

A.L. 234 ta' l-2006

**ATT DWAR IT-TAXXA FUQ L-INCOME
(KAP. 123)**

**Ordni ta' l-2006 dwar Helsien minn Taxxa Doppja
(Taxxi fuq l-Income) (Ir-Renju ta' Spanja)**

BIS-SAHHA tas-setghat moghtija bl-artiklu 76 ta' l-Att dwar it-Taxxa fuq l-Income, il-Prim Ministru u Ministru tal-Finanzi ghamel l-ordni li ġej:-

1. It-titolu ta' dan l-ordni hu Ordni ta' l-2006 dwar Helsien minn Taxxa Doppja (Taxxi fuq l-Income) (Ir-Renju ta' Spanja). Titolu.

2. B'dan qieghed jiġi dikjarat:-

Arranġamenti
jkollhom effett.

(a) illi l-arranġamenti speċifikati fil-Ftehim muri fl-Iskeda li tinsab ma' dan l-ordni saru mar-Renju ta' Spanja sabiex jaghtu helsien minn taxxa doppja dwar it-taxxi li ġejjin imposti bil-ligijiet tar-Renju ta' Spanja:

- (i) it-taxxa fuq l-income dwar individwi;
- (ii) it-taxxa korporattiva;
- (iii) it-taxxa fuq l-income dwar min mhux residenti; u
- (iv) taxxi lokali fuq l-income;

(b) illi huwa spedjenti li daww l-arranġamenti ghandu jkollhom effett;

(c) illi l-Ftehim ghandu jitqies li dahal fis-sehh fit-12 ta' Settembru, 2006.

SKEDA

FTEHIM

BEJN

MALTA

U R-RENJU TA' SPANJA

DWAR HELSIEN MINN TAXXA DOPPJA

U L-PREVENZJONI TA' EVAŻJONI FISKALI

DWAR TAXXI FUQ L-*INCOME*

Malta u r-Renju ta' Spanja, billi jixtiequ jagħmlu Ftehim dwar Helsien minn Taxxa Doppja u l-Prevenzjoni ta' Evażjoni Fiskali dwar Taxxi fuq l-*Income*, ftehm u kif ġej:

Artikolu 1

SKOP PERSONALI

Dan il-Ftehim għandu japplika għal persuni li jkunu residenti fi Stat Kontraenti wieħed jew fit-tnejn li huma.

Artikolu 2

TAXXI KOPERTI

1. Dan il-ftehim għandu japplika għat-taxxi fuq *l-income* imposti f'isem Stat Kontraenti jew f'isem is-sottodivizjonijiet politiċi jew l-awtoritajiet lokali tiegħu, irrispettivament mill-mod kif dawn jingabru.

2. Għandhom jitqiesu bħala taxxi fuq *l-income* it-taxxi kollha imposti fuq *l-income* totali, jew fuq elementi ta' *income*, inklużi taxxi fuq dħul mill-bejgħ ta' proprjetà mobbli jew immobbli, taxxi fuq l-ammonti totali ta' pagi jew salarji mħallsa mill-imprizi kif ukoll taxxi fuq l-apprezzament kapitali.

3. It-taxxi eżistenti li għalihom japplika dan il-Ftehim huma b'mod partikolari:

(a) fil-każ ta' Spanja:

(i) it-taxxa fuq *l-income* ta' individwi;

(ii) it-taxxa korporattiva;

(iii) it-taxxa fuq *l-income* ta' persuni mhux residenti; u

(iv) it-taxxi lokali fuq *l-income*;

(hawnhekk iżjed 'il quddiem imsejha "it-taxxa ta' Spanja").

(b) fil-każ ta' Malta:

it-taxxa fuq *l-income*;

(hawnhekk iżjed 'il quddiem imsejha "it-taxxa ta' Malta").

4. Il-Ftehim għandu japplika wkoll għal kull taxxa identika jew sostanzjalment simili li tiġi imposta wara d-data meta jiġi ffirmat il-Ftehim b'zieda ma',

jew minflok, it-taxxi ezistenti. L-awtoritajiet kompetenti ta' l-Istati Kontraenti għandhom jgħarrfu lil xulxin b'kull tibdil sostanzjali li jkun sar fil-ligijiet rispettivi tagħhom dwar it-taxxa.

Artiklu 3

TIFSIRIET ĠENERALI

1. Għall-għanijiet ta' dan il-Ftehim, kemm-il darba r-rabta tal-kliem ma tkunx teħtieġ xort'ohra:

(a) il-frazi "Spanja" tfisser ir-Renju ta' Spanja u, meta tintuza f'sens ġeografiku, tfisser it-territorju tar-Renju ta' Spanja, inkluż il-baħar territorjali u kull area ohra barra l-baħar territorjali li fuqhom, skond id-dritt internazzjonali u bl-applikazzjoni tal-legislazzjoni domestika tagħha, ir-Renju ta' Spanja jeżerċita jew jista' jeżerċita fil-futur il-ġurisdizzjoni tiegħu jew id-drittijiet sovrani tiegħu għar-rigward ta' qiegħ il-baħar, is-sottoswol tiegħu u l-ibħra sovraċenti, u r-rizorsi naturali tagħhom;

(b) il-frazi "Malta" tfisser ir-Repubblika ta' Malta u, meta użata f'sens ġeografiku, tfisser il-Gżira ta' Malta, il-Gżira ta' Għawdex u l-gzejjer l-ohra ta' l-arċipelagu Malti inklużi l-ibħra territorjali tagħhom, u kull area ta' qiegħ il-baħar, is-sottoswol u l-kolonna ta' baħar sovraċenti u adjaċenti għall-ibħra territorjali, fejn Malta għandha drittijiet sovrani, ġurisdizzjoni jew kontroll skond id-dritt internazzjonali u d-dritt nazzjonali tagħha, inkluża l-ligi tagħha għar-rigward l-esplorazzjoni tal-blata kontinentali u l-esplorazzjoni tar-rizorsi naturali tagħha;

(ċ) il-frazzjiet "Stat Kontraenti" u "l-Istat Kontraenti l-ieħor" ifissru Spanja jew Malta, skond ir-rabta tal-kliem;

(d) il-frazi "persuna" tinkludi individwu, kumpannija u kull korp ta' persuni ieħor;

(e) il-frazi "kumpannija" tfisser kull korp magħqud jew kull enti li jiġi trattat bhala korp magħqud għall-iskopijiet ta' taxxa;

(f) il-frazi "impriża ta' Stat Kontraenti" u "impriża ta' l-Istat Kontraenti l-ieħor" ifissru rispettivament impriża ġestita minn residenti ta' Stat Kontraenti u impriża ġestita minn residenti ta' l-Istat Kontraenti l-ieħor;

(g) il-frazi "traffiku internazzjonali" tfisser trasport li jsir b'bastiment jew inġenji ta' l-ajru mhaddma minn impriża ta' Stat Kontraenti, hlief meta l-bastiment jew l-inġenji ta' l-ajru jiġu unikament imhaddma bejn postijiet fl-Istat Kontraenti l-ieħor;

(h) il-frazi "awtorità kompetenti" tfisser:

(i) fi Spanja: il-Ministru ta' l-Ekonomija u l-Finanzi jew ir-rappreżentant awtorizzat tiegħu;

(ii) f'Malta: il-Ministru responsabbli għall-finanzi jew ir-rappreżentant awtorizzat tiegħu;

(i) il-frazi "ċittadin" tfisser:

(i) individwu li jkollu ċ-ċittadinanza ta' Stat Kontraenti;

(ii) persuna legali, soċjetà jew assoċjazzjoni li tikseb l-istatus tagħha bħala tali mil-ligijiet li jkunu jseħhu fi Stat Kontraenti.

2. Għar-rigward ta' l-applikazzjoni tal-Ftehim f'kull żmien minn Stat Kontraenti, kull frazi li ma tkunx imfissra fih għandu jkollha, kemm-il darba r-rabta tal-kliem ma tkunx teħtiegħ xort'oħra, it-tifsira mogħtija lilha f'dak il-waqt taħt il-liġi ta' dak l-Istat għall-finijiet tat-taxxi li dwarhom ikun japplika l-Ftehim, hekk li kull tifsir taħt il-ligijiet tat-taxxa li jkunu applikabbli f'dak l-Istat ikun jipprevalixxi fuq tifsira mogħtija lil dik il-frazi taħt ligijiet oħra ta' dak l-Istat.

Artiklu 4

RESIDENTI

1. Għall-finijiet ta' dan il-Ftehim, il-frazi "residenti ta' Stat Kontraenti" tfisser kull persuna li, taħt il-ligijiet ta' dak l-Istat, hija soġġetta għat-taxxa hemmhekk minhabba d-domicilju, residenza, post tal-manigg jew xi kriterju ieħor ta' xorta simili, u tinkludi wkoll lil dak l-Istat u lil xi sottodivizjoni politika jew awtorità lokali tiegħu. Din il-frazi, madankollu, ma tinkludix lil xi persuna li tkun soġġetta għat-taxxa f'dak l-Istat għar-rigward biss ta' *income* minn għejjun f'dak l-Istat.

