competent authorities decide to provide a longer time period, the presenter of the case should have 45 days after receiving the determination of the arbitration panel to notify, in writing, the competent authority to whom the case was presented, of his or her acceptance of the determination.
2. If the presenter of the case fails to so advise the relevant competent authority, the determination should be considered not to be accepted.

3. In the event the case is pending in litigation or appeal, the determination of the arbitration panel should be considered not to be accepted by the presenter of the case if any Concerned Person who is a party to the litigation or appeal does not withdraw from consideration by the relevant court or administrative tribunal, within the same timeframe described above, the issues resolved in the arbitration proceeding.

4. Where the determination of the arbitration panel is not accepted, the case should be closed and should not be eligible for any subsequent further consideration by the competent authorities.

XIV. Terminating Proceedings

A. According to subparagraph (b) of paragraph 21 of the Protocol, the arbitration proceeding and MAP with respect to a case should terminate if at any time before the arbitration panel delivers a determination to the competent authorities:

1. the competent authorities reach a mutual agreement to resolve the case;
2. the presenter of the case withdraws the request for arbitration;
3. any Concerned Person, or any of their representatives or agents, wilfully violates the written statement of nondisclosure referred to in clause (iii) of subparagraph (c) of paragraph 6 of Article 26 of the Convention, and both competent authorities decide that such violation should result in the termination of the arbitration proceeding; or
4. any Concerned Person initiates a legal action or suit before the courts of either Contracting State concerning any issue involved in the case, unless such legal action or suit is suspended according to the applicable laws of the Contracting State.

B. If the arbitration proceeding and MAP with respect to the case is terminated under clauses 2, 3 or 4 of subparagraph A, both competent authorities should exchange letters to close the MAP case unagreed.

C. If a taxpayer terminates an arbitration proceeding by withdrawing its request for assistance, the taxpayer should not be allowed access to the competent authority procedures for the same matter and same years.

D. At the termination of any proceeding each arbitrator must immediately destroy all documents or other information received from either competent authority, or that otherwise reflect the considerations or discussions of the arbitration panel, and delete all information that may be stored on any computer, personal data assistant or other electronic device or media.

XV. Multiple Adjustments

A. According to subparagraph (e) of paragraph 21 of the Protocol, where an arbitration proceeding concerns a case comprising multiple adjustments or similar issues each requiring a disposition of specific monetary amounts (for example, of income, profit, gains or expense) or where specified, the maximum rate of tax charged

pursuant to the Convention, the proposed resolution may propose a separate disposition for each adjustment or similar issue.

B. Unless both competent authorities decide upon a different presentation to the arbitration panel, the proposed resolution and supporting position paper in such a case should address each adjustment separately, within the overall page limitation.

C. The arbitration panel should make a determination on each adjustment or similar issue separately. Thus, the final determination of the arbitration panel may be comprised of a proposed resolution from the competent authority on one adjustment and a proposed resolution from the other competent authority on another adjustment.

XVI. Permanent Establishment, Residency, and Other Threshold Questions

A. According to subparagraph (d) of paragraph 21 of the Protocol, in the case of an arbitration proceeding concerning:

1. the taxation of an individual with respect to whom the competent authorities have been unable to reach a mutual agreement regarding the Contracting State of which the individual is a resident;
2. the taxation of the business profits of an enterprise with respect to which the competent authorities have been unable to reach a mutual agreement on whether a permanent establishment exists; or
3. such other issues the determination of which are contingent on resolution of similar threshold questions;

the competent authorities may submit proposed resolutions separately addressing the relevant threshold questions as described in clause 1, 2 or 3 above (for example, the question of whether a permanent establishment exists), and the contingent determinations (for example, the determination of the amount of profit attributable to such permanent establishment).

B. In such a case, the competent authority is allowed to submit a proposed resolution and supporting position paper which addresses each issue separately, taking alternative positions as appropriate. For example, the competent authority is allowed to take a position that no permanent establishment exists in one proposed resolution, and to propose an amount of business profit to be attributable to a permanent establishment in another proposed resolution in case the arbitration panel determines that a permanent establishment exists.

C. The arbitration panel should make a determination on the threshold question and the contingent determination separately.

XVII. Timeframes

A. Notwithstanding the above paragraphs, in an exceptional case both competent authorities may decide to utilize different procedural periods.

B. Both competent authorities should confirm the period so extended and notify the Concerned Person in each Contracting State of that extended period in writing.

XVIII: Miscellaneous

A. In computing the days necessary for an action in this Arrangement, the day when the event beginning this computation occurred should not be counted.

