

**AGREEMENT BETWEEN
THE REPUBLIC OF TURKEY 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 TURKEY
AND
THE KINGDOM OF SPAIN**

**Desiring to conclude an Agreement 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 Agreement shall apply to persons who are residents of one or both of the Contracting States.

Article 2

TAXES COVERED

1. This Agreement 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.

3. The existing taxes to which the Agreement shall apply are in particular:

a) in Turkey:

- i) the income tax ; (Gelir Vergisi)
- ii) the corporation tax ; (Kurumlar Vergisi) and
- iii) the levy imposed on the income tax and the corporation tax; (Gelir Vergisi ve Kurumlar Vergisi Üzerinden Alınan Fon Payı)

(hereinafter referred to as "Turkish Tax")

b) in Spain:

- i) the income tax on individuals; (Impuesto Sobre la Renta de las Personas Físicas)
- ii) the corporation tax; (Impuesto Sobre la Renta de Sociedades)
- iii) the income tax on non residents; (Impuesto Sobre la Renta de No Residentes) and
- iv) local taxes on income; (Impuestos Locales sobre la Renta);

(hereinafter referred to as "Spanish Tax").

4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement 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 that have been made in their respective taxation laws.

Article 3

GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:

a) i) the term "Turkey" means the Turkish territory including territorial sea and air space above it, as well as the maritime areas over which it has jurisdiction or sovereign rights for the purpose of exploration, exploitation and conservation of natural resources, pursuant to international law;

ii) the term "Spain" means the Kingdom of Spain and, when used in a geographical sense, means the territory of the Kingdom of Spain, including territorial sea and air space above it, including any area outside the territorial sea upon which, in accordance with international law 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 terms "a Contracting State" and "the other Contracting State" mean Turkey or Spain as the context requires;

c) the term "tax" means any tax covered by Article 2 of this Agreement;

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 "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;

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 "competent authority" means:

i) in Turkey: the Minister of Finance or his authorised representative; and

ii) in Spain: the Minister of Finance or his authorised representative

i) the term "international traffic" means any transport by a ship, aircraft or road vehicle operated by an enterprise of a Contracting State, except when the ship, aircraft or road vehicle is operated solely between places in the other Contracting State;

2. As regards the application of the Agreement 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 Agreement 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 Agreement, 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, legal head office, 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 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 of the Contracting State in which its place of effective management is situated. However, where such person has its place of effective management in one of the States and its legal head office in the other State, then the competent authorities of the Contracting States shall consult to determine by mutual agreement whether the legal head office of such a person has to be considered as the actual place of effective management or not.

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, 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, assembly or installation project or supervisory activities in connection therewith constitute a permanent establishment only if such site, project or activities continue for a period of 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 in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 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; or

b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise. The provisions of the foregoing sentence shall not apply, unless it is proved that in order to avoid taxation in the first-mentioned State, such person undertakes not only the regular delivery of the goods or merchandise, but also undertakes virtually all the activities connected with the sale of the goods or merchandise except for the actual conclusion of the sales contract itself.

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 (including the breeding and cultivation of fish) 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 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 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. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

SHIPPING, AIR AND LAND TRANSPORT

1. Profits derived by an enterprise of a Contracting State from the operation of ships, aircraft or road vehicles in international traffic shall be taxable only in that State.

2. The provisions of paragraph 1 of this Article 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 the profits so included are by the first-mentioned State claimed to be 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, where that other State considers the adjustment justified. In determining such adjustment, due regard shall be had to the other provisions of this Agreement 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) in the case of Turkey:

i) 5 per cent of the gross amount of the dividends to the extent they are paid out of profits that have been subject to tax as specified in paragraph (5) where those dividends are paid to a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends; and

ii) 15 per cent of the gross amount of the dividends in all other cases;

b) in the case of Spain:

i) 5 per cent of the gross amount of the dividends where those dividends are paid to a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends; and

ii) 15 per cent of the gross amount of the dividends in all other cases.

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. Profits of a company of a Contracting State carrying on business in the other Contracting State through a permanent establishment situated therein may, after having been taxed under Article 7, be taxed on the remaining amount in the Contracting State in which the permanent establishment is situated and in accordance with the provision of domestic law of that State, but the tax so charged shall not exceed

- a) in the case of Turkey:
 - i) 5 per cent of the remaining amount where profits of a company are subject to tax as specified in paragraph (5); and
 - ii) 15 per cent of the remaining amount in all other cases;
- b) in the case of Spain, 5 per cent of the remaining amount.

5. For the purposes of paragraphs 2 and 4, profits have been subject to tax in Turkey, where they have not been exempted and are subject to the full rate of corporation tax (Kurumlar Vergisi).

6. 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.

7. Subject to the provision of paragraph 4 of this Article, 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.

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:

a) 10 per cent of the gross amount of such interest, if the interest is derived from a loan of whatever kind granted by a bank or if the interest is paid in connection

with the sale on credit of merchandise or equipment to an enterprise of a Contracting State.

b) 15 per cent of the gross amount of the interest in all other cases.

3. 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.

4. The provisions of paragraph 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, 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.

5. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or 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 or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base 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 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 Agreement.

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 10 per cent of the gross amount of the royalties.

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, the sale of, any copyright of literary, artistic or scientific work including cinematograph films, or films, tapes and other means of 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, or for the use of, or the right to use, industrial, commercial or scientific equipment.

4. The provisions of paragraph 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.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that 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 or fixed base in connection with which the right or property giving rise to the royalties is effectively connected, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base 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 Agreement.

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 a resident of a Contracting State from the alienation of ships, aircraft or road vehicles operated in international traffic, or movable property pertaining to the operation of such ships, aircraft or road vehicles, shall be taxable only in that State.

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

5. The provisions of paragraph 4 shall not affect the right of one of the States to levy, according to its own law, a tax on gains derived by a resident of the other State from the alienation of shares or bonds issued by a resident of the first-mentioned State if the alienation takes place to a resident of the first-mentioned State and if the period between acquisition and alienation does not exceed one year.

Article 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by an individual of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State. However, such income may also be taxed in the other Contracting State if such services or activities are performed in that other State and if:

a) he has a fixed base regularly available to him in that other State for the purpose of performing those services or activities; or

b) he is present in that other State for the purpose of performing those services or activities for a period or periods amounting in the aggregate to 183 days or more in any continuous period of 12 months.

In such circumstances, only so much of the income as is attributable to that fixed base or is derived from the services or activities performed during his presence in that other State, as the case may be, may be taxed in that other State.

2. Income derived by an enterprise of a Contracting State in respect of professional services or other activities of a similar character shall be taxable only in that State. However, such income may also be taxed in the other Contracting State if such services or activities are performed in that other State and if:

a) the enterprise has a permanent establishment in that other State through

which the services or activities are performed; or

b) the period or periods during which the services or activities are performed exceed in the aggregate 183 days in any continuous period of 12 months.

In such circumstances only so much of the income as is attributable to that permanent establishment or to the services or activities performed in that other State, as the case may be, may be taxed in that other State. In either case, the enterprise may elect to be taxed in that other State in respect of such income in accordance with the provisions of Article 7 of this Agreement as if the income were attributable to a permanent establishment of the enterprise situated in that other State. This election shall not affect the right of that other State to impose a withholding tax on such income.

3. 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 and other activities requiring specific professional skill.

Article 15

INCOME FROM EMPLOYMENT

1. Subject to the provisions of Articles 16, 18, 19 and 20, 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, aircraft or road vehicle operated in international traffic by an enterprise of a Contracting State may be taxed in that Contracting 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.

3. Income derived by an entertainer or a sportsman from activities exercised in a Contracting State shall be exempt from tax in that State, if the visit to that State is supported wholly by public funds of the other Contracting State a political subdivision or a local authority thereof.

Article 18

PENSIONS

1. Subject to the provisions of paragraph 2 of Article 19 of this Agreement, pensions and other similar remuneration paid in consideration of past employment and annuities as defined in paragraph (2) of this Article shall be taxable only in the State of which the recipient is a resident.

2. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

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

1. 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.

2. Remuneration which a student or a trainee who is a national of a Contracting State derives from an employment in the other Contracting State in order to obtain practical experience related to his education or formation shall be exempt from tax by that other Contracting State for a period of two years in an aggregate amount not in

excess of 18.000.- EURO or its equivalent in Turkish Liras for any taxable year.

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 Agreement 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

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 Agreement, may be taxed in Turkey, Spain shall allow:

- i) as a deduction from the tax on the income of that resident, an amount equal to the tax paid in Turkey.
- ii) the deduction of the underlying corporation tax shall be given in accordance with the internal legislation of Spain.

Such deductions shall not, however, exceed that part of the tax on income, as computed before the deduction is given, which is attributable, to the income which may be taxed in Turkey.

b) Notwithstanding the provisions of sub-paragraph (a), where a company resident in Spain derives income, which, in accordance with letter (i) sub-paragraph a), paragraph 2 of Article 10 or letter (i) subparagraph a), paragraph 4 of Article 10 may be taxed in Turkey, Spain shall exempt that income from tax.

This sub-paragraph shall not apply to that part of the income of a taxpayer arising from any profits exempted from Corporation tax in Turkey in a given fiscal year.

This method is alternative to the one provided for in sub-paragraph a) of this paragraph and both will not be simultaneously applicable for the same income.

c) Where in accordance with any provision of this Agreement 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.

d) For the purposes of paragraph 1 a) i) the term “tax paid in Turkey” shall be deemed to include any amount of Turkish tax on interests and royalties which would have been payable under Turkish taxation law but for any reduction or exemption of Turkish tax granted under the provisions concerning special incentive measures to promote economic development in Turkey.

Notwithstanding the preceding sentence, the tax on income paid in Turkey shall be calculated,

- i. in the case of dividends referred to in paragraph 2 a) ii) of Article 10, paragraph 4 a) ii), of Article 10, at a rate of 15 per cent;
- ii. in the case of interest referred to in paragraph 2 a) of Article 11, at a rate of 10 per cent;
- iii. in the case of interest referred to in paragraph 2 b) of Article 11, at a rate of 15 per cent;
- iv. in the case of royalties referred to in paragraph 2 of Article 12, at a rate of 10 per cent.

