

No. 9716

JAPAN
and
BRAZIL

**Convention for the avoidance of double taxation with
respect to taxes on income (with exchange of notes).
Signed at Tokyo on 24 January 1967**

Authentic texts of the Convention : Japanese, Portuguese and English.

Authentic text of the exchange of notes : English.

Registered by Japan on 16 July 1969.

JAPON
et
BRÉSIL

**Convention tendant à éviter la double imposition en
matière d'impôts sur le revenu (avec échange de
notes). Signée à Tokyo le 24 janvier 1967**

Textes authentiques de la Convention : japonais, portugais et anglais.

Texte authentique de l'échange de notes : anglais.

Enregistrée par le Japon le 16 juillet 1969.

CONVENTION¹ BETWEEN JAPAN AND THE UNITED STATES OF BRAZIL FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME

The Government of Japan and the Government of the United States of Brazil,

Desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income,

Have agreed as follows :

Article 1

(1) The taxes which are the subject of this Convention are :

(a) In the case of the United States of Brazil, the federal income tax (hereinafter referred to as “Brazilian tax”);

(b) In the case of Japan, the income tax and the corporation tax (hereinafter referred to as “Japanese tax”).

(2) This Convention shall also apply to taxes substantially similar to those covered by paragraph (1) which are introduced in either Contracting State after the date of signature of this Convention.

Article 2

(1) In this Convention, unless the context otherwise requires :

(a) The term “Brazil” means the United States of Brazil;

(b) The term “Japan”, when used in a geographical sense, means all the territory in which the laws relating to Japanese tax are in force;

(c) The terms “a Contracting State” and “the other Contracting State” mean Japan or Brazil, as the context requires;

(d) The term “tax” means Japanese tax or Brazilian tax, as the context requires;

(e) The term “person” includes an individual, a company and any other body of persons;

¹ Came into force on 31 December 1967, i.e. the thirtieth day after the date of the exchange of the instruments of ratification, which took place at Rio de Janeiro on 1 December 1967, in accordance with article 27 (2).

(f) The term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes ;

(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” in relation to a Contracting State means the Minister of Finance of that Contracting State or his authorized representative.

(2) As regards the application of this Convention by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes to which this Convention applies.

Article 3

(1) For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the law of that Contracting State, is liable to taxation therein by reason of his domicile, residence, place of head or main office, place of management or any other criterion of a similar nature.

(2) Where by reason of the provisions of paragraph (1) a person is a resident of both Contracting States, then the competent authorities shall determine by mutual agreement the Contracting State of which that person shall be deemed to be a resident for the purposes of this Convention.

Article 4

(1) For the purposes of this Convention, the term “permanent establishment” means a fixed place of business in which the business of the 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 workshop ;

e) a factory ;

f) a warehouse ;

g) a mine, quarry or other place of extraction of natural resources ;

h) a building site or construction or assembly project which exists for more than six months.

- (3) The term "permanent establishment" shall not be deemed to include:
- a) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - b) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
 - c) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - d) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

(4) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State — other than an agent of an independent status to whom paragraph (5) applies — shall be deemed to be a permanent establishment in the first-mentioned Contracting State if he

- (a) has, and habitually exercises in that Contracting State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
- (b) maintains in that Contracting State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise, consecutive to a contract previously concluded by the enterprise without specifying either the quantity to be delivered, or the date and the place of delivery.

(5) An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

(6) 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 Contracting State (whether through a permanent establishment or otherwise), shall not of itself constitute for either company a permanent establishment of the other.

(7) An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it carries on

business which consists in whole or in part of providing in that other Contracting State the services of public entertainers referred to in Article 15.

Article 5

(1) The profits of an enterprise of a Contracting State shall be taxable only in that Contracting 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 Contracting State but only so much of them as is attributable to that permanent establishment.

(2) 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 the determination of 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.

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

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

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

Article 6

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.