2. Meta minhabba d-disposizzjonijiet tal-paragrafu 1, individwu jkun residenti taż-żewġ Stati Kontraenti, allura l-istatus tiegħu għandu jiġi stabbilit kif ġej:

(a) huwa għandu jitqies li jkun residenti ta' l-Istat li fih ikollu dar permanenti għad-disposizzjoni tiegħu; jekk huwa jkollu dar permanenti għad-disposizzjoni tiegħu fiż-żewġ Stati, huwa għandu jitqies li huwa residenti ta' l-Istat li miegħu r-relazzjonijiet personali u ekonomiċi tiegħu jkunu l-aktar viċini (ċentru ta' interessi vitali);

(b) jekk l-Istat li fih huwa jkollu ċ-ċentru ta' interessi vitali ma jistax jiġi determinat, jew jekk huwa ma jkollu għad-disposizzjoni tiegħu dar permanenti f'ebda Stat, huwa għandu jitqies li jkun residenti biss ta' l-Istat li fih soltu jirrisjedi;

(è) jekk huwa soltu jirrisjedi fiż-żewġ Stati jew f'ebda wieħed minnhom, huwa għandu jitqies li jkun residenti biss ta' l-Istat li jkun ċittadin tiegħu;

(d) jekk huwa jkun ċittadin taż-żewġ Stati jew ta' l-ebda wieħed minnhom, l-awtoritajiet kompetenti ta' l-Istati Kontraenti għandhom jiddeċiedu l-każ bi ftehim bejniethom.

3. Meta minhabba d-disposizzjonijiet tal-paragrafu 1 persuna li ma tkunx individwu tkun residenti taż-żewġ Stati Kontraenti, hija għaldaqstant titqies li tkun residenti biss ta' l-Istat fejn ikun jinsab il-post ta' maniġġ effettiv tagħha.

Artiklu 5

STABILIMENT PERMANENTI

1. Għall-finijiet ta' dan il-Ftehim, il-frazi "stabiliment permanenti" tfisser post tan-negozju fiss li minnu jitmexxa għalkollox jew f'parti minnu x-xogħol ta' impriza.

2. Il-frazi "stabiliment permanenti" tinkludi b'mod speċjali:

(a) post ta' maniġġ;

(b) fergħa;

(è) ufficċju;

(d) fabbrika;

(e) ħanut tax-xogħol, u

(f) minjiera, bir taż-żejt jew tal-gass, barriera jew kull post ieħor ta' estrazzjoni ta' riżorsi naturali.

3. Art li tkun qiegħda tinbena, proġett ta' kostruzzjoni jew stallazzjoni, jew attivitajiet ta' sorveljanza jew konsulenza li jkollhom x'jaqsmu ma' dan, jikkostitwixxu stabiliment permanenti biss meta jkomplu għal aktar minn 12-il xahar.

4. Minkejja d-disposizzjonijiet ta' qabel ta' dan l-Artikolu, il-frazi "stabiliment permanenti" għandha titqies li ma tinkludix:

(a) l-użu ta' faċilitajiet għall-iskop uniku ta' hażna jew ta' wiri ta' oġġetti jew merkanzija li jkunu proprjetà ta' l-impriza;

(b) il-manutenzjoni ta' hażna ta' oġġetti jew merkanzija li jkunu proprjetà ta' l-impriza għall-iskop uniku ta' hażna, wiri jew kunsinna;

(c) il-manutenzjoni ta' hażna ta' oġġetti jew merkanzija li tkun proprjetà ta' l-impriza għall-iskop uniku ta' proċessar minn impriza oħra;

(d) il-manutenzjoni ta' post fiss ta' negozju għall-iskop uniku ta' xiri ta' oġġetti jew merkanzija jew ta' gbir ta' taġħrif, għall-impriza;

(e) il-manutenzjoni ta' post fiss ta' negozju għall-iskop uniku li tiġi ġestita, għall-impriza, xi attività oħra ta' xorta preparatorja jew awżiljarja;

(f) il-manutenzjoni ta' post fiss ta' negozju għall-iskop uniku ta' xi kombinazzjoni ta' attivitajiet imsemmija fis-subparagrafi (a) sa (e), kemm-il darba l-attività kollha tal-post tan-negozju fiss li tirriżulta minn din il-kombinazzjoni tkun waħda ta' xorta preparatorja jew awżiljarja.

5. Minkejja d-disposizzjonijiet tal-paragrafi 1 u 2, meta persuna - li ma tkunx aġent bi *status* indipendenti li għalih japplika l-paragrafu 6 - tkun qed taġixxi u jkollha, u tkun soltu teżerċita, fi Stat Kontraenti awtorità biex taġħmel kuntratti f'isem l-impriza, dik l-impriza għandha titqies li jkollha stabbiliment permanenti f'dak l-Istat għar-rigward ta' kull attività li dik il-persuna taġħmel għal dik l-impriza, sakemm l-attivitajiet ta' dik il-persuna ma jkunux limitati għal dawk imsemmija fil-paragrafu 4 li, jekk jiġu eżerċitati minn go post tan-negozju fiss, ma jirrendux dan il-post ta' negozju fiss bħala stabbiliment permanenti taht id-disposizzjonijiet ta' dak il-paragrafu.

6. Impriza ta' Stat Kontraenti ma għandhiex titqies li jkollha stabbiliment permanenti fl-Istat Kontraenti l-ieħor unikament għaliex tkun tiġġestixxi negozju f'dak l-Istat l-ieħor permezz ta' sensal, aġent b'kummissjoni ġenerali jew kull aġent ieħor bi *status* indipendenti, sakemm dawk il-persuni jkunu qed jaġixxu fil-kors ordinarju tan-negozju taġħhom.

7. Il-fatt li kumpannija li tkun residenti ta' Stat Kontraenti tkun tikkontrolla jew tkun ikkontrollata minn kumpannija li tkun residenti ta' l-Istat Kontraenti l-ieħor, jew li tkun tiġġestixxi negozju f'dak l-Istat l-ieħor (sew permezz ta' stabbiliment permanenti sew xort'oħra), m'għandux fih innifsu jikkostitwixxi lil xi kumpannija waħda jew l-oħra stabbiliment permanenti tal-kumpannija l-oħra.

Artiklu 6

INCOME MINN PROPRJETÀ IMMOBBLI

1. *Income* li jinkiseb minn residenti ta' Stat Kontraenti minn proprjetà immobbli (inkluż *income* mill-agrikoltura jew ħidma fil-boskijiet) li jkunu jinsabu fl-Istat

Kontraenti l-iehor jista' jigi intaxxat f' dak l-Istat l-iehor.

2. Il-frazi "proprjeta immobbli" ghandu jkollha t-tifsira li ghandha taht il-ligi ta' l-Istat Kontraenti li fih tkun tinsab il-proprjeta involuta. Il-frazi ghandha f'kull kaz tinkludi proprjeta aċċessorja ghal proprjeta immobbli, bhejjem f'razzett u taghmir li jintuza fl-agrikoltura jew fil-hidma fil-boskijiet, drittijiet li ghalihom japplikaw id-disposizzjonijiet tal-ligi generali dwar il-proprjeta ta' l-art, l-użufrutt tal-proprjeta immobbli u d-drittijiet dwar hlasijiet varjabbli jew fissi bhala korrispettiv ghal hidma fi, jew id-dritt li jinhadmu, jew ghall-esplorazzjoni ta', depożiti minerali, ghejjun u rizorsi ohra naturali; bastimenti, opri tal-bahar u ingenji ta' l-ajru ma ghandhomx jitqiesu bhala proprjeta immobbli.

3. Id-disposizzjonijiet tal-paragrafu 1 ghandhom ikunu japplikaw ghal *income* li jinkiseb mill-użu dirett, kiri, jew uzu ta' kull xorta ta' proprjeta immobbli.

4. Id-disposizzjonijiet tal-paragrafi 1 u 3 ghandhom japplikaw ukoll ghall-*income* minn proprjeta immobbli ta' impriza u ghal *income* minn proprjeta immobbli uzata ghall-ghemil ta' servizzi personali indipendenti.

Artiklu 7

PROFITTI MINN NEGOZJU

1. Il-profitti ta' impriza ta' Stat Kontraenti ghandhom ikunu biss taxxabli f' dak l-Istat kemm-il darba l-impriza ma tmexxix negozju fl-Istat Kontraenti l-iehor permezz ta' stabbiliment permanenti li jkun qiegħed hemmhekk. Jekk l-impriza tkun qiegħda tmexxi negozju kif hawn aktar qabel imsemmi, il-profitti ta' l-impriza jistgħu jigu intaxxati fl-Istat Kontraenti l-iehor izda biss ghal dik il-parti minnhom daqskemm tkun attribwibbli ghal dak l-istabbiliment permanenti.

