

LEGAL NOTICE NO. 169

REPUBLIC OF TRINIDAD AND TOBAGO

THE INCOME TAX ACT, CHAP. 75:01

ORDER

MADE BY THE PRESIDENT UNDER SECTION 93(1) OF THE INCOME TAX ACT

THE DOUBLE TAXATION RELIEF (KINGDOM OF SPAIN)
ORDER, 2009

WHEREAS it is provided by subsection (1) of section 93 of the Income Tax Act that if the President by Order declares that arrangements specified in the Order have been made with the Government of any country with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that country, and that it is expedient that those arrangements should have effect, the arrangements shall have effect in relation to income tax notwithstanding anything in any written law:

And whereas by Convention dated 17th February, 2009 and Protocol dated 17th February, 2009 made between the Government of the Republic of Trinidad and Tobago and the Government of the Kingdom of Spain arrangements were made *inter alia* for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income:

Now, therefore, the President in pursuance of the said subsection (1) of section 93 of the Income Tax Act is pleased to order, and it is hereby ordered as follows:

- | | |
|---|--|
| Citation | 1. This Order may be cited as the Double Taxation Relief (Kingdom of Spain) Order, 2009. |
| Convention between the Government of the Republic of Trinidad and Tobago and the Government of the Kingdom of Spain
Schedule | 2. It is hereby declared—

(a) that the Convention and Protocol specified in the Schedule have been made with the Government of the Kingdom of Spain; and

(b) that it is expedient that the said Convention and Protocol shall have effect. |

SCHEDULE

CONVENTION BETWEEN THE REPUBLIC OF TRINIDAD AND TOBAGO AND THE KINGDOM OF SPAIN
FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME

THE REPUBLIC OF TRINIDAD AND TOBAGO AND THE KINGDOM OF SPAIN, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

CHAPTER I

SCOPE OF THE CONVENTION

Article 1*Persons Covered*

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 imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, as well as taxes on the total amounts of wages or salaries paid by enterprises.

3. The existing taxes which are the subject of this Convention are:

(a) in the case of Trinidad and Tobago:

- (i) the corporation tax;
 - (ii) the business levy;
 - (iii) the income tax;
 - (iv) the petroleum profits tax;
 - (v) the supplemental petroleum tax; and
 - (vi) the unemployment levy,
- (hereinafter referred to as "Trinidad and Tobago tax").

(b) in the case of Spain:

- (i) the income tax on individuals;
 - (ii) the corporation tax;
 - (iii) the income tax on non residents; and
 - (iv) local taxes on income,
- (hereinafter referred to as "Spanish tax").

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 referred to in paragraph 3. The competent authorities of the Contracting States shall notify each other of significant changes which have been made in their respective taxation laws.

CHAPTER II
DEFINITIONS

Article 3

General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:
 - (a) the term “Trinidad and Tobago” means the archipelagic State of Trinidad and Tobago, comprising the several islands of the Republic of Trinidad and Tobago, its archipelagic waters, territorial sea and airspace thereof, as well as the Exclusive Economic Zone and the continental shelf beyond the territorial sea over which Trinidad and Tobago exercises sovereign rights or jurisdiction in accordance with the laws of Trinidad and Tobago and with international law;
 - (b) the term “Spain” means the Kingdom of Spain and, when used in a geographical sense, means the territory of the Kingdom of Spain, including its airspace, inland waters, the territorial sea and any area outside the territorial sea and 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;
 - (c) the terms “a Contracting State” and “the other Contracting State” mean Spain or Trinidad and Tobago, as the context requires;
 - (d) the term “person” includes an individual, a company and any other body of persons;
 - (e) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - (f) the term “enterprise” applies to the carrying on of any business;
 - (g) 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;
 - (h) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - (i) the term “competent authority” means:
 - (i) in the case of Trinidad and Tobago, the Minister to whom the responsibility for Finance is assigned or his authorized representative;
 - (ii) in the case of Spain, the Minister of Economy and Finance or his authorized representative;
 - (j) 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 laws in force in a Contracting State;
 - (k) the terms “business” includes the performance of professional services and of other activities of an independent character.
2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