B. Any due date that falls upon a weekend or holiday for either competent authority should be extended to the next calendar day which is a business day for both competent authorities.

XIX. Coordination with Protocol Entry into Force

A. As provided in section 3 of Article XV of the 2013 Protocol, “paragraphs 5 and 6 of Article 26 (Mutual Agreement Procedure) of the Convention shall not have effect with respect to cases that are under consideration by the competent authorities of the Contracting States on the date on which this Protocol enters into force [i.e., on or before November 27, 2019]. With respect to cases that come under consideration by the competent authorities after the date on which this Protocol enters into force [i.e., November 27, 2019], the provisions of paragraphs 5 and 6 of Article 26 of the Convention, as amended by this Protocol, shall have effect on the date on which the competent authorities agree in writing on a mode of application pursuant to subparagraph (g) of paragraph 6 of Article 26.. For cases that come under consideration by the competent authorities of the Contracting States after entry into force of this Protocol [i.e., November 27, 2019], but before such provisions have effect, the [C]ommencement [D]ate shall be the date on which the competent authorities have agreed in writing on a mode of application.”

B. Both competent authorities may modify or supplement this Arrangement by an exchange of letters between them.

For the Competent Authority of Spain

For the Competent Authority of the United
States of America

M^a José Garde Garde
Spanish Competent Authority
Director-General of Taxation
Ministry of Finance

Date: 12/12/2025

Holly O. Paz
United States Competent Authority
Commissioner, Large Business and
International Division

Date: 20/11/2025

Attachment 1

**TAXPAYER [REQUEST AND]¹ NONDISCLOSURE STATEMENT
FOR MAP ARBITRATION**

NAME OF TAXPAYER

ADDRESS

CITY	STATE	COUNTRY	POSTAL CODE (ZIP CODE)
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The above-named taxpayer hereby [requests and] consents to the competent authorities of the United States and Spain undertaking an arbitration proceeding described in paragraphs 5 and 6 of Article 26 (Mutual Agreement Procedure) of the Convention Between the Kingdom of Spain and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, and its Protocol signed at Madrid, on February 22, 1990, as amended by the Protocol signed January 14, 2013 and the Memorandum of Understanding accompanying the 2013 Protocol, as necessary in order to reach a mutual agreement under Article 26 regarding the request filed with the [United States/Spain] Competent Authority on ____[date]____.

This consent and nondisclosure statement also covers the following concerned persons² that the taxpayer has the legal authority to bind:

[Enter name and address of each such concerned person. If none, enter "Not Applicable."]

The following concerned persons, if any, are not covered by this consent and nondisclosure statement (and therefore must submit a separate consent and nondisclosure statement on their own behalf):

[Enter name and address of each such concerned person. If none, enter "Not Applicable."]

In making this consent, the taxpayer and, if applicable, each of the concerned persons covered by this consent and nondisclosure statement, agrees not to disclose to any person (other than the taxpayer's authorized representative or agent, another concerned person, its authorized representative or agent, or one of the competent authorities or its authorized

¹ A taxpayer may make a request for MAP arbitration in a separate letter, but must make its nondisclosure statement in this form.

² As defined in the relevant treaty provisions, the term "concerned person" means the taxpayer requesting mutual agreement procedure assistance from a competent authority under Article 26 and any other person whose tax liability to either the United States or Spain may be directly affected by the mutual agreement arising from that request. A concerned person that has the legal authority to bind any other concerned person(s) on this matter may do so in a comprehensive statement.

representative³) any information received during the course of the arbitration proceeding from either Contracting State or the arbitration panel, other than the determination of such panel.

The following persons are all of the representatives or agents of the taxpayer or, if applicable, the specified concerned person, who have been authorized to assist the taxpayer or specified concerned person in the mutual agreement procedure to which this consent and nondisclosure statement applies. Attached to this consent and nondisclosure statement are the nondisclosure statements of each of these representatives and agents, as is required by paragraph 6 of Article 26 of the above-mentioned Convention.

[Enter name and address of each such representative or agent and the concerned person(s) for which each is acting. If none, enter "Not Applicable."]

The information, positions, arguments, or analyses contained in any position paper submitted for consideration of the arbitration panel will be previously presented, and any annexes to such position paper will be documents previously made available, to both competent authorities for their consideration during negotiations prior to the beginning of arbitration.

[Under penalties of perjury,]⁴ I declare that I have examined this consent and nondisclosure statement and any accompanying attachments and to the best of my knowledge and belief, they are true, correct, and complete. Furthermore, I certify that I have the legal authority to execute this consent and nondisclosure statement on behalf of each concerned person covered by it and to bind each concerned person to its terms.

