

No. 55215. Spain and Switzerland

CONVENTION BETWEEN THE SWISS CONFEDERATION AND SPAIN FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL. BERN, 26 APRIL 1966

AMENDING PROTOCOL TO THE CONVENTION OF 26TH APRIL 1966 BETWEEN SPAIN AND THE SWISS CONFEDERATION FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL. MADRID, 29 JUNE 2006*

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Nº 55215. Espagne et Suisse

CONVENTION ENTRE LA CONFÉDÉRATION SUISSE ET L'ESPAGNE EN VUE D'ÉVITER LES DOUBLES IMPOSITIONS EN MATIÈRE D'IMPÔTS SUR LE REVENU ET SUR LA FORTUNE. BERNE, 26 AVRIL 1966

PROTOCOLE MODIFIANT LA CONVENTION DU 26 AVRIL 1966 ENTRE L'ESPAGNE ET LA CONFÉDÉRATION SUISSE EN VUE D'ÉVITER LES DOUBLES IMPOSITIONS EN MATIÈRE D'IMPÔTS SUR LE REVENU ET SUR LA FORTUNE. MADRID, 29 JUIN 2006*

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**AMENDING PROTOCOL TO THE CONVENTION OF 26TH
APRIL 1966 BETWEEN SPAIN AND THE SWISS
CONFEDERATION FOR THE AVOIDANCE OF DOUBLE
TAXATION WITH RESPECT TO TAXES ON INCOME AND
ON CAPITAL**

The Government of the Kingdom of Spain
and
the Swiss Federal Council

Desiring to amend the convention of 26th April 1966 between Spain and the Swiss Confederation for the avoidance of double taxation with respect to taxes on income and on capital (here after "the Convention") have agreed on the following:

Article 1

Paragraph 2 of Article 10 is deleted and replaced by the following provisions:

- "2. a) 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 15 per cent of the gross amount of the dividends.
- b) Notwithstanding the provisions of the subparagraph above, the Contracting State of which the company paying the dividends is a resident shall exempt from tax the dividends paid by that company to a company the capital of which is wholly or partly divided into shares and which is a resident of the other Contracting State, as long as it holds directly at least 25 per cent of the capital of the company paying the dividends for, at least, two years, and, the paying company is subject to and not exempt from the taxes covered by Article 2 of the Convention and under any double tax agreements with any third State, none of the companies is resident in that third State. Both companies must adopt the form of a limited company.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

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

Article 2

Article 11 is deleted and replaced by the following provisions:

" 1. Interest arising in a Contracting State and paid to 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 securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

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

4. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention."

Article 3

A new paragraph 7 is added to Article 12 of the Convention:

"7. Notwithstanding paragraphs 1 and 2, royalties arising in a Contracting State and paid between associated companies shall not be subject to taxation in the source State, where:

- such companies are affiliated by a direct minimum holding of 25 per cent for at least two years or are both held by a third company which

has directly a minimum holding of 25 per cent both in the capital of the first company, and in the capital of the second company for at least two years; and

- such companies are resident in a Contracting State; and
- under any double tax agreements with any third State none of the companies is resident in that third State; and
- all companies are subject to corporation tax without being exempted in particular on royalty payments and each adopts the form of a limited company."

Article 4

Paragraph 5 of Article 23 of the Convention is deleted and replaced by the following provision:

"For the purpose of paragraph 3, interest from loans contracted after January 1, 1966 and entitled to a reduction of the Spanish tax in accordance with the Decree-Law of October 19, 1961 or any other provisions in addition to or in the place of this Decree, shall be deemed to have been subjected to the Spanish tax at a rate of 10 per cent."

Article 5

A new Article 25 bis concerning exchange of information is inserted into the Convention:

"Article 25 bis

1. The competent authorities of the Contracting States shall exchange, on request, such information as is necessary:

- a) for carrying out the provisions of this Convention in relation to the taxes which are the subject of this Convention;
- b) for the administration or enforcement of the domestic laws in the case of holding companies, in relation to taxes which are the subject of this Convention;
- c) for the administration or enforcement of the domestic laws in cases of tax fraud or the like which have been committed by a resident of a Contracting State or by a person subjected to a limited tax liability in a Contracting State, in relation to taxes which are the subject of this Convention.

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, or the determination of appeals in relation to the taxes covered by the Convention. 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.

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 cases of tax fraud or the like the provisions of paragraphs 1 and 3 shall not be construed so as 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 6

The following Protocol shall be added to the Convention:

"Protocol to the Convention of 26 April 1966 between the Swiss Confederation and Spain for the avoidance of double taxation with respect to taxes on income and on capital.

On the occasion of signing the Amending Protocol to the Convention for the avoidance of double taxation with respect to taxes on income and on capital signed by the Swiss Confederation and Spain on 26 April 1966, the authorized signatories hereto agreed upon the following provisions, which form an integral part of the Convention: