No. 31360

SPAIN
and
MEXICO

Convention for the avoidance of double taxation and the prevention of fraud and fiscal evasion with respect to taxes on income and capital (with protocol). Signed at Madrid on 24 July 1992

Authentic text: Spanish.

Registered by Spain on 14 November 1994.

ESPAGNE
et
MEXIQUE

Convention tendant à éviter la double imposition en matière d'impôts sur le revenu et sur la fortune et à prévenir la fraude et l'évasion fiscale (avec protocole). Signée à Madrid le 24 juillet 1992

Texte authentique : espagnol.

Enregistrée par l'Espagne le 14 novembre 1994.

[TRANSLATION — TRADUCTION]

CONVENTION[1] BETWEEN THE KINGDOM OF SPAIN AND THE UNITED MEXICAN STATES FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FRAUD AND FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL

The Kingdom of Spain and the United Mexican States, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fraud and fiscal evasion with respect to taxes on income and capital, hereinafter referred to as "the Convention", have agreed as follows:

Article 1

PERSONAL SCOPE

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 and on capital imposed by each of the Contracting States, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income or total capital or on any part thereof, including taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are, in particular:

(*a*) In the Kingdom of Spain:

— The income tax on individuals;

— The corporation tax; and

— The capital tax

(hereinafter referred to as "Spanish tax");

(*b*) In the United Mexican States:

— The income tax; and

— The capital tax

(hereinafter referred to as "Mexican tax").

[1] Came into force on 6 October 1994 by the exchange of the instruments of ratification, which took place at Madrid, in accordance with article 28 (1).

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 any 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 "Spain" means the territory of the Spanish State, and in the geographical sense refers to the territory of the Spanish State, including any area outside its territorial sea over which, in accordance with international law and domestic legislation, the Spanish State may exercise jurisdiction or sovereign rights with respect to the seabed and its subsoil, the superjacent waters and their natural resources.

(*b*) The term "Mexico" means the territory of the United Mexican States, including the constituent parts of the Federation; islands, including coral reefs and keys in the adjacent waters; the islands of Guadalupe and Revillagigedo; the continental shelf and the undersea bases of the islands, keys and coral reefs; the waters of the territorial sea, to the extent and on the terms provided for by international law, and internal waters; and the airspace situated over the national territory, to the extent and on the terms provided for by international law.

(*c*) The terms "a Contracting State" and "the other Contracting State" mean the Kingdom of Spain or the United Mexican States, as the context requires.

(*d*) The term "person" includes individuals, companies and any other body of persons.

(*e*) The term "company" means any body corporate or legal or other entity which is treated as a body corporate or a legal entity for tax purposes.

(*f*) The terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean, respectively, an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State.

(*g*) The term "national" means:

(i) Any individual possessing the nationality of a Contracting State; and

(ii) Any legal person, association or other entity deriving its status as such from the law in force in a Contracting State.

(*h*) The term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between two places in the other Contracting State.

(*i*) The term "competent authority" means:

(i) In the case of Spain, the Minister of Economic Affairs and Finance or his authorized representative; and

(ii) In the case of Mexico, the Ministry of Finance and Public Credit.

2. As regards the application of the Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State concerning the taxes to which the Convention applies.

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, provided, however, that this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or of any capital which he owns in that State.

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

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

(*b*) If the State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident of the Contracting State in which he has a habitual abode;

(*c*) If he has a habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

(*d*) If he is not a national of either of the Contracting States, the competent authorities of the two 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 that person shall be deemed to be a resident of the State in which its place of effective management is situated.

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this 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;

(*f*) A mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. The term "permanent establishment" likewise encompasses building sites; construction, assembly or installation projects; or supervisory activities in connection therewith, but only where such sites, projects or activities continue for a period of more than six 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 advertising, for the supply of information, for scientific research, for the preparation of loan activities or for similar activities which have a preparatory or auxiliary character, as long as such activities are carried out for the enterprise;

(*f*) The maintenance of a fixed place of business solely for any combination of the 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 7 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. Notwithstanding the provisions of this article, an insurance enterprise of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business 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 and that, in their commercial or financial relations with that enterprise, they are not bound by conditions made or imposed that differ from those generally agreed upon by independent agents.