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, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources 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 has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) if he has an 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 a national of both States or of neither of them, the competent authorities of the 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 it 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 warehouse in relation to a person in the business of providing storage facilities for others;
- (g) a store or other sales outlet;
- (h) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. The term “permanent establishment” likewise includes:

- (a) a building site, a construction, assembly, dredging or installation project only if it lasts more than nine months;
- (b) a drilling rig or ship used for, or in connection with, the exploration or development of natural resources only if it lasts 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 carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (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 6 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. An enterprise shall not be deemed to have a permanent establishment in a 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. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent persons, he will not be considered an agent of an independent status within the meaning of this paragraph.

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.

CHAPTER III TAXATION OF INCOME

Article 6

Income from Immovable Property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other 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. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property

apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

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. Subject to the provisions of paragraph 3, 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 determining 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 situated or elsewhere.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year, unless there is good and sufficient reason to the contrary.

6. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

Shipping and Air Transport

1. Profits of an enterprise from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. For the purposes of this Article, the terms "profits of an enterprise from the operation of ships or aircraft" shall include profits derived from:

- (a) the occasional rental of ships or aircraft on a bare-boat basis; and
- (b) the use or rental of containers (including trailers and ancillary equipment used for transporting these containers),

if these activities are directly connected or ancillary to the operation of ships or aircrafts in international traffic.

3. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

4. The provisions of paragraph 1 also apply to profits derived from participation in a pool, a joint business or an international operating agency.

Article 9

Associated Enterprises

1. Where:

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the Contracting States and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would but for those conditions have accrued to one of the enterprises, but, by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

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 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.

Article 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. 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:

- (a) 0 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 50 per cent of the capital of the company paying the dividends;
- (b) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25 per cent of the capital of the company paying the dividends;
- (c) 10 per cent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term “dividends” as used in this Article means income from shares, “jouissance” shares or “jouissance” rights, mining shares, founders’ shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 (Business Profits) shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company’s undistributed profits to a tax on the company’s undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

6. Where a company which is a resident of a Contracting State having a permanent establishment in the other Contracting State, derives profits or income from that permanent establishment, any remittances or deemed remittances of such profits or income by the permanent establishment to the company which is a resident of the first-mentioned Contracting State may, notwithstanding any other provision of this Convention, be taxed in accordance with the law of the other Contracting State, but the rate of tax imposed on such remittances or deemed remittances shall be 0 per cent.

Article 11

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 8 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraphs 2, interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if the recipient is the beneficial owner of the interest and:

- (a) is that State or the Central Bank, a political subdivision or local authority thereof;
- (b) is a financial institution created and substantially supported by that other State or a political subdivision, or local authority thereof, a pension fund that is approved for tax purposes by that State and the income of that fund is generally exempt from tax in that State, or any other institution or agency as may be mutually agreed between the Contracting States;
- (c) if the interest is paid by the State in which the interest arises or by a political subdivision, a local authority or statutory body thereof;
- (d) if the interest is paid in respect of a loan, debt-claim or credit that is owed to, or made, provided, guaranteed or insured by, that State or a political subdivision, local authority or export financing agency wholly owned by that other State or by a political subdivision, or local authority thereof;
- (e) if the interest is paid with respect to indebtedness arising as a consequence of the sale on credit of any equipment, merchandise or service.

4. 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 government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as all other income treated as income from money lent by the taxation laws of the State in which the income arises. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1 and 2 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 cases the provisions of Article 7 (Business Profits) shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by that permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

7. 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 payment shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 12

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films, tapes, video tapes, or other means of transmission or reproduction of images or sound for use in connection with television or radio, any patent, trade mark, design or model, plan, secret formula or process, or for the use of or the right to use industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such cases the provisions of Article 7 (Business Profits) shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that Contracting State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. 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 royalties, having regard to the use, right or information for which they are 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 13

Management Charges

1. Management charges arising in a Contracting State and paid to an enterprise of the other Contracting State may be taxed in that other State.