Article 7

(1) Profits from the operation of ships or aircraft in international traffic carried on by an enterprise of a Contracting State shall be taxable only in that Contracting State.

(2) In respect of the operation of ships or aircraft in international traffic carried on by an enterprise which is a resident of Brazil, that enterprise shall be exempt from the local inhabitant taxes and the enterprise tax in Japan.

Article 8

(1) Income from immovable property may be taxed in the Contracting State in which such property is situated.

(2) The term "immovable property" shall be defined in accordance with 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 immovable 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 professional services.

Article 9

(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 Contracting State.

(2) However, such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that Contracting State, but the tax so charged shall not exceed 10 per cent of the gross amount of the dividends if the recipient is a company which owns at least 25 per cent of the voting shares of the company paying such dividends during the period of six months immediately before the end of the accounting period for which the distributions of profits takes place.

(3) The provisions of paragraph (2) shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

(4) 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 assimilated to income from shares by the taxation law of the Contracting State of which the company making the distribution is a resident.

(5) In the application of preceding paragraphs, in the case of Brazil, there shall also be considered as dividends all forms of disposition of profits by a permanent establishment, situated in Brazil, of an enterprise which is a resident of Japan, in which case the tax on such disposition of profits shall not exceed the rate of tax referred to in paragraph (2).

(6) The provisions of paragraphs (2) and (5) shall not apply to the Brazilian tax on activities of minor importance and excess remittance tax.

(7) The provisions of paragraphs (1) and (2) shall not apply if the recipient of the dividends, being a resident of a Contracting State, has in the other Contracting State, of which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provisions of Article 5 shall apply.

Article 10

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

(2) However, such interest may be taxed in the Contracting State in which it arises, and according to the laws of that Contracting State, but the tax so charged shall not exceed 10 per cent of the gross amount of the interest if:

- (a) the interest is received by a bank or other financial institution which is a resident of the other Contracting State;
- (b) the interest arises from loans made by an enterprise of the other Contracting State to an enterprise of the first-mentioned Contracting State engaged

in an industrial undertaking, provided that the funds for such loans have been obtained by the first-mentioned enterprise from a bank or other financial institution solely for the purpose of financing that other enterprise, and that the first-mentioned enterprise owns at least 25 per cent of the voting capital of that other enterprise at the time either such loans are made or such interest is to be paid;

- (c) the interest arises from debentures or other similar bonds; or
- (d) the interest arises from treasury bills or other public bonds.

(3) Notwithstanding the provisions of paragraph (2), interest arising in a Contracting State and paid to the Government of the other Contracting State, a political subdivision or local authority thereof or any agency or instrumentality (including financial institution) wholly owned by that Government, political subdivision or local authority shall be exempt from tax of the first-mentioned Contracting State.

(4) The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the Contracting State in which the income arises.

(5) The provisions of paragraphs (1) and (2) shall not apply if the recipient of the interest, being a resident of a Contracting State, has in the other Contracting State in which the interest arises a permanent establishment with which the debt-claim from which the interest arises is effectively connected. In such a case, the provisions of Article 5 shall apply.

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

(7) Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to

the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

Article 11

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

(2) However, such royalties may be taxed in the Contracting State in which they arise, and according to the laws of that Contracting State, but the tax so charged shall not exceed 10 per cent of the gross amount of royalties. This limitation shall not apply to royalties derived from Brazil during the first three calendar years of the application of this Convention during which period of time Brazil may thus apply the tax on royalties provided for in the taxation law of Brazil.

(3) The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of scientific work, any patent, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience; but does not include payments of any kind received as a consideration for the use of, or the right to use, trade marks, cinematograph films, films or tapes for radio or television broadcasting.

(4) The provisions of paragraphs (1) and (2) shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise a permanent establishment with which the right or property giving rise to the royalties is effectively connected. In such a case, the provisions of Article 5 shall apply.