2. Bla hsara ghad-disposizzjonijiet tal-paragrafu 3, meta impriza ta' Stat Kontraenti tkun tmexxi negozju fl-Istat Kontraenti l-iehor permezz ta' stabbiliment permanenti li jkun jinsab hemmhekk, ghandhom f'kull Stat Kontraenti jigu attribwiti lil dak l-istabbiliment permanenti l-profitti li kien ikun mistenni jagħmel kieku kien impriza distinta u separata li taħdem fl-istess attivitajiet jew ohrajn bhalhom taht l-istess kundizzjonijiet jew ohrajn bhalhom u li taħdem indipendentement għalkollox mill-impriza li tagħha tkun stabbiliment permanenti.

3. Sabiex jigu stabbiliti l-profitti ta' stabbiliment permanenti, ghandhom ikunu permessi bhala tnaqqis dawk l-ispejjeż li jsiru ghall-għanijiet ta' l-istabbiliment permanenti, inklużi l-ispejjeż eżekuttivi u amministrattivi generali li jkunu saru, sew fl-Istat li fih ikun jinsab l-istabbiliment permanenti sew band' ohra.

4. Sakemm tkun il-konswetudni fi Stat Kontraenti li jstabbilixxi l-profitti li

għandhom jiġu attribwiti lil stabbiliment permanenti minhabba fi tqassim tal-profitti totali ta' l-impriza lill-partijiet diversi tagħha, ebda haġa fil-paragrafu 2 ma għandha tipprekludi lil dak l-Istat Kontraenti milli jistabbilixxi l-profitti li għandhom jiġu intaxxati b'dak it-tqassim skond ma jista' jkun konswetudinarju; il-metodu ta' tqassim li jiġi adottat għandu, madankollu, jkun tali li r-rizultat għandu jkun skond il-prinċipji li jinsabu f'dan l-Artikolu.

5. Ebda profitti ma għandhom jiġu attribwiti lil stabbiliment permanenti minhabba biss f'li jsir ix-xiri minn dak l-istabbiliment permanenti ta' oġġetti jew merkanzija għall-impriza.

6. Għall-għanijiet tal-paragrafi preċedenti, il-profitti li għandhom jiġu attribwiti lill-istabbiliment permanenti għandhom jiġu stabbiliti bl-istess metodu sena wara l-oħra kemm-il darba ma jkunx hemm raġuni tajba u suffiċjenti biex dan ma jsirx.

7. Meta l-profitti jkunu jinkludu oġġetti ta' *income* li qegħdin jiġu trattati separatament fl-Artikoli oħra ta' dan il-Ftehim, għaldaqshekk id-disposizzjonijiet ta' dawk l-Artikoli ma għandhomx jintlaqtu bid-disposizzjonijiet ta' dan l-Artikolu.

Artiklu 8

TBAHHIR U TRASPORT BL-AJRU

1. Il-profitti ta' impriza ta' Stat Kontraenti mit-thaddim ta' bastimenti jew inġenji ta' l-ajru fi traffiku internazzjonali għandhom ikunu taxxabbli biss f'dak l-Istat.

2. Id-disposizzjonijiet tal-paragrafu 1 għandhom ukoll japplikaw għal profitti mill-parteciġazzjoni f'*pool*, negozju bi sħab jew aġenzija b'operat internazzjonali.

Artiklu 9

IMPRIZI ASSOĊJATI

1. Meta:

(a) impriza ta' Stat Kontraenti tipparteċipa direttament jew indirettament fit-tmexxija, kontroll jew kapital ta' impriza ta' l-Istat Kontraenti l-ieħor, jew

(b) l-istess persuni jipparteċipaw direttament jew indirettament fit-tmexxija, kontroll jew kapital ta' impriza ta' Stat Kontraenti u ta' impriza ta' l-Istat Kontraenti l-ieħor,

u f'kull każ isiru jew jiġu imposti kondizzjonijiet bejn iż-żewġ imprizi fir-relazzjonijiet

kummerċjali jew finanzjarji tagħhom li ma jkunux jaqblu ma' dawk li kieku kienu jiġu magħmula bejn impriži indipendenti, f'dak il-każ il-profitti li, kieku ma kinux dawk il-kondizzjonijiet, kienu jakkumulaw għal waħda mill-impriži, imma, minhabba f'dawk il-kondizzjonijiet, ma ġewx hekk akkumulati, jistgħu jiġu inklużi fil-profitti ta' dik l-impriża u intaxxati skond hekk.

2. Meta Stat Kontraenti jkun jinkludi fil-profitti ta' impriża ta' dak l-Istat – u skond hekk jintaxxa - profitti li fuqhom impriża ta' l-Istat Kontraenti l-ieħor ġiet intaxxata f'dak l-Istat l-ieħor u dak l-Istat l-ieħor ikun jaqbel li l-profitti hekk inklużi jkunu profitti li kienu jinqalgħu mill-impriża ta' l-ewwel Stat li kieku l-kondizzjonijiet magħmula bejn iż-żewġ impriži kienu dawk li kienu jsiru bejn żewġ impriži indipendenti, għaldaqshekk dak l-Istat l-ieħor jista' jagħmel it-tibdil li jmiss fl-ammont tat-taxxa imposta hemmhekk fuq dawk il-profitti. Biex jiġi stabbilit it-tibdil, għandhom jitqiesu kif dovut id-disposizzjonijiet l-oħra ta' dan il-Ftehim u l-awtoritajiet kompetenti ta' l-Istati Kontraenti għandhom jekk ikun hekk meħtieġ jikkonsultaw lil xulxin.

Artiklu 10

DIVIDENDI

1. Dividendi mħallsa minn kumpannija li tkun residenti ta' Stat Kontraenti lil residenti ta' l-Istat Kontraenti l-ieħor tista' tiġi intaxxata f'dak l-Istat l-ieħor.

2. Madankollu, dawk id-dividendi jistgħu wkoll jiġu ntaxxati fl-Istat Kontraenti fejn il-kumpannija li tħallas id-dividendi tkun residenti tiegħu u skond il-liġijiet ta' dak l-Istat, imma:

a) Meta d-dividendi jithallsu minn kumpannija li tkun residenti fi Spanja lil residenti ta' Malta li jkun is-sid benefiċjarju ta' dawk id-dividendi, it-taxxa Spanjola hekk imposta m'għandhiex tkun iżjed minn 5 fil-mija ta' l-ammont gross tad-dividendi.

Minkejja d-disposizzjonijiet ta' dan is-subparagrafu, Spanja għandha teżenta mit-taxxa dawk id-dividendi mħallsin minn dik il-kumpannija lil kumpannija li l-kapital tagħha jkun kollu kemm hu jew f'parti minnu maqsum f'ishma u li tkun residenti f'Malta, kemm-il darba jkollha direttament mill-inqas 25 fil-mija tal-kapital tal-kumpannija li tkun qed tħallas id-dividendi.

(b) Meta d-dividendi jithallsu minn kumpannija li tkun residenti ta' Malta lil residenti ta' Spanja li jkun is-sid benefiċjarju ta' dawk id-dividendi, it-taxxa ta' Malta fuq l-ammont gross tad-dividendi m'għandux ikun iżjed minn dak li jithallas fuq il-profitti li minnhom jithallsu d-dividendi.

Dan il-paragrafu m'għandux ikun jolqot it-tassazzjoni tal-kumpannija għar-rigward tal-profitti li minnhom jithallsu d-dividendi.

3. Il-frazi "dividendi" kif din tintuża f'dan l-Artikolu tfisser *income* minn ishma, jew drittijiet oħra, li ma jkunux pretensjonijiet ta' debitu, il-partecipazzjoni fi profitti, kif ukoll *income* minn ishma "*jouissance*" jew drittijiet "*jouissance*", ishma konnessi mal-minjieri jew mal-fundaturi jew ma' drittijiet oħra, kif ukoll *income* li jinghata l-istess trattament fl-intaxxar bhallikieku kien *income* minn ishma skond il-liġijiet ta' l-Istat li tiegħu l-kumpannija li tkun qed tagħmel it-tqassim tkun residenti.

4. Id-disposizzjonijiet tal-paragrafi 1 u 2 m'għandhomx japplikaw jekk is-sid benefiċjarju tad-dividendi, li jkun residenti ta' Stat Kontraenti, imexxi negozju fl-Istat Kontraenti l-ieħor li tiegħu tkun residenti l-kumpannija li thallas id-dividendi, permezz ta' stabbiliment permanenti li jkun sitwat hemmhekk, jew li jkun jagħmel f'dak l-Istat l-ieħor servizzi personali indipendenti minn bażi stabbilita sitwata hemmhekk, u l-*holding* li dwaru d-dividendi jkunu mħallsa jkollu x'jaqsam effettivament ma' dak l-istabbiliment permanenti jew bażi stabbilita. F'dak il-każ għandhom japplikaw id-disposizzjonijiet ta' l-Artikolu 7 jew ta' l-Artikolu 14, skond il-każ.