2. However, such management charges may be taxed in the Contracting State in which they arise and according to the laws of that State, but the tax so charged shall not exceed 5 per cent of the gross amount of the charges.

3. The term "management charges" as used in this Article means charges made for the provision of management services, head office charges, foreign research and development fees and other shared costs charged by the head office and charges made for the provision of personal or professional services and technical skills.

4. The provisions of paragraphs 1 and 2 shall not apply if the enterprise which derives the management charges, being an enterprise of a Contracting State, carries on business in the other Contracting State in which the management charges arise, through a permanent establishment situated therein and the management charges are effectively connected with such a permanent establishment. In such cases the provisions of Article 7 (Business Profits) shall apply.

5. Management charges, wherever incurred, shall be deemed to arise in the Contracting State where the enterprise paying the charges is resident. Where the management charges are borne by a permanent establishment, then such management charges, wherever incurred, are deemed to arise in the Contracting State where the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the recipient, or between both of them and some other person, the amount of the management charges, having regard to the services for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient 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 14

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 (Income from Immovable Property) and situated in the other Contracting State may be taxed in that other State.

2. Gains from alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other Contracting State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains derived by a resident of a Contracting State from the alienation of shares or comparable interest deriving more than 50% of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.

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

Article 15

Income from Employment

1. Subject to the provisions of Articles 16 (Directors' Fees), 18 (Pensions), 19 (Government Service) and 21 (Teaching and Research), salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16

Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the Board of Directors of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17

Artistes and Sportspersons

1. Notwithstanding the provisions of Articles 7 (Business Profits) and 15 (Income from Employment) income derived by a resident of a Contracting State as an entertainer, such as theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 7 (Business Profits) and 15 (Income from Employment), be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. The provisions of paragraphs 1 and 2, shall not apply if the activities exercised by an entertainer or a sportsperson in a Contracting State are supported wholly or substantially from public funds of the other Contracting State, or a political subdivision or local authority thereof, within the framework of a cultural or sports exchange programs approved by both Contracting States. In such a case, the income derived from those activities may only be taxed in the other Contracting State.

Article 18

Pensions

Subject to the provisions of paragraph 2 of Article 19 (Government Service), pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

Article 19

Government Service

1. (a) Salaries, wages and other similar remuneration, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
- (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2. (a) Notwithstanding the provisions of paragraph 1 of this Article, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
- (b) However, such pension and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
3. The provisions of Articles 15 (Income from Employment), 16 (Directors' Fees), 17 (Artistes and Sportspersons) and 18 (Pensions), shall apply to salaries, wages and other similar remuneration, and to pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 20

Students

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

Article 21

Teaching and Research

1. An individual who is or was a resident of a Contracting State at the beginning of his visit to the other Contracting State and who, at the invitation of the Government of that other Contracting State or of a university or other educational institution situated in that other Contracting State and approved by the appropriate educational authority of that other Contracting State visits that other Contracting State for a period not exceeding two years for the primary purpose of teaching or research at such university or other educational institution shall be exempt from tax by that other Contracting State on his income from personal services for teaching or research at such university or other educational institution for a period not exceeding two years from the date of his arrival in that other Contracting State

2. The exemption granted under paragraph 1 shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or specific persons.

Article 22

Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6 (Income from Immovable Property), if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 (Business Profits) shall apply.

CHAPTER IV

METHODS FOR ELIMINATION OF DOUBLE TAXATION

Article 23

Elimination of Double Taxation

1. In case of Trinidad and Tobago, double taxation shall be avoided as follows:

(a) Subject to the provisions of the laws of Trinidad and Tobago regarding the allowance of a credit against Trinidad and Tobago tax of tax payable in a territory outside Trinidad and Tobago (which shall not effect the general principle hereof):

(i) Spanish tax payable under the laws of Spain and in accordance with this Convention, whether directly by deduction on profits or income from sources within Spain (excluding, in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any Trinidad and Tobago tax computed by reference to the same profits or income by reference to which the Spanish tax is computed;

(ii) in the case of a dividend paid by a company which is a resident of Spain to a company which is a resident of Trinidad and Tobago and which controls directly or indirectly at least 25 per cent of the voting power in the company paying the dividends the credit shall take into account, in addition to any Spanish tax creditable under (a)(i) the Spanish tax payable by the company paying the dividends in respect of the profits out of which such dividend is paid.

- (b) The credit, however, shall in no case exceed that part of the tax, as computed before the credit is given, which is appropriate to the income which may be taxed in Spain.

2. In the case of 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 which, in accordance with the provisions of this Convention, may be taxed in Trinidad and Tobago, 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 Trinidad and Tobago;
 - (ii) 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 as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in Trinidad and Tobago.

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

CHAPTER V

SPECIAL PROVISIONS

Article 24

Non-discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1 (Persons Covered), also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 7 of Article 11 (Interest), paragraph 6 of Article 12 (Royalties) or paragraph 6 of Article 13 (Management Charges) apply, interest, royalties, management charges and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. The provisions of this Article shall, notwithstanding the provisions of Article 2 (Taxes Covered), apply to taxes of every kind and description.

Article 25

Mutual Agreement Procedure

1. Where a person considers that the action of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24 (Non-Discrimination), to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with this Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Convention. They may also consult together for the elimination of double taxation in cases not provided for in this Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. The competent authorities shall, through consultations, develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article.

Article 26

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation there under is not contrary to the Convention. The exchange of information is not restricted by Articles 1 (Persons Covered) and 2 (Taxes Covered).

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, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. 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 available 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 except where such limitations would preclude a Contracting State from supplying information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely on the grounds that such information is held by a bank or other financial institution, a nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 27

Members of Diplomatic Missions and Consular Posts

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

CHAPTER VI

FINAL PROVISIONS

Article 28

Entry into Force

1. The Governments of the Contracting States, shall notify each other, through diplomatic channels that the internal procedures required by each Contracting State for the entry into force of this Convention have been complied with.

2. This Convention shall enter into force after a period of three months following the date of receipt of the later of these notifications and shall thereupon have effect:

- (a) regarding taxes payable or assessed on income for a taxable year or year of income, in any taxable year or year of income beginning on or after the date on which this Convention enters into force;
- (b) regarding all other cases, including taxes withheld at source on amounts paid, credited or remitted to non-residents, on the date on which the Convention enters into force.

Article 29

Termination

1. This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving written notice of termination at least six months before the end of any calendar year beginning on or after the expiration of a period of five years from the date of its entry into force.

2. In such event, this Convention shall cease to have effect:

- (a) regarding taxes payable or assessed on income for a taxable year or year of income, in any taxable year or year of income beginning on or after the first day of January in the calendar year next following that in which the notice is given;
- (b) regarding all other cases, including taxes withheld at source on amounts paid, credited or remitted to non-residents, on the first day of January in the calendar year next following that in which notice is given.

In witness whereof the undersigned, being duly authorized thereto, have signed this Convention.

Done at Port-of-Spain, this 17th day of February, 2009, in duplicate in the English and Spanish languages, both texts being equally authentic.

FOR THE REPUBLIC OF
TRINIDAD AND TOBAGO

Paula Gopee-Scoon
Minister of Foreign Affairs

FOR THE
KINGDOM OF SPAIN

Miguel Ángel Moratinos Cuyaubé
*Minister of Foreign Affairs
and Co-operation*

PROTOCOL

At the moment of signing the Convention between the Kingdom of Spain and the Republic of Trinidad and Tobago for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed upon the following provisions which shall be an integral part of the Convention:

I. Entitlement to treaty benefits

1. The provisions of this Convention shall not be construed so as to restrict in any manner the application of anti-fraud, anti-abuse and improper use provisions or doctrines under the laws of a Contracting State. By way of example, where in accordance with the provisions of the laws of a Contracting State and of this Convention, it is ascertained that if an enterprise of a Contracting State which ordinarily carries on business activities in the other Contracting State through a permanent establishment, structures its other business activities in the other Contracting State with the intention of avoiding taxation in the other Contracting State where its permanent establishment is situated, the profits of such other activities may be attributable to the permanent establishment.

