

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

PROTOCOL BETWEEN THE KINGDOM OF SPAIN AND THE SWISS CONFEDERATION AMENDING THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL SIGNED AT BERN ON 26 APRIL 1966, AND ITS PROTOCOL, AS AMENDED BY THE PROTOCOL SIGNED AT MADRID ON 29 JUNE 2006. MADRID, 27 JULY 2011*

Entry into force: 24 August 2013, in accordance with article 13

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N° 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 ENTRE LE ROYAUME D'ESPAGNE ET LA CONFÉDÉRATION SUISSE MODIFIANT LA CONVENTION EN VUE D'ÉVITER LES DOUBLES IMPOSITIONS EN MATIÈRE D'IMPÔTS SUR LE REVENU ET SUR LA FORTUNE ET LE PROTOCOLE Y RELATIF, SIGNÉS À BERNE LE 26 AVRIL 1966, TELS QUE MODIFIÉS PAR LE PROTOCOLE SIGNÉ À MADRID LE 29 JUIN 2006. MADRID, 27 JUILLET 2011*

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PROTOCOL

**BETWEEN THE KINGDOM OF SPAIN AND THE SWISS CONFEDERATION
AMENDING THE CONVENTION FOR THE AVOIDANCE OF DOUBLE
TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL
SIGNED AT BERN ON 26 APRIL 1966, AND ITS PROTOCOL, AS AMENDED BY
THE PROTOCOL SIGNED AT MADRID ON 29 JUNE 2006 (HEREINAFTER
REFERRED TO AS “THE AMENDING PROTOCOL”)**

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

desiring to amend the Convention for the avoidance of double taxation with respect to taxes on income and on capital signed at Bern on 26 April 1966, and its Protocol, (hereinafter referred to as “the Convention” and “the Protocol”, respectively), as amended by the Protocol signed at Madrid on 29 June 2006,

have agreed as follows:

ARTICLE 1

Subparagraph a) of paragraph 3 of Article 2 (Taxes Covered) of the Convention shall be deleted and replaced by the following subparagraph a) of paragraph 3 of Article 2:

“a) in Spain:

- (i) the income tax on individuals;
- (ii) the corporation tax;
- (iii) the income tax on non residents;
- (iv) the capital tax; and
- (v) local taxes on income and on capital;

(hereinafter referred to as “Spanish Tax”).”

ARTICLE 2

Subparagraph a) of Paragraph 1 of Article 3 (General Definitions) of the Convention shall be deleted and replaced by the following subparagraph a) of Paragraph 1 of Article 3:

“a) the term “Spain” means the Kingdom of Spain and, when used in a geographical sense, means the territory of the Kingdom of Spain, including inland waters, the air space, the territorial sea and any area outside the territorial sea upon which, in accordance with international law and on application of its domestic legislation, the Kingdom of Spain exercises or may exercise in the future jurisdiction or sovereign rights with respect to the seabed, its subsoil and superjacent waters, and their natural resources;”

ARTICLE 3

1. The following subparagraph f) shall be added into Paragraph 3 of Article 5 (Permanent establishment) of the Convention:

“f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.”

2. Paragraph 4 of Article 5 (Permanent establishment) of the Convention shall be deleted and replaced by the following Paragraph 4 of Article 5:

“4. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 5 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 3 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.”

ARTICLE 4

The existing Paragraph of Article 9 (Associated enterprises) of the Convention shall become Paragraph 1, and the following new Paragraphs 2 and 3 shall be added to Article 9:

“2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other State has been charged to tax in that other Contracting State and that other State agrees that the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

3. The provisions of paragraph 2 shall not apply in the case of fraud or wilful default.”

ARTICLE 5

1. Subparagraph b) of paragraph 2 of Article 10 (Dividends) of the Convention shall be deleted and replaced by the following subparagraph:

“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 10 per cent of the capital of the company paying the dividends for, at least, one year, 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."

2. The following subparagraph c) shall be added in paragraph 2 of Article 10 (Dividends) of the Convention:

"c) Notwithstanding subparagraph a), dividends paid to a recognized pension fund or pension scheme resident of a Contracting State shall be taxable only in that Contracting State."

ARTICLE 6

1. The following paragraph 3 shall replace the present paragraph 3 in Article 13 (Capital gains) of the Convention:

"3. Gains derived by a resident of a Contracting State from the alienation of shares or comparable interests deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State. The provisions of the preceding sentence shall not apply to:

- a) the alienation of shares quoted on a Swiss or Spanish Stock Exchange or any other Stock Exchange as may be agreed between the competent authorities; or
- b) the alienation of shares of a company if the immovable property is used by this company for its own industrial activity."

2. Paragraph 3 of Article 13 shall be replaced by the following paragraph which becomes paragraph 4:

"4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3, shall be taxable only in the Contracting State of which the alienator is a resident."

ARTICLE 7

Article 23 (Method for the elimination of double taxation) of the Convention shall be deleted and replaced by the following provisions:

"1. In Spain, double taxation shall be avoided following either the provisions of its internal legislation or the following provisions in accordance with the internal legislation of Spain:

- a) Where a resident of Spain derives income or owns elements of capital which, in accordance with the provisions of this Convention, may be taxed in Switzerland, Spain shall allow:
 - (i) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Switzerland;
 - (ii) as a deduction from the tax on the capital of that resident, an amount equal to the tax paid in Switzerland on the same elements of capital;

- (iii) the deduction of the underlying corporation tax shall be given in accordance with the internal legislation of Spain.

Such deduction shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the same elements of capital which may be taxed in Switzerland.

- b) Where in accordance with any provision of the Convention income derived or capital owned by a resident of Spain is exempt from tax in Spain, Spain may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

2. In Switzerland, double taxation shall be avoided as follows:

- a) Where a resident of Switzerland derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Spain, Switzerland shall, subject to the provisions of subparagraph b), exempt such income or capital from tax but may, in calculating tax on the remaining income or capital of that resident, apply the rate of tax which would have been applicable if the exempted income or capital had not been so exempted. However, such exemption shall apply to gains referred to in paragraph 3 of Article 13 only if actual taxation of such gains in Spain is demonstrated.
- b) Where a resident of Switzerland derives dividends or royalties which, in accordance with the provisions of Articles 10 or 12, may be taxed in Spain, Switzerland shall allow, upon request, a relief to such resident. The relief may consist of:
 - (i) a deduction from the tax on the income of that resident of an amount equal to the tax levied in Spain in accordance with the provisions of Article 10 or Article 12; such deduction shall not, however, exceed that part of the Swiss tax, as computed before the deduction is given, which is appropriate to the income which may be taxed in Spain;
 - (ii) a lump sum reduction of the Swiss tax; or
 - (iii) a partial exemption of such dividends or royalties from Swiss tax, in any case consisting at least of the deduction of the tax levied in Spain from the gross amount of the dividends or of the royalties.

Switzerland shall determine the applicable relief and regulate the procedure in accordance with the Swiss provisions relating to the carrying out of international conventions of the Swiss Confederation for the avoidance of double taxation.

- c) A company which is a resident of Switzerland and which derives dividends from a company which is a resident of Spain shall be entitled, for the purposes of Swiss tax with respect to such dividends, to the same relief which would be granted to the company if the company paying the dividends were a resident of Switzerland."