5. Meta kumpannija li tkun residenti ta' Stat Kontraenti tikseb profitti jew *income* mill-Istat Kontraenti l-ieħor, dak l-Istat l-ieħor ma jista' jimponi ebda taxxa fuq id-dividendi mħallsa mill-kumpannija, hlief daqskemm dawk id-dividendi jithallsu lil residenti ta' dak l-Istat l-ieħor jew daqskemm il-*holding* li dwaru jithallsu d-dividendi jkun effettivament konness ma' dak l-istabbiliment permanenti jew ma' bażi stabbilita sitwati f'dak l-Istat l-ieħor, lanqas jassoġġetta l-profitti mhux imqassma tal-kumpannija għal taxxa fuq il-profitti mhux imqassma tal-kumpannija, ukoll jekk id-dividendi mħallsa jew il-profitti mhux imqassma jkunu kollha kemm huma jew f'parti minnhom jikkonsistu fi profitti jew *income* li jinqalgħu f'dak l-Istat l-ieħor.

Artiklu 11

MGHAX

1. Mghax li jinqala' fi Stat Kontraenti u jithallas lil residenti ta' l-Istat Kontraenti l-ieħor għandu jkun taxxabli biss f'dak l-Istat l-ieħor.

2. Il-frazi "mghax" kif inhi użata f'dan l-Artikolu tfisser *income* minn pretensjonijiet ta' debitu ta' kull xorta, sew jekk assigurati b'ipoteka sew jekk le, u sew jekk ikollhomx dritt li jipparteċipaw fil-profitti tad-debitur sew jekk le, u b'mod partikolari, *income* minn titoli tal-Gvern u *income* minn *bonds* jew *debentures*, inkluzi *premiums* u premjijiet marbutin ma' dawk it-titoli, *bonds* jew *debentures*, kif ukoll kull *income* ieħor li hu assimilat mil-liġijiet tat-taxxa ta' l-Istat li fih huwa maqluġh l-*income* ma' *income* minn flus mislufa. Hlasijiet ta' penali għal hlas tardiv ma jitqisux bhala mghax għall-finijiet ta' dan l-Artikolu.

3. Id-disposizzjonijiet tal-paragrafu 1 m'għandhomx japplikaw jekk is-sid

benefiċjarju ta' l-imghax, li jkun residenti ta' Stat Kontraenti, ikun qed imexxi negozju fl-Istat Kontraenti l-iehor li fih jinqala' l-imghax, permezz ta' stabbiliment permanenti sitwat hemmhekk, jew jagħmel servizzi personali indipendenti f'dak Istat l-iehor minn bażi stabbilita sitwata hemmhekk, u l-pretensjoni ta' debitu li dwarha jithallas l-imghax tkun effettivament konnessa ma' dak l-istabbiliment permanenti jew bażi stabbilita. F'każ bħal dak għandhom japplikaw id-disposizzjonijiet ta' l-Artikolu 7 jew ta' l-Artikolu 14, skond il-każ.

4. Meta, minhabba f'relazzzjoni speċjali bejn min iħallas u s-sid benefiċjarju jew bejn it-tnejn li huma u xi persuna oħra, l-ammont ta' l-imghax, wara li titqies xi tkun il-pretensjoni ta' debitu li dwarha jithallas, ikun iżjed mill-ammont li kien ikun miftiehem bejn min iħallas u s-sid benefiċjarju fin-nuqqas ta' dik ir-relazzjoni, id-disposizzjonijiet ta' dan l-Artikolu għandhom ikunu japplikaw biss għall-ammont l-aħħar imsemmi. F'każ bħal dak, il-parti żejda tal-ħlasijiet tibqa' taxxabli skond il-ligijiet ta' kull Stat Kontraenti, fil-qies tad-disposizzjonijiet l-oħra ta' dan il-Ftehim.

Artikolu 12

ROYALTIES

1. *Royalties* li jinqalgħu fi Stat Kontraenti u min jirċevihom ikun residenti fl-Istat Kontraenti l-iehor għandhom jiġu intaxxati biss f'dak l-Istat l-iehor.

2. Il-frażi "*royalties*" kif din tintuża f'dan l-Artikolu tfisser ħlasijiet ta' kull xorta li jsiru b'korrissettiv għall-użu ta', jew għall-jedd ta' l-użu, ta' xi dritt ta' l-awtur ta' xogħol letterarju, artistiku jew xjentifiku inklużi *films* ċinematografiċi, jew *films*, *tapes* u kull mezz ieħor għal riproduzzjoni ta' immaġni jew ħoss, *privattiva*, *trade mark*, disinn jew mudell, pjan, formula jew proċess sigrieti, jew għal informazzjoni dwar konoxxenza industrijali, kummerċjali jew xjentifika.

3. Id-disposizzjonijiet tal-paragrafi 1 u 2 m'għandhomx japplikaw jekk is-sid benefiċjarju tar-*royalties*, li jkun residenti ta' Stat Kontraenti, ikun qed imexxi negozju fl-Istat Kontraenti l-iehor li fih jinqalgħu r-*royalties*, permezz ta' stabbiliment permanenti sitwat hemmhekk, jew ikun jagħmel servizzi personali indipendenti f'dak l-Istat l-iehor minn bażi stabbilita sitwata hemmhekk, u d-dritt jew il-proprjetà li dwarhom jithallsu r-*royalties* ikunu effettivament konnessi ma' dak l-istabbiliment permanenti jew bażi stabbilita. F'dak il-każ għandhom japplikaw id-disposizzjonijiet ta' l-Artikolu 7 jew l-Artikolu 14, skond il-każ.

4. Meta, minhabba r-relazzjoni speċjali bejn min iħallas u s-sid benefiċjarju effettiv jew bejniethom it-tnejn u xi persuna oħra, l-ammont tar-*royalties*, fil-qies ta' x'ikun l-użu, id-dritt jew l-informazzjoni li jithallsu għalihom, ikun iżjed mill-ammont li kien ikun miftiehem bejn min iħallas u s-sid benefiċjarju fin-nuqqas ta' dik ir-relazzjoni, id-disposizzjonijiet ta' dan l-Artikolu għandhom japplikaw biss għall-ammont l-aħħar

imsemmi. F'dak il-każ, il-parti żejda tal-ħlasijiet għandha tibqa' taxxabbli skond il-ligijiet ta' kull Stat Kontraenti, wara li jitqiesu d-disposizzjonijiet l-oħra ta' dan il-Ftehim.

Artikolu 13

QLIGH KAPITALI

1. Qligh li jinkiseb minn resident ta' Stat Kontraenti mit-trasferiment ta' proprjetà immobbli msemmi fl-Artikolu 6 u li tkun tinsab fl-Istat Kontraenti l-ieħor jista' jiġi intaxxat f'dak l-Istat l-ieħor.

2. Qligh mit-trasferiment ta' proprjetà mobbli li tagħmel parti mill-proprjetà tan-negozju ta' stabbiliment permanenti li impriza ta' Stat Kontraenti jkollha fl-Istat Kontraenti l-ieħor jew ta' proprjetà mobbli li tkun tappartjeni għal bażi stabbilita disponibbli għal residenti ta' Stat Kontraenti fl-Istat Kontraenti l-ieħor bil-għan li jitwettqu servizzi personali indipendenti, inkluż dak il-qligh mit-trasferiment ta' dak l-istabbiliment permanenti (waħdu jew flimkien ma' l-impriza kollha) jew ta' dik il-bażi stabbilita, jista' jiġi intaxxat f'dak l-Istat l-ieħor.

3. Qligh li jinkiseb minn impriza fi Stat Kontraenti mit-trasferiment ta' bastimenti jew inġenji ta' l-ajru li jithaddmu fi traffiku internazzjonali, jew minn proprjetà mobbli li tkun tappartjeni għat-thaddim ta' dawk il-bastimenti jew inġenji ta' l-ajru, għandhom jiġu intaxxati biss f'dak l-Istat.

4. Qligh li jinkiseb minn resident fi Stat Kontraenti mit-trasferiment ta' ishma jew jeddijiet komparabbli f'kumpannija, li jkollhom aktar minn 50% tal-valur tagħhom jikkonsisti direttament jew indirettament fi proprjetà immobbli sitwata fl-Istat Kontraenti l-ieħor jista' jiġi intaxxat f'dak l-Istat Kontraenti l-ieħor.

5. Qligh mit-trasferiment ta' proprjetà li ma tkunx dik imsemmija fil-paragrafi 1, 2, 3 u 4 għandu jkun taxxabbli biss fl-Istat Kontraenti li t-trasferent ikun residenti tiegħu.

Artiklu 14

SERVIZZI PERSONALI INDEPENDENTI

1. *Income* li jinkiseb minn individwu li jkun resident fi Stat Kontraenti għal servizzi professjonali jew attivitajiet oħra ta' xorta indipendenti għandu jiġi intaxxat biss f'dak l-Istat kemm-il darba ma jkollux bażi stabbilita regolarment disponibbli għalih fl-Istat kontraenti l-ieħor bil-għan li jwettaq l-attivitajiet tiegħu. Jekk ikollu bażi stabbilita bħal dik, hi biss dik il-parti mill-*income* tiegħu daqskemm tkun attribwibbli lil dik il-bażi

stabbilita li tista' tiġi intaxxata f' dak l-Istat Kontraenti l-ieħor;

2. Il-frazi "servizzi professjonali" tinkludi attivitajiet letterarji, artistici, edukattivi jew ta' taġlim li huma speċjalment indipendenti kif ukoll l-attivitajiet indipendenti ta' tobba, avukati, inġiniera, periti u *accountants*.