2. It is understood that the benefits under this Convention shall not be granted to a person, which is not the beneficial owner of the items of income derived from the other Contracting State.

3. This Convention does not prevent Contracting States from applying domestic rules pertaining to Controlled Foreign Companies (CFCs).

II. Ad Article 4 (Resident)

In the case of Trinidad and Tobago, with respect to individuals, certificates of residence will only be issued to "ordinary resident and domiciled" taxpayers.

III. Ad Article 12 (Royalties)

The term does not include any amounts paid in respect of the operation of mines, oil or gas wells, quarries, or other natural resources.

IV. Ad Articles 10 (Dividends), 11 (Interest), 12 (Royalties), 13 (Management Charges) and 14 (Capital Gains)

A—Notwithstanding the remaining provisions of this Convention, the provisions of Articles 10 (Dividends), 11 (Interest), 12 (Royalties), 13 (Management Charges) and 14 (Capital Gains) of this Convention shall not apply if:

- (i) the entity of a Contracting State paying the dividends, interests, royalties, management charges or capital gains to a resident in the other Contracting State has derived its income from a jurisdiction that does not have a Double Taxation Agreement with that other Contracting State; and
- (ii) that income is exempt from or not subjected to tax in the first-mentioned Contracting State.

B—Notwithstanding the provisions of this Convention, the provisions of Articles 10 (Dividends), 11 (Interest), 12 (Royalties), 13 (Management Charges) and 14 (Capital Gains) of this Convention shall not apply if:

- (i) an entity paying the dividends, interest, royalties, management charges or capital gains is resident in a Contracting State and persons who are not residents of that State hold, directly or indirectly, a participation in this entity of more than 75 per cent of the share capital; and
- (ii) the income derived by that entity is exempt from or not subjected to tax in the first-mentioned Contracting State.

An entity which under the preceding paragraphs would not be entitled to the benefits of the Convention in respect of the aforementioned items of income, could still be granted such benefits if the competent authorities of the Contracting States agree under Article 25 of the Convention (Mutual Agreement Procedure) that the establishment of the entity and the conduct of its operations are founded on sound business reasons and thus do not have as its primary purpose the obtaining of such benefits.

V. AD. Article 26 (Exchange of Information)

It is understood that Article 26 of the Convention (Exchange of Information) will apply under the following guidelines:

A. Definitions

For the purposes of this Protocol provision, it is understood that:

- (a) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided that its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale is not implicitly or explicitly restricted to a limited group of investors;
- (b) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- (c) the term “recognised stock exchange” means any stock exchange that operates under the supervision of a Regulatory Authority whose regulations contain sufficient safeguards against private limited companies posing as publicly listed companies;
- (d) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of its legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided that the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- (e) the term “information gathering measures” means a provision in any law and administrative or judicial procedures enabling a Contracting State to obtain and provide the requested information;
- (f) the term “information” means any fact, statement or record in whatever form;
- (g) the term “notification” means the delivery of documents to residents of either Contracting State according to the rules that govern the delivery of documents in that State.

B. Exchange of Information upon Request

1. The competent authority of a Contracting State shall provide upon request information as is foreseeably relevant for the purposes referred to in Article 26 (Exchange of Information). Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of that Contracting State if such conduct occurred therein.

2. If the information in the possession of the competent authority of a Contracting State is not sufficient to enable it to comply with a request for information, that Contracting State shall use all available information gathering measures to provide the other Contracting State with the information requested, notwithstanding that the first mentioned Contracting State may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under Article 26 (Exchange of Information), to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each contracting State shall ensure that its competent authority for the purposes specified in Article 26 (Exchange of Information) use its available powers to obtain and provide upon request:

- (a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
- (b) information regarding the ownership of companies, partnerships, trusts, foundations and other persons, including, within the constraints of Article 1 of the Convention (Persons Covered), ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries.

Further, Article 26 (Exchange of Information) does not create an obligation on the Contracting States to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds.