2. In Turkey double taxation shall be avoided as follows:

a) Subject to the provisions of the laws of Turkey regarding the allowance as a credit against Turkish tax of tax payable in a territory outside Turkey, Spanish tax payable under the laws of Spain and in accordance with this Agreement in respect of income (including profits and chargeable gains) derived by a resident of Turkey from sources within Spain shall be allowed as a deduction from the Turkish tax on such income. Such deduction, however, shall not exceed the amount of Turkish tax, as computed before the deduction is made, attributable to such income.

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

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. Subject to the provisions of paragraph 4 of Article 10, 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.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11, or paragraph 6 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. These provisions 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.

6. 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 resident of a Contracting State 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 Agreement, 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 Agreement.

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 Agreement. 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 Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

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 necessary for carrying out the provisions of this Agreement or of the domestic laws concerning taxes of every kind and every description 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 Agreement. The exchange of information is not restricted by Articles 1 and 2. Any information received 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 in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in first sentence. 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.

2. In no case shall the provisions of paragraph 1 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).

Article 26

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

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

Article 27

ENTRY INTO FORCE

Each of the Contracting States shall notify to the other, through the diplomatic channels the completion of the procedures required by its domestic law for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the latter of these notifications and its provisions shall have effect for taxes with respect to every taxable period beginning on or after the first day of January of the year following that of entry into force of the Agreement.

Article 28

TERMINATION

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year following after the period of five years from the date on which the Agreement enters into force. In such event, the Agreement shall cease to have effect for taxes with respect to every taxable period beginning on or after the first day of January of the year following

that in which the notice is given.

IN WITNESS WHEREOF, the undersigned duly authorized hereto, have signed the present Agreement.

"Done in duplicate at this day of20, in the Turkish, Spanish and English Languages, all three texts being equally authentic. In case of divergence between the texts, the English text shall be the operative one."

**FOR THE REPUBLIC OF
TURKEY**

**FOR THE KINGDOM OF
SPAIN**

PROTOCOL

At the moment of signing the Agreement between the Kingdom of Spain and the Republic of Turkey 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 Agreement.

1. Ad Article 7, paragraph 3

No deduction shall be allowed for sums which are paid (other than the reimbursement of expenses including expenses for research and developments actually incurred) by the permanent establishment to the head office or any other office of enterprise as royalties, interests, (except in the case of banking enterprises) and commissions for services rendered or for management.

2. Ad Article 10, paragraph 3

It is understood that, in the case of Turkey, the term "dividends" includes income derived from an investment fund and an investment "trust".

3. Ad Article 10 paragraph 5

For the purposes of this Agreement, the term "full rate" is understood as the general corporation tax rate provided for in the Turkish Corporation Tax Law.

Should Turkey establish a reduced rate, the Turkish authorities shall notify the Spanish Authorities in order to jointly decide whether the provisions of Article 10.2.a) i) or 10.4.a) i), as the case may be, shall apply to income arising from profits which have been subjected to this reduced rate.

4. Ad Article 11, paragraph 2. a)

It is understood that, the term "bank" includes, in the case of Spain, saving banks.

5. Ad Article 11, paragraph 3

It is understood that, in the case of Spain, penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

6. Ad Articles 12 and 13

It is understood that in the case of any payment received as a consideration for the sale of the property as meant in paragraph 3 of Article 12, the provisions of Article 13 shall apply, unless it is proved that the payment in question is not a payment for a genuine alienation of the said property. In such case, the provisions of Article 12 shall apply.

7. Ad Article 14, paragraph 2

It is understood that the services or activities are performed by an enterprise of a Contracting State, in the other Contracting State, if services or activities are performed through employees or other engaged personnel who are present in that other State for the purposes of performing such services or activities (for same or connected project).

8. Ad Article 22

The exemption provided in sub-paragraph (b) of paragraph 1 of Article 22 shall not apply if it was the main purpose of any person concerned with the creation or assignment of the shares or other rights in respect of which the income is paid to take advantage of this provision by means of that creation or assignment. In that case, subparagraphs 10.2.a) ii) or 10.4 a) ii) shall apply.

The provisions of sub-paragraph (d) of paragraph 1 of Article 22 shall cease to have effect after 10 years since the entry into force of this Agreement. After this period, the Competent Authorities will jointly consider an extension of the provisions hereinbefore mentioned.

9. Ad Article 24

It is understood that with respect to paragraph 2 of Article 24 the taxpayer must in the case of Turkey claim the refund resulting from such mutual agreement within a period of one year after the tax administration has notified the taxpayer of the result of the mutual agreement.

IN WITNESS WHEREOF, the undersigned duly authorized hereto, have signed the present Protocol.

"Done in duplicate at this day of20....., in the Turkish, Spanish and English Languages, all three texts being equally authentic. In case of divergence between the texts, the English text shall be the operative one."

**FOR THE REPUBLIC OF
TURKEY**

**FOR THE KINGDOM OF
SPAIN**