

Article IX

Article 17 (Limitation on Benefits) of the Convention shall be deleted and replaced by the following:

“Article 17 Limitation on Benefits”

1. Except as otherwise provided in this Article, a resident of a Contracting State shall not be entitled to the benefits of this Convention otherwise accorded to residents of a Contracting State unless such resident is a "qualified person" as defined in paragraph 2 of this Article.
2. A resident of a Contracting State shall be a qualified person for a taxable year if the resident is:
 - (a) an individual;
 - (b) a Contracting State, or a political subdivision or local authority thereof or wholly-owned instrumentality thereof;
 - (c) a company, if:
 - (i) the principal class of its shares (and any disproportionate class of shares) is regularly traded on one or more recognized stock exchanges, and either:
 - (A) its principal class of shares is primarily traded on one or more recognized stock exchanges located in the Contracting State of which the company is a resident (or, in the case of a company resident in Spain, on a recognized stock exchange located within the European Union or, in the case of a company resident in the United States, on a recognized stock exchange located in another state that is a party to the North American Free Trade Agreement); or
 - (B) the company's primary place of management and control is in the Contracting State of which it is a resident; or
 - (ii) at least 50 percent of the aggregate vote and value of the shares (and at least 50 percent of any disproportionate class of shares) in the company is owned directly or indirectly by five or fewer companies entitled to benefits under clause (i) of this subparagraph, provided that, in the case of indirect ownership, each intermediate owner is a resident of either Contracting State;
 - (d) a person other than an individual that is:
 - (i) established and maintained in that Contracting State exclusively for religious, charitable, scientific, artistic, cultural, or

educational purposes, notwithstanding that all or part of its income or gains may be exempt from tax under the domestic law of that Contracting State; or

(ii) described in subparagraph (j) of paragraph 1 of Article 3 (General Definitions), provided that:

(A) in Spain, in the case of a person described in clause (i) of subparagraph (j) of paragraph 1 of Article 3, and in the United States, in the case of a person described in clause (ii) (A) of subparagraph (j) of paragraph 1 of Article 3, more than 50 percent of the person's beneficiaries, members or participants are individuals resident in either Contracting State; and

(B) in the United States, in the case of a person described in clause (ii) (B) of subparagraph (j) of paragraph 1 of Article 3, all of the persons for which such person earns the income satisfy the requirements of clause (A) of this subparagraph;

(e) a person other than an individual, if:

(i) on at least half the days of the taxable year, persons who are residents of that Contracting State and that are entitled to the benefits of this Convention under subparagraph (a), subparagraph (b), clause (i) of subparagraph (c), or subparagraph (d) of this paragraph own, directly or indirectly, shares or other beneficial interests representing at least 50 percent of the aggregate voting power and value (and at least 50 percent of any disproportionate class of shares) of the person, provided that, in the case of indirect ownership, each intermediate owner is a resident of that Contracting State, and

(ii) less than 50 percent of the person's gross income for the taxable year, is paid or accrued, directly or indirectly, to persons who are not residents of either Contracting State entitled to the benefits of this Convention under subparagraph (a), subparagraph (b), clause (i) of subparagraph (c), or subparagraph (d) of this paragraph in the form of payments that are deductible for purposes of the taxes covered by this Convention in the person's State of residence. For purposes of the foregoing, such deductible payments do not include arm's length payments in the ordinary course of business for services or tangible property and payments in respect of financial obligations to a bank that is not related to the payor.

3. A company that is a resident of a Contracting State shall also be entitled to the benefits of this Convention if:

(a) at least 95 percent of the aggregate voting power and value of its shares (and at least 50 percent of any disproportionate class of shares) is owned, directly or indirectly, by seven or fewer persons that are equivalent beneficiaries, provided that in the case of indirect ownership, each intermediate owner is a resident of a member state of the European Union or any party to the North American Free Trade Agreement; and

(b) less than 50 percent of the company's gross income, as determined in the company's State of residence, for the taxable year is paid or accrued, directly or indirectly, to persons who are not equivalent beneficiaries, in the form of payments (but not including arm's length payments in the ordinary course of business for services or tangible property and payments in respect of financial obligations to a bank that is not related to the payor), that are deductible for the purposes of the taxes covered by this Convention in the company's State of residence.

4.