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

(6) Where any royalties exceed a fair and reasonable consideration in respect of the rights for which they are paid, the provisions of this Article shall apply only to so much of the royalties as represents as such fair and

reasonable consideration. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, 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 recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In those cases, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

Article 12

(1) Gains from the alienation of immovable property, as defined in Article 8 paragraph (2), may be taxed in the Contracting State in which such property is situated.

(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 professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in that other Contracting State. However, gains derived by a resident of a Contracting State from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft shall be exempt from tax of the other Contracting State.

(3) Gains derived by a resident of a Contracting State from the alienation of any property other than those mentioned in paragraphs (1) and (2) shall be taxable only in that Contracting State.

Article 13

(1) Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be exempt from tax of the other Contracting State unless he has a fixed base regularly available to him in that other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in that other Contracting 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 14

(1) Subject to the provisions of Articles 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 exempt from tax of the other Contracting 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 Contracting 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 exempt from tax of that other Contracting State if:

- a) the recipient is present in that other Contracting State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned, and
- b) the remuneration is paid by, or on behalf, an employer who is not a resident of that other Contracting State, and
- c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in that other Contracting State.

(3) Notwithstanding the provisions of paragraphs (1) and (2), remuneration 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 Contracting State.

Article 15

Notwithstanding the provisions of Articles 13 and 14, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

Article 16

A professor or teacher who makes a temporary visit to a Contracting State for a period not exceeding two years for the purpose of teaching or conducting research at a university, college, school or other educational institution and who is, or immediately before such visit was, a resident of the other Contracting State shall be exempt from tax of the first-mentioned Contracting State in respect of remuneration for such teaching or research.

Article 17

Payments or income received for the purpose of his maintenance, education or training by a student or business apprentice who is present in a Contracting State solely for the purpose of his education or training and who is, or immediately before being so present was, a resident of the other Contracting State shall be exempt from tax of the first-mentioned Contracting State, provided that such payments are made to him from outside that first-mentioned Contracting State and that such income is received in respect of his personal services performed in the first-mentioned Contracting State in an amount not in excess of U.S.\$ 1,000 or its equivalent in Japanese or Brazilian currency for any taxable year for a period not exceeding three consecutive taxable years.

Article 18

Remuneration 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 Contracting State in accordance with the law of that other Contracting State.

Article 19

Wages, salaries, and similar compensation, and pensions, or similar benefits paid by, or out of funds to which contributions are made by, a Contracting State, a political subdivision or local authority thereof to an individual who is a national of that Contracting State for services rendered to the Contracting State, political subdivision or local authority in the discharge of governmental functions shall be taxable only in that Contracting State.

Article 20

(1) Private pensions and private life annuities paid to individuals who are residents of a Contracting State shall be taxable only in that Contracting State.

(2) The term "pensions", as used in this Article, includes periodic payments made in consideration for, or by way of compensation for injuries received in connection with, past employment.

(3) The term "life annuities", as used in this Article, includes a stated sum paid periodically at stated times during life, or during a specified number

of years, under an obligation to make the payments in return for adequate and full consideration.

Article 21

Any income not dealt with in the foregoing provisions derived by a resident of a Contracting State from sources in the other Contracting State may be taxed in both Contracting States.

Article 22

(1) Where a resident of Brazil derives income which, in accordance with the provisions of this Convention, may be taxed in Japan, Brazil shall allow as a deduction from the tax on the income of that person, an amount equal to the income tax paid in Japan. The deduction shall not, however, exceed that part of the income tax as computed before the deduction is given, which is appropriate to the income which may be taxed in Japan.

(2) (a) Where a resident of Japan derives income from Brazil which may be taxed in Brazil in accordance with the provisions of this Convention, the amount of the Brazilian tax payable in respect of that income shall be allowed as a credit against the Japanese tax imposed on that resident. The amount of credit, however, shall not exceed that part of the Japanese tax which is appropriate to that income.