Date

Signature

Printed Name

Position

³ The U.S. Competent Authority has authorized the International Centre for Dispute Resolution (ICDR), a division of the American Arbitration Association, to act on its behalf with respect to certain designated matters concerning the arbitration proceeding.

⁴ Only in the United States.

Attachment 2

NONDISCLOSURE STATEMENT OF TAXPAYER'S AUTHORIZED REPRESENTATIVE

I hereby agree that neither I nor any member of my firm's office staff nor any other person who may assist me or the firm in the mutual agreement proceeding requested in the letter of [date] submitted by [name of taxpayer] to the competent authorities of the United States and Spain will disclose to any person (other than the taxpayer, another concerned person,¹ its authorized representative or agent, or one of the competent authorities or its authorized representative²) any information received during the course of the arbitration proceeding from either Contracting State or the arbitration panel, other than the determination of such panel.

Date

Signature

Printed Name

Position

¹ As defined in the relevant treaty provisions, the term "concerned person" means the taxpayer requesting mutual agreement procedure assistance from a competent authority under the Article 26 of the Convention Between the Kingdom of Spain and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, and its Protocol signed at Madrid, on February 22, 1990, as amended by the Protocol signed January 14, 2013 and the Memorandum of Understanding accompanying the 2013 Protocol, and any other person whose tax liability to either the United States or Spain may be directly affected by the mutual agreement arising from that request.

² The U.S. Competent Authority has authorized the International Centre for Dispute Resolution (ICDR), a division of the American Arbitration Association to act on its behalf with respect to certain designated matters concerning the arbitration proceeding.

Attachment 3

TAXPAYER AUTHORIZATION TO DISCLOSE TAX INFORMATION FOR PURPOSES OF TREATY MAP ARBITRATION PROCEEDINGS

NAME OF TAXPAYER

TAX IDENTIFICATION NUMBER

ADDRESS

CITY STATE COUNTRY POSTAL CODE (ZIP CODE)

The above-named taxpayer, in accordance with its request of [date] that the competent authorities of the United States and Spain undertake an arbitration proceeding described in paragraphs 5 and 6 of Article 26 of the Convention Between the Kingdom of Spain and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, and its Protocol signed at Madrid, on February 22, 1990, as amended by the Protocol signed January 14, 2013 and the Memorandum of Understanding accompanying the 2013 Protocol, consents to the disclosure by the competent authorities of Spain and the United States of any and all returns and return information with respect to the taxpayer's mutual agreement procedure (MAP) request submitted to the competent authorities on [date], to the individuals appointed (or identified for potential appointment pending clearance) by the respective competent authorities to arbitrate the MAP case, the individual appointed (or identified for potential appointment pending clearance) as the Chair of the arbitration panel, and the following representatives, if any, of the respective competent authorities who are authorized by the competent authority to act on its behalf with respect to certain designated matters concerning the arbitration proceeding:

In the case of the United States: International Centre for Dispute Resolution (ICDR), a division of the American Arbitration Association

In the case of Spain: _____.

In the case of a consolidated group of U.S. corporations, this consent is made in regard to all such information concerning the following members of the consolidated group, who are the subjects of the mutual agreement request:

[Enter name and address of each consolidated group member, if any, who is a concerned person.¹ If none, enter "Not Applicable."]

¹ As defined in the relevant treaty provisions, the term "concerned person" means the taxpayer requesting mutual agreement procedure assistance from a competent authority under Article 26 and any other person whose tax liability to either the United States or Spain may be directly affected by the mutual agreement arising from that request.

I certify that I have the legal authority to execute a request for or consent to disclose a return or return information to disclose information to third parties (as described in Treas. Reg. §301.6103(c)-1(e)(4)) and I hereby make this consent on behalf of the taxpayer, including each of the members of the consolidated group listed above.²

Date

Signature

Printed Name

Position

² Each taxpayer or concerned person (as defined in footnote 1) whose U.S. tax liability may be directly affected by the mutual agreement procedure request must sign a consent. In the case of a consolidated group (as defined in Treas. Reg. 1.1502-1(h)), a person authorized by law to act for the common parent should execute the consent on behalf of the group. See Treas. Reg. §1.1502-77(a).