(a) A resident of a Contracting State will be entitled to benefits of the Convention with respect to an item of income derived from the other State, regardless of whether the resident is a qualified person, if the resident is engaged in the active conduct of a trade or business in the first-mentioned State (other than the business of making or managing investments for the resident's own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance company or registered securities dealer), and the income derived from the other Contracting State is derived in connection with, or is incidental to, that trade or business.

(b) If a resident of a Contracting State derives an item of income from a trade or business activity conducted by that resident in the other Contracting State, or derives an item of income arising in the other Contracting State from a related person, the conditions described in subparagraph (a) shall be considered to be satisfied with respect to such item only if the trade or business activity carried on by the resident in the first-mentioned Contracting State is substantial in relation to the trade or business activity carried on by such resident or related person in the other Contracting State. Whether a trade or business activity is substantial for the purposes of this paragraph will be determined based on all the facts and circumstances.

(c) For purposes of applying this paragraph, activities conducted by persons connected to a person shall be deemed to be conducted by such person. A person shall be connected to another if one possesses at least 50 percent of the beneficial interest in the other (or, in the case of a company, at least 50 percent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or another person possesses at least 50 percent of the beneficial interest (or, in the case of a company, at least 50 percent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in each person. In any case, a person shall be considered to be

connected to another if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same person or persons.

5. A person that is a resident of a Contracting State shall also be entitled to all the benefits of this Convention otherwise accorded to residents of a Contracting State if that person functions as a headquarters company for a multinational corporate group and that resident satisfies any other specified conditions for the obtaining of such benefits other than those of this Article. A person shall be considered a headquarters company for this purpose only if:

(a) it provides a substantial portion of the overall supervision and administration of the group, which may include, but cannot be principally, group financing;

(b) the corporate group consists of corporations resident in, and engaged in an active business in, at least five countries, and the business activities carried on in each of the five countries (or five groupings of countries) generate at least 10 percent of the gross income of the group;

(c) the business activities carried on in any one country other than the Contracting State of residence of the headquarters company generate less than 50 percent of the gross income of the group;

(d) no more than 25 percent of its gross income is derived from the other Contracting State;

(e) it has, and exercises, independent discretionary authority to carry out the functions referred to in subparagraph (a);

(f) it is subject to the same income taxation rules in its State of residence as persons described in paragraph 4; and

(g) the income derived in the other Contracting State either is derived in connection with, or is incidental to, the active business referred to in subparagraph (b).

If the gross income requirements of subparagraphs (b), (c), or (d) of this paragraph are not fulfilled, they will be deemed to be fulfilled if the required ratios are met when averaging the gross income of the preceding four years.

6. Notwithstanding the preceding provisions of this Article, where an enterprise of a Contracting State derives income from the other Contracting State, and that income is attributable to a permanent establishment which that enterprise has in a third state, the tax benefits that would otherwise apply under the other provisions of the Convention will not apply to that income if the profits of that permanent establishment are subject to a combined aggregate effective rate of tax in the first-mentioned Contracting State and third state that is less than 60 percent of the general rate of company tax applicable in the first-mentioned Contracting State. Any dividends, interest or royalties to which the

provisions of this paragraph apply shall be subject to tax in the other Contracting State at a rate that shall not exceed 15 percent of the gross amount thereof. Any other income to which the provisions of this paragraph apply shall be subject to tax under the provisions of the domestic law of the other Contracting State, notwithstanding any other provision of the Convention. The provisions of this paragraph shall not apply if:

(a) in the case of royalties, the royalties are received as compensation for the use of, or the right to use, intangible property produced or developed by the permanent establishment; or

(b) in the case of any other income, the income derived from the other Contracting State is derived in connection with, or is incidental to, the active conduct of a trade or business carried on by the permanent establishment in the third state (other than the business of making, managing or simply holding investments for the enterprise's own account, unless these activities are banking or securities activities carried on by a bank or registered securities dealer).

7. If a resident of a Contracting State is not a qualified person pursuant to paragraph 2 of this Article, nor entitled to the benefits of this Convention under paragraphs 3 or 5 of this Article, nor entitled to benefits with respect to an item of income under paragraph 4 of this Article, the competent authority of the other Contracting State may grant the benefits of this Convention, or benefits with respect to a specific item of income, to the resident of the first-mentioned Contracting State, if such grant of benefits is justified based on an evaluation of the extent to which such resident satisfies the requirements of paragraphs 2, 3, 4 or 5 of this Article and after considering the opinion, if any, of the competent authority of the first-mentioned Contracting State as to whether under the circumstances it would be appropriate to grant such benefits.