(b) For the purposes of the credit referred to in sub-paragraph (a) above, there shall be deemed to have been paid by a taxpayer the amount which would have been paid if the Brazilian tax would not have been reduced or relieved in accordance with

- (i) the provisions of paragraph 2 of Article 9, paragraph 2 of Article 10 and paragraph 2 of Article 11 ; and,
- (ii) the special incentive measures designed to promote economic development in Amazonian Region and Northern and North-eastern Region of Brazil.

(c) In the application of the provisions of sub-paragraph (b) above, there shall not, in any event, be deemed to have been paid an amount of tax higher than that which, but for the reduction or relief of tax due to the special incentive measures mentioned in sub-paragraph (b) (ii), would result from the application of the Brazilian tax laws effective on the date of signature of this Convention.

(d) For the purposes of this paragraph, the term "Japanese tax" includes the local inhabitant taxes.

Article 23

(1) The 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 Contracting State in the same circumstances are or may be subjected.

(2) The term “nationals” means all individuals possessing the nationality of either Contracting State and all juridical persons created or organized under the laws of that either Contracting State and all organizations without juridical personality treated for the purposes of tax of that either Contracting State as juridical persons created or organized under the laws of that either Contracting State.

(3) 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 Contracting State than the taxation levied on enterprises of that other Contracting 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.

(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 Contracting 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 that first-mentioned Contracting State are or may be subjected.

(5) In this Article the term “taxation” means taxes of every kind and description.

Article 24

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection, including judicial determination, of the taxes to which this Convention applies.

(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 or the administrative practice of that or of the other Contracting State ;

- b) to supply particulars which are 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.

(3) The competent authorities of the Contracting States may take appropriate measures and exchange the information for the prevention of fiscal evasion in the Contracting States concerning the taxes to which this Convention applies.

Article 25

(1) Where a resident of a Contracting State considers that the actions taken in the other Contracting State result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the laws of those Contracting States, present his case to the competent authority of the Contracting State of which he is a resident.

(2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not able to arrive at an appropriate 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 not in accordance with this Convention.

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

(4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Convention.

Article 26

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

Article 27

(1) This Convention shall be ratified and the instruments of ratification shall be exchanged at Rio de Janeiro as soon as possible.

(2) This Convention shall enter into force on the thirtieth day after the date of the exchange of instruments of ratification and shall have effect as respects income derived during the taxable years beginning on or after the first day of January in the calendar year next following that in which this Convention enters into force.

Article 28

Either Contracting State may terminate this Convention after a period of three years from the date on which this Convention enters into force by giving to the other Contracting State, through the diplomatic channel, written notice of termination, provided that any such notice shall be given only on or before the thirtieth day of June in any calendar year, and, in such event, this Convention shall cease to be effective in respect of income derived during the taxable years beginning on or after the first day of January in the calendar year next following that in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention.

DONE in duplicate at Tokyo on January 24, 1967 in the Japanese, Portuguese and English languages, each text being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government
of Japan :
Takeo MIKI

For the Government
of the United States of Brazil :
Juracy MAGALHÃES

EXCHANGE OF NOTES

I

(Brazilian note)

Tokyo, January 24, 1967

Monsieur le Ministre,

I have the honour to refer to the Convention between the United States of Brazil and Japan for the Avoidance of Double Taxation with respect to Taxes on Income which was signed today and to confirm, on behalf of the Government of the United States of Brazil, the following understandings reached between the Government of the United States of Brazil and the Government of Japan :

1. With reference to paragraph (2) of Article 3 :

Where an individual is a resident of both Contracting States, the question shall be settled by mutual agreement taking into consideration the following rules :

- a) He shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (centre of vital interests) ;
- b) If the Contracting 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 Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode ;
- c) If he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national ;
- d) If he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

2. With reference to sub-paragraphs (c) and (d) of paragraph (3) of Article 4, the term "solely for the purpose of storage, display or delivery" means the case where no sales operations are carried on in the country in which such facilities are situated.

