

No. 30011

**SPAIN
and
ECUADOR**

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital. Signed at Quito on 20 May 1991

Authentic text: Spanish.

Registered by Spain on 20 May 1993.

**ESPAGNE
et
ÉQUATEUR**

Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu et sur la fortune. Signée à Quito le 20 mai 1991

Texte authentique : espagnol.

Enregistrée par l'Espagne le 20 mai 1993.

[TRANSLATION — TRADUCTION]

CONVENTION¹ FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION WITH RESPECT
TO TAXES ON INCOME AND ON CAPITAL

The Government of the Kingdom of Spain, represented by its Minister for Foreign Affairs, Francisco Fernández Ordóñez, and the Government of the Republic of Ecuador, represented by its Minister for Foreign Affairs, Diego Cordovez, agree to enter into the following convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, on the basis of the following provisions:

Article 1

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 on behalf of a Contracting State, irrespective of the manner in which they are levied.

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

(a) In Spain:

- (i) The income tax on individuals;
- (ii) The corporation tax;
- (iii) The capital tax,
(hereinafter referred to as “Spanish tax”);

(b) In Ecuador:

- (i) The income tax on individuals;
- (ii) The corporation tax,
(hereinafter referred to as “Ecuadorian tax”).

3. This Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes. 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 Spanish State and, when used geographically, means the territory of the Spanish State including any area outside its territorial sea

¹ Came into force on 19 April 1993 by the exchange of the instruments of ratification, which took place at Madrid, in accordance with article 29 (1).

in which, in accordance with international law and its domestic legislation, the Spanish State exercises or may exercise jurisdiction or sovereign rights with respect to the seabed, its subsoil, and superjacent waters and their natural resources;

(b) The term “Ecuador” means the Republic of Ecuador in the form and with the territorial components defined by its Constitution and laws;

(c) The terms “a Contracting State” and “the other Contracting State” mean Spain or Ecuador as the context requires;

(d) The terms “residence” and “resident” used in this Convention mean, when referring to Ecuador, “domicile” and “domiciled”, respectively;

(e) The term “person” includes an individual, a company and any other body of persons;

(f) The term “individual” used in this Convention means, when referring to Ecuador, “natural person”;

(g) The term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;

(h) 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;

(i) 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 law in force in a Contracting State;

(j) The term “international traffic” means any transport by a ship or aircraft operated by an enterprise which has its place of effective management or administration in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(k) The term “competent authority” means:

- (i) In the case of Spain: the Minister of Economy and Finance or his authorized representative;
- (ii) In the case of Ecuador: the Minister of Finance and Public Credit, the Director-General for Public Revenues or any other delegated authority.

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

Article 4. RESIDENCE OR DOMICILE

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 effective management or administration or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 of this article 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 Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);

(b) If the Contracting 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 Contracting 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 Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;

(d) If the residence cannot be determined by any of the foregoing criteria, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 of this article a company is a resident of both Contracting States, it shall be deemed to be a resident of the Contracting State in which its place of effective management or administration 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 of the business;

(b) A branch, agency or office;

(c) A factory, plant or industrial or assembly workshop;

(d) A mine, quarry or any other place of extraction or exploitation of natural resources.

3. A building site or installation project constitutes a permanent establishment only where such site or project continues for more than 12 months.

4. 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 or for carrying on, for the enterprise, any similar activity of a preparatory or auxiliary character.

5. Where a person — other than an agent of an independent status to whom paragraph 6 of this article applies — is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned State if such a person has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 of this article.

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other 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, without prejudice to the tax liabilities of such broker, general commission agent or agent.

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. Any income derived from immovable property may be taxed in the Contracting State in which such property is situated in accordance with the law of that Contracting 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. Ships, boats and aircraft shall not be regarded as immovable property.

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. 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 the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is