8. For purposes of this Article:

(a) the term "recognized stock exchange" means:

(i) the NASDAQ System and any stock exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under the U.S. Securities Exchange Act of 1934;

(ii) any Spanish stock exchange controlled by the "*Comisión Nacional del Mercado de Valores*";

(iii) the principal stock exchanges of Stuttgart, Hamburg, Dusseldorf, Frankfurt, Berlin, Hannover, Munich, London, Amsterdam, Milan, Budapest, Lisbon, Toronto, Mexico City and Buenos Aires; and

(iv) any other stock exchange agreed upon by the competent authorities;

(b) the term “principal class of shares” means the ordinary or common shares of the company, provided that such class of shares represents the majority of the voting power and value of the company. If no single class of ordinary or common shares represents the majority of the aggregate voting power and value of the company, the “principal class of shares” are those classes that in the aggregate represent a majority of the aggregate voting power and value of the company;

(c) the term “disproportionate class of shares” means any class of shares of a company resident in one of the Contracting States that entitles the shareholder to disproportionately higher participation through dividends, redemption payments or otherwise, in the earnings generated in the other Contracting State by particular assets or activities of the company;

(d) a company’s “primary place of management and control” will be in the Contracting State of which it is a resident only if executive officers and senior management employees exercise day-to-day responsibility for more of the strategic, financial and operational policy decision making for the company (including its direct and indirect subsidiaries, if any) in that Contracting State than in any other state and the staff of such persons conduct more of the day-to-day activities necessary for preparing and making those decisions in that Contracting State than in any other state;

(e) the term “shares” includes depository receipts thereof;

(f) the term “gross income” means gross receipts, determined in the person’s Contracting State of residence, or where the person is engaged in a business which includes the manufacture, production or sale of goods, such gross receipts reduced by the direct costs of labor and materials attributable to such manufacture or production, or cost of goods purchased for resale;

(g) the term "equivalent beneficiary" means a resident of a member state of the European Union or of a party to the North American Free Trade Agreement, but only if that resident:

(i)

(A) would be entitled to all the benefits of a comprehensive convention for the avoidance of double taxation between any member state of the European Union or any party to the North American Free Trade Agreement and the State from which the benefits of this Convention are claimed under provisions analogous to subparagraph (a), (b), clause (i) of subparagraph (c), or subparagraph (d) of paragraph 2 of this Article, provided that if such convention does not contain a comprehensive limitation on benefits article, the person would be entitled to the benefits of this Convention by reason of subparagraph (a), (b), clause (i) of

subparagraph (c), or subparagraph (d) of paragraph 2 of this Article if such person were a resident of one of the States under Article 4 of this Convention; and

(B) with respect to insurance premiums and to income referred to in Articles 10 (Dividends), 11 (Interest) and 12 (Royalties) of this Convention, would be entitled under such convention to an exemption from excise tax on such premiums or to a rate of tax with respect to the particular class of income for which benefits are being claimed under this Convention that is at least as low as the rate applicable under this Convention; or

(ii) is a resident of a Contracting State that is entitled to the benefits of this Convention by reason of subparagraph (a), (b), clause (i) of subparagraph (c) or subparagraph (d) of paragraph 2 of this Article.

For the purposes of applying paragraph 3 of Article 10 (Dividends), in order to determine whether a person owning shares, directly or indirectly, in the company claiming the benefits of this Convention is an equivalent beneficiary, such person shall be deemed to hold the same voting power, for the same period of time, in the company paying the dividend as the company claiming the benefits holds in such company; and

(h) with respect to dividends, interest and royalties arising in Spain and beneficially owned by a company that is a resident of the United States, a company that is a resident of a member state of the European Union will be treated as satisfying the requirements of clause (i) (B) of subparagraph (g) of this paragraph for purposes of determining whether such United States resident is entitled to benefits under this paragraph if a payment of dividends, interest and royalties arising in Spain and paid directly to such resident of a member state of the European Union would have been exempt from tax pursuant to any directive of the European Union, notwithstanding that the convention to avoid double taxation between Spain and that other member state of the European Union would provide for a higher rate of tax with respect to such payment than the rate of tax applicable to such United States company under Article 10, 11, 12 of this Convention.”