Artikolu 15

SERVIZZI PERSONALI DIPENDENTI

1. Bla ħsara għad-disposizzjonijiet ta' l-Artikoli 16, 18 u 19, is-salarji, il-pagi u kumpens ieħor bħal dak li jinkisbu minn residenti ta' Stat Kontraenti dwar xi impjieg għandhom ikunu taxxabli biss f' dak l-Istat kemm-il darba l-impjieg ma jiġix eżerċitat fl-Istat Kontraenti l-ieħor. Jekk l-impjieg jiġi hekk eżerċitat, dak il-kumpens li jinkiseb minnu jista' jiġi intaxxat f' dak l-Istat l-ieħor.

2. Minkejja d-disposizzjonijiet tal-paragrafu 1, il-kumpens li jinkiseb minn residenti ta' Stat Kontraenti dwar impjieg eżerċitat fl-Istat Kontraenti l-ieħor għandu jkun taxxabli biss fl-Istat l-ewwel imsemmi jekk:

(a) min jirċevih ikun preżenti fl-Istat l-ieħor għal perjodu jew perjodi li ma jaqbzux it-total ta' 183 ġurnata f'perjodu ta' 12-il xahar li jibda għaddej jew itemm fis-sena kalendarja involuta; u

(b) il-kumpens jiġihallas minn, jew f' isem, prinċipal li ma jkunx residenti ta' l-Istat l-ieħor; u

(c) il-kumpens ma jkunx piż fuq l-istabbiliment permanenti jew bażi stabbilit li l-prinċipal ikollu fl-Istat l-ieħor.

3. Minkejja d-disposizzjonijiet preċedenti ta' dan l-Artikolu, il-kumpens li jinkiseb dwar impjieg eżerċitat abbord bastiment jew inġenji ta' l-ajru operati fi traffiku internazzjonali minn impriza ta' Stat Kontraenti, jista' jiġi intaxxat f' dak l-Istat.

Artikolu 16

DRITTIJIET TAD-DIRETTURI

Id-drittijiet tad-diretturi u ħlasijiet simili oħra li jinkisbu minn residenti ta' Stat Kontraenti fil-kapaċità tiegħu ta' membru tal-bord ta' diretturi ta' kumpannija li tkun residenti ta' l-Istat Kontraenti l-ieħor jistgħu jiġu intaxxati f' dak l-Istat l-ieħor.

Artikolu 17

ARTISTI U SPORTIVI

1. Minkejja d-disposizzjonijiet ta' l-Artikoli 14 u 15, *income* li jinkiseb minn residenti ta' Stat Kontraenti bhala whud li jagħtu spetaklu, bhal artisti tat-teatru, tal-*films* cinematografiċi, tar-radju jew tat-televiżjoni, jew bhala mużiċista, jew bhala sportiv, mill-attivitajiet personali tiegħu bhala tali li jiġu eżerċitati fl-Istat Kontraenti l-ieħor, jistgħu jiġu intaxxati f'dak l-Istat l-ieħor.

2. Meta *income* dwar attivitajiet personali eżerċitati minn min jagħti spetaklu jew sportiv fil-kapaċità tiegħu bhala tali jingabar mhux minn min jagħti spetaklu jew l-isportiv innifsu iżda minn xi persuna oħra, dak l-*income* jista', minkejja d-disposizzjonijiet ta' l-Artikoli 7, 14 u 15, jiġi intaxxat fl-Istat Kontraenti li fih jiġu eżerċitati l-attivitajiet ta' min jagħti spetaklu jew ta' l-isportiv.

Artikolu 18

PENSJONIJIET

Bla ħsara għad-disposizzjonijiet tal-paragrafu 2 ta' l-Artikolu 19, pensjonijiet u kumpens ieħor simili li jithallsu lil residenti ta' Stat Kontraenti minhabba f'xi impjeg imghoddi għandhom ikunu taxxabli biss f'dak l-Istat.

Artikolu 19

SERVIZZ TAL-GVERN

1. (a) Kull salarju, paga u rimunerazzjoni simili, minbarra pensjoni, mhallsa minn Stat Kontraenti jew minn sottodivizjoni politika jew minn awtorità lokali tiegħu lil individwu għar-rigward ta' servizzi mogħtijin lil dak l-Istat jew sottodivizjoni jew awtorità għandhom ikunu taxxabli biss f'dak l-Istat.

(b) Madankollu, kull salarju, paga u kumpens simili għandhom ikunu taxxabli biss fl-Istat Kontraenti l-ieħor jekk is-servizzi jingħataw f'dak l-Istat u l-individwu jkun residenti f'dak l-Istat li:

(i) jkun ċittadin ta' dak l-Istat; jew

(ii) ma jkunx sar residenti ta' dak l-Istat unikament sabiex jagħti dawk is-servizzi.

2. (a) Kull pensjoni mhallsa minn, jew li toħroġ minn fond maħluq minn,

Stat Kontraenti jew minn sottodivizjoni politika jew minn awtorità lokali tiegħu lil individwu għar-rigward ta' servizzi mogħtija lil dak l-Istat jew sottodivizjoni jew awtorità għandhom ikunu taxxabbli biss f'dak l-Istat.

(b) Madankollu, dik il-pensjoni għandha tkun taxxabbli biss fl-Istat Kontraenti l-ieħor jekk l-individwu jkun residenti ta', u cittadin ta', dak l-Istat.

3. Id-disposizzjonijiet ta' l-Artikoli 15, 16, 17 u 18 għandhom japplikaw għal kull salarju, paga u kumpens simili u għal pensjonijiet, għar-rigward ta' servizzi mogħtijin f'dak li għandu x'jaqşam ma' negozju li jkun ġestit minn Stat Kontraenti jew minn sottodivizjoni politika jew minn awtorità lokali tiegħu.

Artikolu 20

STUDENTI U APPRENDISTI KUMMERĊJALI

Hlasijiet li student jew apprendist fil-kummerċ li jkun jew kien minnufih qabel ma jżur Stat Kontraenti residenti ta' l-Istat Kontraenti l-ieħor u li jkun preżenti fl-Istat Kontraenti l-ewwel imsemmi unikament bil-għan ta' l-edukazzjoni jew it-taħriġ tiegħu, jirċievi għall-fini tal-manteniment, l-edukazzjoni jew it-taħriġ tiegħu ma għandux jiġi intaxxat fl-Istat Kontraenti l-ewwel imsemmi, sakemm daww il-ħlasijiet joriġinaw minn ghejjun li ma jkunux f'dak l-Istat Kontraenti l-ewwel imsemmi.

Artikolu 21

INCOME IEHOR

1. Elementi ta' *income* ta' residenti ta' Stat Kontraenti, jinqalgħu minn fejn jinqalgħu, li ma jkunux ittrattati fl-Artikoli ta' hawn aktar qabel ta' dan il-Ftehim għandhom ikunu taxxabbli biss f'dak l-Istat.

2. Id-disposizzjonijiet tal-paragrafu 1 ma għandhomx japplikaw għal *income*, li ma jkunx *income* minn proprjetà immobbli kif imfisser fil-paragrafu 2 ta' l-Artikolu 6, jekk min jirċievi dak l-*income*, għax ikun residenti ta' Stat Kontraenti, jiġġestixxi negozju fl-Istat Kontraenti l-ieħor permezz ta' stabbiliment permanenti li jkun jinsab f'dak l-Istat, jew iwettaq f'dak l-Istat l-ieħor servizzi personali indipendenti minn bażi stabbilita li tkun tinsab hemmhekk u d-dritt jew il-proprjetà li dwarhom jithallas l-*income* jkun effettivament konness ma' dak l-istabbiliment permanenti jew bażi stabbilita. F'dak il-każ għandhom japplikaw id-disposizzjonijiet ta' l-Artikolu 7 jew ta' l-Artikolu 14, skond il-każ.

Artiklu 22

ELIMINAZZJONI TA' TASSAZZJONI DOPPJA

It-tassazzjoni doppja għandha tiġi eliminata kif ġej:

1. Fi Spanja:

It-tassazzjoni doppja għandha tiġi eliminata jew skond id-disposizzjonijiet tal-leġislazzjoni interna tagħha jew skond id-disposizzjonijiet li ġejjin:

(a) Meta residenti ta' Spanja jikseb *income* li, skond id-disposizzjonijiet ta' dan il-Ftehim, jista' jkun f' Malta, Spanja għandha tippermetti:

(i) bhala tnaqqis mit-taxxa fuq *l-income* ta' dak ir-residenti ammont daqsinsaw it-taxxa fuq *l-income* li tithallas f' Malta;

(ii) it-tnaqqis tat-taxxa korporattiva sottostanti għandu jingħata skond il-leġislazzjoni interna ta' Spanja.

Dak it-tnaqqis ma għandux, madankollu, jaqbeż dik il-parti mit-taxxa fuq *l-income* kif din tinħadem qabel ma jingħata t-tnaqqis, li jkun attribwibbli għall-*income* li jista' jiġi intaxxat f' Malta.