Attachment 4

DECLARATION OF ARBITRATOR

In the matter of the Mutual Agreement Procedure case under Article 26 of the Convention Between the Kingdom of Spain and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, and its Protocol signed at Madrid, on February 22, 1990 as amended by the Protocol signed January 14, 2013 (Convention) and the Memorandum of Understanding accompanying the 2013 Protocol involving the following Concerned Persons:

[Names and Addresses of taxpayers that will be directly affected by the decision]

Paragraphs 5 and 6 of Article 26 (Mutual Agreement Procedure) of the Convention, paragraphs 18 and 21 of the Protocol to that Convention, and the Implementing Arrangement between the Competent Authorities of Spain and the United States (Implementing Arrangement) provide rules and procedures under which the Spain – U.S. arbitration process (the Proceeding) will operate.

I certify that I can serve impartially in this case, meet the conditions of paragraph VII.A of the Implementing Arrangement at this time, and shall remain independent of the Contracting States and Concerned Persons during the entire arbitration proceeding and for a reasonable period of time thereafter.

Past or existing facts or circumstances that might be likely to give rise to justifiable doubts as to my impartiality or independence, if any, are identified in an Attachment to this Declaration.

Notwithstanding such relationships and interests, if any, I believe that I can be impartial and can exercise independent judgment in making my decisions in the Proceeding and thus to the best of my knowledge and belief, there is no reason why I should not serve as an Arbitrator with respect to the above-noted case. If, at any stage during the Proceeding, any new fact or circumstance arises that might give rise to such doubts, I shall promptly disclose such fact or circumstance to both competent authorities.

I understand that with regard to any information received from International Centre for Dispute Resolution, a division of the American Arbitration Association, the Spanish administration, and the U.S. Internal Revenue Service in connection with the Proceeding, I and my staff, if any, are considered to be among the “persons or authorities” involved in the administration of taxes covered by Article 27 (Exchange of Information) of the Convention. I and my staff agree to abide by and be subject to the confidentiality and nondisclosure provisions of Articles 26 [MAP] and 27 [EOI] of the Convention and the applicable domestic laws of Spain and the United States concerning the confidentiality of tax information. In the event those provisions conflict, the most restrictive condition shall apply. I confirm that I have the legal authority to bind my staff in this matter and will ensure they are aware of their obligations regarding confidentiality and non-disclosure. In particular, I agree that I may not disclose any information relating to the Proceeding, except as permitted by the Convention and the domestic laws of Spain and the United States. In addition, all material received and prepared in the course of, or relating to the Proceeding shall be considered to be information exchanged between the Spain and the

United States and shall be destroyed in accordance with paragraph XIV.D of the Implementing Arrangement referenced above.

[Under penalties of perjury]¹ I hereby accept appointment as an Arbitrator in this case, and will fairly decide the matters in controversy between the Competent Authorities of Spain and the United States in accordance with the Convention and the related agreements referred to above. I declare that these statements and any accompanying attachments are, to the best of my knowledge and belief, true, correct, and complete.

Date

Signature

Printed Name

Address

Sworn before me this _____ day of _____, 20____

¹ Only in the United States.

Attachment 5

NONDISCLOSURE STATEMENT OF CANDIDATE TO BE AN ARBITRATOR

This non-disclosure statement is provided in order to consider the acceptance of an appointment as an arbitrator in the matter of the Mutual Agreement Procedure case number # (hereinafter referred to as the Proceeding) under Article 26 of the Convention between the Kingdom of Spain and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, and its Protocol signed at Madrid, on February 22, 1990 as amended by the Protocol signed January 14, 2013 (Convention) and the Memorandum of Understanding accompanying the 2013 Protocol.

I hereby agree that I will not disclose to any person (other than the other appointed arbitrators or one of the competent authorities) any information received with respect to the Proceeding in order to verify whether I satisfy the eligibility requirements of arbitrators and to certify that I can serve impartially in this case, meeting the conditions of paragraph VII.A of the Implementing Arrangement between the Competent Authorities of Spain and the United States.

I agree to abide by and be subject to the confidentiality and nondisclosure provisions in the applicable domestic laws of Spain and the United States concerning the confidentiality of tax information. In the event those provisions conflict, the most restrictive condition shall apply. In particular, I agree that I may not disclose any information relating to the Proceeding, except as permitted by the Convention and the domestic laws of Spain and the United States. In addition, all material received and prepared in the course of, or relating to the Proceeding shall be considered to be information exchanged between Spain and the United States and shall be destroyed in accordance with paragraph XIV.D of the Implementing Arrangement referenced above.

I declare that these statements and any accompanying attachments are, to the best of my knowledge and belief, true, correct, and complete.

Date

Signature

Printed Name

Position