5. The competent authority of a Contracting State shall forward the requested information as promptly as possible to the other Contracting State. To ensure a prompt response, the competent authority of the first mentioned Contracting State shall:

- (a) Confirm receipt of a request in writing to the competent authority of the other Contracting State and shall notify the competent authority of the other Contracting State of deficiencies in the request, if any, within 60 days of the receipt of the request.
- (b) If the competent authority of the first mentioned Contracting State has been unable to obtain and provide the information within 90 days of the receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, immediately inform the other Contracting State, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

In the event that the first mentioned Contracting State has not provided the information within 6 months of the receipt of the request, it shall inform the other Contracting State of the progress made in obtaining the requested information and provide with its best estimate within what period of time the request can be complied with. If the first mentioned Contracting State is unable

to comply with the request it will so inform the other Contracting State, while providing the reasons for its inability. The other Contracting State shall subsequently decide whether or not to rescind its request. If it decides not to rescind its request the Contracting States shall informally and directly, through mutual agreement or otherwise, discuss the possibilities to achieve the purpose of the request and consult with each other the manner in which to achieve that objective.

The time restrictions mentioned in this Article do not in any way affect the validity and legality of information exchanged under this Convention.

6. The competent authorities of the Contracting States may by mutual agreement settle the mode in which requests for information shall be submitted.

C. Possibility of Declining a Request

1. The provisions of this Convention shall not impose on a Contracting State the obligation to obtain or provide information, which would reveal confidential communication between a client and an attorney, solicitor or other admitted legal representative where such communication is:

- (a) produced for the purposes of seeking or providing legal advice; or
- (b) produced for the purposes of use in existing or contemplated legal proceedings.

2. A Contracting State may decline a request for information if the information is requested by the other Contracting State to administer or enforce a provision of the tax law of the other Contracting State, or any requirement connected therewith, which discriminates against a national of the first mentioned Contracting State as compared with a national of the other Contracting State in the same circumstances.

3. The rights and safeguards secured to persons by the laws or administrative practice of the Contracting State which has been requested to provide the information under this Article remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

D. Tax Examinations Abroad

It is understood that co-operation between both Contracting States includes tax examinations abroad within the following framework:

1. At the request of the competent authority of one Contracting State, the competent authority of the other Contracting State may allow representatives of the competent authority of the first-mentioned Contracting State to be present at the appropriate part of a tax examination in the second-mentioned Contracting State.

Notwithstanding the above-mentioned provisions, the procedural domestic law of the Contracting States would remain applicable.

2. If the request referred to in paragraph 1 is acceded to, the competent authority of the Contracting State conducting the examination shall, as soon as possible, notify the competent authority of the other Contracting State about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned State for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Contracting State conducting the examination.

E. Request for Notifications

It is understood that co-operation between both Contracting States includes assistance for notifications within the following framework:

1. The authority of a Contracting State, at the request of the competent authority of the other Contracting State, and in accordance with the laws which govern the notification of such instruments in the first mentioned Contracting State, shall notify, when possible, decisions and any other instrument which emanate from the administrative authorities of the other Contracting State and concern the application of taxes of every kind and description imposed on behalf of the Contracting States.

2. The competent authority of a Contracting State shall inform the competent authority of the other Contracting State of the name, address and any other relevant information of the addressee, when making a request for notification, if such information is available.

3. The competent authority of a Contracting State shall confirm receipt of a request in writing to the competent authority of the other Contracting State and shall notify its competent authority of any deficiencies in the request.

4. The competent authorities of the Contracting States may by mutual agreement settle the mode in which requests for notification shall be submitted.

F. Language

Requests for assistance and answers thereto shall be drawn up in English or in Spanish.

In Witness Whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Port-of-Spain, this 17th day of February, 2009, in duplicate in the English and Spanish languages, both texts being equally authentic.

FOR THE REPUBLIC OF
TRINIDAD AND TOBAGO

Paula Gopee-Scoon
Minister of Foreign Affairs

FOR THE
KINGDOM OF SPAIN

Miguel Ángel Moratinos Cuyaubé
*Minister of Foreign Affairs
and Co-operation*

Made this 2nd day of July, 2009.

A. LEUNG WOO-GABRIEL
Secretary to Cabinet