(b) Meta skond xi disposizzjoni tal-Ftehim *income* li jinkiseb minn residenti ta' Spanja jkun eżenti mit-taxxa fi Spanja, Spanja tista' madankollu, meta tkun qed tikkalkola l-ammont ta' taxxa fuq *l-income* li jifdal ta' dak ir-residenti, tqis *l-income* eżentat.

2. F' Malta:

Bla ħsara għad-disposizzjonijiet tal-liġi ta' Malta dwar l-ghoti bi kreditu għat-taxxa ta' Malta għar-rigward tat-taxxa barranija, meta, skond id-disposizzjonijiet ta' dan il-Ftehim, ikun hemm inkluzi fi stima ta' Malta *income* minn sorsi fi Spanja, it-taxxa Spanjola fuq dak *l-income* għandha tiġi permessa bhala kreditu għat-taxxa ta' Malta relattiva li tithallas dwarhom.

Artikolu 23

EBDA DISKRIMINAZZJONI

1. Iċ-ċittadini ta' Stat Kontraenti ma għandhomx jiġu suġġetti fl-Istat Kontraenti l-iehor għal xi tassazzjoni jew għal xi htieġa li jkunu konnessi ma' dan, li tkun diversa jew ta' iktar piż mit-tassazzjoni u htigiet konnessi li għalihom ċittadini ta' dak l-

Istat l-iehor fl-istess ċirkostanzi, b'mod partikolari għar-rigward ta' residenza, huma jew jistgħu jkunu sugġetti. Din id-disposizzjoni għandha, minkejja d-disposizzjonijiet ta' l-Artikolu 1, tkun tapplika wkoll għal persuni li ma jkunux residenti ta' xi Stat Kontraenti wieħed jew it-tnejn li huma.

2. L-intaxxar ta' stabbiliment permanenti li impriza ta' Stat Kontraenti jkollha fl-Istat Kontraenti l-iehor ma għandux jingabar inqas favorevolment f'dak Istat l-iehor mit-tassazzjoni miġbura fuq imprizi ta' dak l-Istat l-iehor li jkun qiegħed iwettaq l-istess attivitajiet. Din id-disposizzjoni ma għandhiex tiftiehem bħala li tobbliga lil Stat Kontraenti li jikkonċedi lil residenti ta' l-Istat Kontraenti l-iehor xi *allowances*, helsien u tnaqqis personali għall-għanijiet ta' tassazzjoni minhabba fl-*istatus* ċivili jew responsabbiltajiet familjari li tikkonċedi lir-residenti tagħha.

3. Hlief fejn d-disposizzjonijiet tal-paragrafu 1 ta' l-Artikolu 9, il-paragrafu 4 ta' l-Artikolu 11, jew il-paragrafu 4 ta' l-Artikolu 12 japplikaw, mghax, *royalties* u hlasijiet oħra li jithallsu minn impriza ta' Stat Kontraenti lil residenti ta' l-Istat Kontraenti l-iehor għandhom, għall-għan li jiġu stabbiliti x'inhuma l-profitti taxxabbli ta' dik l-impriza, jiġu mnaqqsa taht l-istess kondizzjonijiet bhallikieku kienu mhallsa lil residenti ta' l-ewwel imsemmi Stat.

4. Imprizi ta' Stat Kontraenti, li l-kapital tagħhom ikun għalkollox jew f'parti proprjeta jew taht il-kontroll, sew dirett sew mhux dirett, ta' resident wieħed jew aktar ta' l-Istat Kontraenti l-iehor, ma jkunux sugġetti fl-Istat l-ewwel imsemmi għal xi tassazzjoni jew htieġa konnessa ma' dan li tkun xort'oħra jew ta' iktar piż mit-tassazzjoni u htigiet konnessi li għalihom ikunu jew jistgħu jkunu assoġġettati l-imprizi ta' l-ewwel imsemmi Stat.

5. Id-disposizzjonijiet ta' dan l-Artikolu għandhom, minkejja d-disposizzjonijiet ta' l-Artikolu 2, ikunu japplikaw għal taxxi ta' kull xorta u deskrizzjoni.

Artikolu 24

PROĊEDURA GĦAL FTEHIM REĊIPROKU

1. Meta persuna jidhrilha li l-azzjonijiet ta' xi wieħed jew taż-żewġ Stati Kontraenti jirriżultawlu jew jistgħu jirriżultawlu f'tassazzjoni li ma tkunx skond id-disposizzjonijiet ta' dan il-Ftehim, huwa jista', irrispettivament mir-rimedji provduti mill-liġi domestika ta' dawk l-Istati, jippreżenta l-każ tiegħu quddiem l-awtorità kompetenti ta' l-Istat Kontraenti li tiegħu huwa jkun residenti jew, jekk il-każ tiegħu jkun jaqa' taht il-paragrafu 1 ta' l-Artikolu 23, lil dik ta' l-Istat Kontraenti li tiegħu huwa jkun ċittadin. Il-każ għandu jiġi ppreżentat fi żmien tliet snin mill-ewwel avviz ta' l-azzjoni li tirriżulta f'intaxxar li ma jkunx skond id-disposizzjonijiet tal-Ftehim.

2. L-awtorità kompetenti għandha tistharreġ, jekk ikunx jidhrilha li l-

ogġezzjoni tkun ġustifikata u jekk hi nnifisha ma tkunx tista' tasal għal soluzzjoni sodisfaċenti, li tirrisolvi l-każ bi ftehim reċiproku ma' l-awtorità kompetenti ta' l-Istat Kontraenti l-iehor, bil-għan li tiġi evitata tassazzjoni li ma tkunx skond il-Ftehim. Meta jintlaħaq ftehim dan għandu jiġi implimentat minkejja kull terminu ta' żmien fil-liġi domestika ta' l- Stati Kontraenti.

3. L-awtoritajiet kompetenti ta' l-Istati Kontraenti għandhom jistharrġu kif jirrisolvu permezz ta' ftehim reċiproku kull diffikultà jew dubbju li jista' jittnissel dwar l-interpretazzjoni jew l-applikazzjoni tal-Ftehim. Dawn jistgħu wkoll jikkonsultaw flimkien għall-eliminazzjoni ta' tassazzjoni doppja f'dawk il-każijiet li m'hemm xejn provdut dwarhom fil-Ftehim.

4. L-awtoritajiet kompetenti ta' l-Istati Kontraenti jistgħu jikkomunikaw ma' xulxin direttament bil-għan li jilhqgħu ftehim fis-sens tal-paragrafi preċedenti. Meta jkun rakkomandabbli, bil-għan li jilhqgħu ftehim, li jkun hemm skambju ta' opinjonijiet, dan l-iskambju jista' jsehh permezz ta' kummissjoni li tkun tikkonsisti f'rappreżentanti ta' l-awtoritajiet kompetenti ta' l-Istati Kontraenti.

Artikolu 25

SKAMBJU TA' INFORMAZZJONI

1. L-awtoritajiet kompetenti ta' l-Istati Kontraenti għandhom jiskambjaw dik l-informazzjoni li tidher li tista' tkun meħtieġa għat-twettiq tad-disposizzjonijiet ta' dan il-Ftehim jew għall-ammisnistrazzjoni jew l-infurzar tal-liġijiet domestiċi għar-rigward ta' taxxi koperti minn dan il-Ftehim imposti f'isem l-Istati Kontraenti, jew tassottodivizionijiet politiċi jew awtoritajiet lokali tagħhom, sakemm l-intaxxar li jsir taħthom ma jkunx kuntrarju għall-Ftehim. L-iskambju ta' informazzjoni mhuwiex ristrett bl-Artikolu 1.

2. Kull informazzjoni li tiġi riċevuta mill-Istat Kontraenti għandha tiġi ttrattata bħala waħda sigrieta bl-istess mod bhall-informazzjoni miksuba taħt il-liġijiet domestiċi ta' dak l-Istat u għandha tiġi żvelata biss lil persuni jew awtoritajiet (inklużi grati u korpi amministrattivi) involuti fl-istima jew fil-ġbir ta', l-infurzar jew prosekuzzjoni dwar, jew id-deċiżjoni ta' appelli dwar taxxi ta' kull tip u deskrizzjoni jew is-supervizzjoni tal-persuni jew l-awtoritajiet imsemmija. Dawk il-persuni jew awtoritajiet għandhom jużaw dik l-informazzjoni biss għal dawk l-għanijiet. Huma jistgħu jiżvelaw l-informazzjoni fi proċeduri tal-qorti bil-miftuħ jew f'deċiżjonijiet ġudizzjarji.

3. F'ebda każ ma għandhom id-disposizzjonijiet tal-paragrafi 1 u 2 jiftiehm bħala li jimponu fuq Stat Kontraenti l-obbligu:

(a) li jwettaq miżuri amministrattivi li ma jkunux jaqblu mal-liġijiet u mal-prattika amministrattiva ta' dak jew ta' l-Istat Kontraenti l-iehor;

(b) li jagħti informazzjoni li ma tkunx tista' tinkiseb taħt il-ligijiet jew fil-kors normali ta' l-amministrazzjoni ta' dak jew ta' l-Istat Kontraenti l-ieħor;

(ċ) li jagħti informazzjoni li tikxef xi sigriet ta' sengħa, negozju, industrija, kummerċ jew professjoni jew proċess tal-kummerċ, jew informazzjoni, li meta tiġi żvelata din tkun tmur kontra l-ordni pubbliku (*ordre public*).

4. Jekk tintalab informazzjoni minn Stat Kontraenti skond dan l-Artikolu, l-Istat Kontraenti l-ieħor għandu juża l-mezzi tiegħu ta' ġbir ta' l-informazzjoni biex jikseb l-informazzjoni mitluba, ukoll jekk l-Istat l-ieħor jista' ma jkollux bżonn dik l-informazzjoni għall-iskopijiet tat-taxxa tiegħu. L-obbligu kontenut fil-paragrafu preċedenti huwa soġġett għal-limitazzjonijiet tal-paragrafu 3 imma fl-ebda każ ma għandhom dawn il-limitazzjonijiet jiftiehm bħala li jippermettu Stat Kontraenti li jiċhad li jipprovdi informazzjoni għar-raġuni biss li huwa ma jkollux interess domestiku f'dik l-informazzjoni.

5. F'ebda każ ma għandhom id-disposizzjonijiet tal-paragrafu 3, għar-rigward ta' każijiet ta' frodi tat-taxxa, jiftiehm bħala li jippermettu Stat Kontraenti li jiċhad li jipprovdi informazzjoni għar-raġuni biss li l-informazzjoni tkun miżmuma minn bank, istituzzjoni finanzjarja oħra, *nominee* jew persuna li tkun qiegħda taġixxi f'kapacità ta' aġent jew f'kapacità fiduċjarja jew għax tkun konnessa ma' interessi ta' titolu f'persuna.

Artikolu 26

MEMBRI TA' MISSJONIJIET DIPLOMATIĊI U KARIGI KONSULARI

Ebda haġa f'dan il-Ftehim ma għandha tolqot il-privileġġi ta' membri ta' missjonijiet diplomatiċi jew karigi konsulari taħt ir-regoli ġenerali tad-dritt internazzjonali jew taħt id-disposizzjonijiet ta' kull ftehim speċjali.

Artikolu 27

LIMITAZZJONI TA' BENEFIĊĊJI

1. Id-disposizzjonijiet ta' dan il-Ftehim m'għandhomx ikunu japplikaw għal:

(a) persuni li jkunu jgawdu trattament fiskali speċjali bis-saħħa tal-ligijiet jew tal-prattika amministrattiva ta' xi wiehed mill-Istati Kontraenti li huma identifikati fil-Protokoll ma' dan il-Ftehim;

(b) persuni li jkunu jgawdu trattament fiskali speċjali ta' xi wiehed mill-Istati Kontraenti li għe identifikat bħala tali bi ftehim reċiproku bejn l-awtoritajiet kompetenti.

Lanqas ma għandhom japplikaw għal *income* li jinkiseb mingħand persuni bħal dawn minn residenti ta' l-Istat Kontraenti l-ieħor, jew għal ishma jew drittijiet oħra f' persuni bħal dawn li s-sid tagħhom ikun resident bħal dak imsemmi.

2. Minkejja kull disposizzjoni oħra ta' dan il-Ftehim, residenti fi Stat Kontraenti ma għandux jirċievi l-benefiċċju ta' xi riduzzjoni fi jew eżenzjoni minn taxxi li hu provdut dwarhom f' dan il-Ftehim mill-Istat Kontraenti l-ieħor jekk l-għan prinċipali tal-holqien jew l-eżistenza ta' dak ir-residenti jew ta' xi persuna konnessa ma' dak ir-residenti jkun il-ksib ta' benefiċċji taht dan il-Ftehim li ma kinux ikunu disponibbli kieku ma kienx għal dan il-Ftehim.

Artikolu 28

BIDU FIS-SEHH

1. Il-Gvernijiet ta' l-Istati Kontraenti għandhom javżaw lil xulxin permezz tal-kanali diplomatiċi li jkunu tharsu l-proċeduri interni mehtiega minn kull Stat Kontraenti għall-bidu fis-sehh ta' dan il-Ftehim.

2. Dan il-Ftehim għandu jibda jsehh wara l-perijodu ta' tliet xhur wara d-data li jasal l-aħħar wiehed mill-avviżi msemmija fil-paragrafu 1 u d-disposizzjonijiet tiegħu għandu jkollhom effett:

(a) fi Spanja:

(i) dwar taxxi stmati perjodikament, għar-rigward ta' taxxi fuq l-*income* li jkollhom x'jaqsmu ma' xi sena taxxabbli li tibda fi jew wara d-data meta l-Ftehim jibda jsehh;

(ii) dwar il-każi l-oħra kollha, id-data meta l-Ftehim jibda jsehh.

(b) f'Malta:

għar-rigward ta' taxxi li jingabru għal xi sena taxxabbli li tibda fi jew wara l-ewwel ta' Jannar tas-sena minnufih wara s-sena li fiha jibda jsehh il-Ftehim.

Artikolu 29

TERMINAZZJONI

Dan il-Ftehim għandu jibqa' jseħh sakemm jiġi terminat minn xi Stat Kontraenti. Sew Stat Kontraenti wiehed sew l-ieħor jistgħu jittterminaw il-Ftehim, permezz tal-kanali diplomatici, billi jagħtu avviż bil-miktub tat-terminazzjoni mill-inqas sitt xhur qabel tmiem xi sena kalendarja li tibda minnufih wara li jiskadi perjodu ta' hames snin mid-data meta l-Ftehim jibda jseħh. F'dak il-każ, il-Ftehim għandu jtemm milli jibqa' jseħh:

(a) fi Spanja:

(i) dwar taxxi stmati perjodikament, għar-rigward ta' taxxi fuq l-*income* li jkollhom x'jaqsmu ma' xi sena taxxabli li tibda fi jew wara l-ewwel ta' Jannar tas-sena kalendarja li tiġi minnufih wara s-sena li fiha jingħata l-avviż;

(ii) għar-rigward tat-taxxi l-oħra kollha, l-ewwel jum ta' Jannar tas-sena kalendarja li tiġi minnufih wara s-sena li fiha jingħata l-avviż.

(b) f'Malta:

għar-rigward ta' taxxi li jingabru għal xi sena taxxabli li tibda fi jew wara l-ewwel jum ta' Jannar tas-sena kalendarja minnufih wara s-sena li fiha jingħata l-avviż.

B'xhieda ta' dan is-sottoskritti, awtorizzati kif imiss biex jagħmlu dan, iffirraw dan il-Ftehim.

Magħmul f'żewġ originali f'Madrid fit-8 jum ta' Novembru, 2005, fl-ilsien Spanjol u Ingliz, iż-żewġ testi awtentiċi ndaq. F'każ ta' xi divergenza fl-interpretazzjoni, din għandha tiġi rizzolta skond it-test Ingliz.

Għal Malta

Michael Frendo
Ministru għall-Affarijiet Barranin

Għar-Renju ta' Spanja

Miguel Angel Moratinos
Ministru għall-Affarijiet Barranin
u l-Kooperazzjoni

PROTOKOLL

Fil-waqt ta' l-iffirmar tal-Ftehim bejn ir-Renju ta' Spanja u Malta għal Ftehim dwar ħelsien minn taxxa doppja u l-prevenzjoni ta' evażjoni fiskali dwar taxxi fuq l-*income*, is-sottskritti qablu dwar dawn id-disposizzjonijiet li ġejjin, li jiformaw parti integrali minn dan il-Ftehim:

1. Dwar l-Artikolu 27

B'riferenza għal paragrafu 1 (a) ta' l-Artikolu 27 jiftiehem li:

(a) fil-każ ta' Spanja, ma teżisti l-ebda leġislazzjoni jew prattika amministrattiva li taħtha xi persuni jistgħu jgawdu minn xi trattament fiskali speċjali:

(b) fil-każ ta' Malta, persuni li jgawdu trattament fiskali speċjali huma persuni li skond id-disposizzjonijiet ta' l-Att ta' l-1973 dwar il-Bastimenti Merkantili – sakemm dawn ikunu japplikaw - mhumiex sugġetti għat-taxxa fuq il-profitti miksuba mit-thaddim ta' bastimenti fi traffiku internazzjonali;

2. Dwar l-Artikolu 25.5

Il-frazi "frodli tat-taxxa" għandha tiġi interpretata skond il-linji ta' interpretazzjoni komuni tal-frazi kif iddikjarat f'Taqsimha V Ittra A tar-Rapport tal-Progress ta' l-2003 ta' l-OECD: "Titjib fl-Aċċess għall-Infurmazzjoni tal-Banek għal Skopijiet ta' Taxxa".

B'xhieda ta' dan is-sottoskritti, awtorizzati kif imiss biex jagħmlu dan, iffirmaw dan il-Ftehim.

Magħmul f'żewġ oriġinali f'Madrid fit-8 jum ta' Novembru, 2005, fl-ilsien Spanjol u Ingliz, iż-żewġ testi awtentici ndaqs. F'każ ta' xi divergenza fl-interpretazzjoni, din għandha tiġi risolta skond it-test Ingliz.

Għal Malta

Michael Frendo
Ministru għall-Affarijiet Barranin

Għar-Renju ta' Spanja

Miguel Angel Moratinos
Ministru għall-Affarijiet Barranin
u l-Kooperazzjoni

L.N. 234 of 2006

**INCOME TAX ACT
(CAP. 123)**

**Double Taxation Relief (Taxes on Income)
(The Kingdom of Spain) Order, 2006**

IN exercise of the powers conferred by article 76 of the Income Tax Act, the Prime Minister and Minister of Finance has made the following order:—

Citation.

1. The title of this order is the Double Taxation Relief (Taxes on Income) (The Kingdom of Spain) Order, 2006.

Arrangements to have effect.

2. It is hereby declared:—

(a) that the arrangements specified in the Convention set out in the Schedule to this Order have been made with the Kingdom of Spain with a view to affording relief from double taxation in relation to the following taxes imposed by the laws of the Kingdom 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;

(b) that it is expedient that those arrangements should have effect;

(c) that the Convention shall be deemed to have come into force on the 12 September, 2006.

SCHEDULE

CONVENTION

BETWEEN

SCHEDULES PAS ~~MALTA~~ 24 PAGES

AND

THE KINGDOM OF SPAIN

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

Malta 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:

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, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. 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 income tax on non residents; and
- iv) local taxes on income;

(hereinafter referred to as "Spanish tax").

b) in Malta:

the income tax;

(hereinafter referred to as "Malta 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. 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 Kingdom of Spain and, when used in a geographical sense, means the territory of the Kingdom of Spain, including 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;
- b) the term "Malta" means the Republic of Malta and, when used in a geographical sense, means the Island of Malta, the Island of Gozo and the other islands of the Maltese archipelago including the territorial waters thereof, as well as any area of the sea-bed, its sub-soil and the superjacent water column adjacent to the territorial waters, wherein Malta exercises sovereign rights, jurisdiction, or control in accordance with international law and its national law, including its legislation relating to the exploration of the continental shelf and exploitation of its natural resources;
- c) the terms "a Contracting State" and "the other Contracting State" mean Spain or Malta, 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 that is treated as a body corporate for tax purposes;

- f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- h) the term "competent authority" means:
 - i) in Spain: the Minister of Economy and Finance or his authorised representative;
 - ii) in Malta: the Minister responsible for finance or his authorised representative;
- 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 laws in force in a Contracting State.

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 only 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 only 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 only 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 only 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 only 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, and

- f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. A building site, construction, installation project, or supervisory or consulting activities connected therewith, constitutes a permanent establishment only if it lasts more than 12 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 subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 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.

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. 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, boats 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 and to income from immovable property used for the performance of independent personal services.

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 permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere.
4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. 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.
6. 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.
7. 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 of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.
2. The provisions of paragraph 1 shall also apply to profits from the 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 a Contracting State 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 Contracting State has been charged to tax in that other 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.

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:

- a) When the dividends are paid by a company which is a resident of Spain to a resident of Malta who is the beneficial owner thereof, the Spanish tax so charged shall not exceed 5 per cent of the gross amount of the dividends.

Notwithstanding the provisions of this sub-paragraph, Spain 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 Malta, as long as it holds directly at least 25 per cent of the capital of the company paying the dividends.

- b) Where the dividends are paid by a company which is a resident of Malta to a resident of Spain who is the beneficial owner thereof, Malta tax on the gross amount of the dividends shall not exceed that chargeable on the profits out of which the dividends are paid.

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, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, 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 or a fixed base 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.

Article 11

INTEREST

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 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 assimilated to 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.

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, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, 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 12

ROYALTIES

1. Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

2. 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, or films, tapes and any other means used for image or sound reproduction, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

3. 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, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, 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 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

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the 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 or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic, or from movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.
4. Gains derived by a resident of a Contracting State from the alienation of shares or comparable interests 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 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.
2. The term "professional services" includes especially independent scientific,

literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18 and 19, 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 or a fixed base 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 by an enterprise of a Contracting State may be taxed in that State.

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 SPORTSMEN

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, 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 sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

Article 18

PENSIONS

Subject to the provisions of paragraph 2 of Article 19, 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, other than a pension, 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) Any pension 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 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, 16, 17 and 18 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 AND BUSINESS APPRENTICES

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

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, 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, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

Article 22

ELIMINATION OF DOUBLE TAXATION

Double taxation shall be avoided as follows:

1. In Spain:

Double taxation shall be avoided following either the provisions of its internal legislation or the following provisions:

- a) Where a resident of Spain derives income which, in accordance with the provisions of this Convention, may be taxed in Malta, 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 Malta;
 - 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 to the income which may be taxed in Malta.

b) Where in accordance with any provision of the 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.

2. In Malta:

Subject to the provisions of the law of Malta regarding the allowance of a credit against Malta tax in respect of foreign tax, where, in accordance with the provisions of this Convention, there is included in a Malta assessment income from sources within Spain, the Spanish tax on such income shall be allowed as a credit against the relative Malta tax payable thereon.

Article 23

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, 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, paragraph 4 of Article 11, or paragraph 4 of Article 12, apply, interest, royalties 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, apply to taxes of every kind and description.

Article 24

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions 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 23, 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 the 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 the 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 the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the 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. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

Article 25

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 covered by the Convention imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1.

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) involved in the assessment or collection of, the enforcement or prosecution in respect of the determination of appeals in relation to taxes of every kind and description or the oversight of the said persons or authorities. 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 no case shall the provisions of paragraph 3, in relation to cases of tax fraud, be construed 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 26

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.

Article 27

LIMITATION OF BENEFITS

1. The provisions of Articles 6 to 21 of this Convention shall not apply to:
 - a) persons enjoying a special fiscal treatment by virtue of the laws or the administrative practice of either one of the Contracting States which are identified in the Protocol to this Convention;
 - b) persons enjoying a special fiscal treatment of either Contracting State which has been identified as such by mutual agreement between the competent authorities.

Neither shall they apply to income derived from such persons by a resident of the other Contracting State, nor to shares or other rights in such persons owned by such a resident.

2. Notwithstanding any other provision of this Convention, a resident of a Contracting State shall not receive the benefit of any reduction in or exemption from taxes provided for in this Convention by the other Contracting State if the main purpose or one of the main purposes of the creation or existence of such resident or any person connected with such resident was to obtain the benefits under this Convention that would not otherwise be available.

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. The Convention shall enter into force after the period of three months following the date of receipt of the later of the notifications referred to in paragraph 1 and its provisions shall have effect:

a) In Spain

- i. regarding taxes periodically assessed, in respect of taxes on income relating to any taxable year beginning on or after the date on which the Convention enters into force;
- ii. regarding all other cases, the date on which the Convention enters into force.

b) In Malta

in respect of taxes which are levied for any taxable year beginning on or after the first of January in the year next following the year in which the Convention enters into force.

Article 29

TERMINATION

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. In such event, the Convention shall cease to have effect

a) In Spain

- i. regarding taxes periodically assessed, in respect of taxes on income relating to any taxable year beginning on or after the first day of January in the calendar year next following that in which the notice is given.
- ii. regarding all other cases, the first day of January in the calendar year next following that in which the notice is given.

b) In Malta

in respect of taxes which are levied for any taxable year beginning on or after the first of January in the calendar year next following the year in which the notice is given.

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

Done in duplicate in Madrid on the 8th day of November, 2005, in the Spanish and English languages, both texts being equally authentic. In case of any divergence of interpretation, it shall be resolved in accordance with the English text.

For Malta

Michael Frendo
Minister of Foreign Affairs

For The Kingdom of Spain

Miguel Angel Moratinos
Minister of Foreign Affairs
and Co-Operation

PROTOCOL

At the moment of signing the Convention between the Kingdom of Spain and Malta 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:

1. Ad. Article 27

With reference to paragraph 1 (a) of Article 27 it is understood that:

- a) in the case of Spain, there is no legislation or administrative practice under which persons may enjoy any special fiscal treatment;
- b) in the case of Malta, any persons enjoying a special fiscal treatment are persons which under the provisions of the Merchant Shipping Act, 1973 -and to that extent- are not subject to tax on the profits derived from the operation of ships in international traffic;

2. Ad Article 25.5

The term "tax fraud" would be interpreted along the lines of the common understanding of the term stated in Part V letter A of the 2003 OECD Progress Report: "Improving Access to Bank Information for tax Purposes"

In witness whereof the undersigned, duly authorised thereto, have signed this Protocol.

Done in duplicate in Madrid on the 8th day of November, 2005, in the Spanish and English languages, both texts being equally authentic. In case of any divergence of interpretation, it shall be resolved in accordance with the English text.

For Malta

Michael Frendo
Minister of Foreign Affairs

For The Kingdom of Spain

Miguel Angel Moratinos
Minister of Foreign Affairs
and Co-Operation