3. With reference to paragraph (3) of Article 5, the term "expenses which are incurred for the purposes of the permanent establishment" means all expenses actually incurred whether in the Contracting State in which the permanent establishment is situated or elsewhere, reasonably allocable to such permanent establishment, and which have contributed to earning of profits.

4. With reference to paragraph (2) of Article 7, the two Governments agree that, if the Government of the United States of Brazil, a political subdivision or local

authority thereof introduces any taxes of a character substantially similar to the local inhabitant taxes or the enterprise tax in Japan after the date of signature of the Convention, the two Governments will consult for the purpose of amending the said provisions with a view to including those taxes.

5. With reference to paragraph (6) of Article 9, the terms "tax on activities of minor importance" and "excess remittance tax" mean the Brazilian tax imposed under Articles 295 and 299, respectively, of the Brazilian Income Tax Regulations as consolidated by Decree 58 400, of May 10th, 1966.

6. Sub-paragraph (a) of paragraph (2) of Article 10 shall not apply to the interest arising in a Contracting State and paid to a bank or other financial institution which is a resident of the other Contracting State having a permanent establishment in the first-mentioned Contracting State, if such interest which arises from the debt-claims is treated as income attributable to the above-mentioned permanent establishment.

7. With reference to sub-paragraph (b) of paragraph (2) of Article 10 :

(1) the term "industrial undertaking" means an undertaking falling under any of the classes mentioned below :

- (a) manufacturing, assembling and processing ;
- (b) construction, civil engineering and ship-building ;
- (c) electricity, hydraulic power, gas and water supply ;
- (d) mining, including the working of a quarry or any other source of mineral deposits ;
- (e) plantation, agriculture, forestry and fishery ; and
- (f) any other undertaking which may be declared to be an "industrial undertaking" for the purposes of Article 10 by the competent authority of the Contracting State in which the undertaking is situated ;

(2) the term "such loans are made" means the time when a contract for such loans is concluded or the time when such loans are actually disbursed.

8. With reference to paragraph (6) of Article 11, in determining whether or not the royalties are a fair and reasonable consideration in respect of the rights for which they are paid, the competent authority of a Contracting State may take into account the provisions of its own tax legislation.

9. With reference to sub-paragraph (b) (ii) of paragraph (2) of Article 22 :

(1) the special incentive measures designed to promote economic development in Amazonian Region and Northern and Northeastern Region of Brazil are those set forth in the following articles of the Brazilian Income Tax Regulations of May, 1966,

(i) in the case of Northern and Northeastern Region

- Law No. 3692 of 1959—Article 19
- Law No. 3995 of 1961—Article 34
- Law No. 4239 of 1963—Articles 13 to 18
- Law No. 4357 of 1964—Article 14

Law No. 4506 of 1964—Article 9

Law No. 4869 of 1965—Articles 12 to 24

(ii) in the case of Amazonian Region

Law No. 1806 of 1953—Article 2

Law No. 3692 of 1959—Article 19

Law No. 4069-B of 1962—Articles 1 and 2,

and also those set forth in the Law No. 5174 of October, 1966—Articles 1, 2, 7, 8, 9, 10, 17 and 19.

(2) if new legislation is enacted in Brazil within the scope of the special incentive measures mentioned in the said Article or in substitution for the Articles of the Brazilian legislation enumerated in paragraph (1) above effective on the date of signature of the Convention, the Government of the United States of Brazil will inform the Government of Japan on such legislation and the two Governments will consult for the purpose of a new exchange of notes with a view to including those modifications which arise from the above legislation.

I have further the honour to request Your Excellency to be good enough to confirm the foregoing understandings on behalf of the Government of Japan.

I avail myself of this opportunity to extend to Your Excellency, Monsieur le Ministre, the assurances of my highest consideration.

Juracy Montenegro MAGALHÃES
Minister of State of External Relations
of the United States of Brazil

His Excellency Takeo Miki
Minister for Foreign Affairs of Japan

II

(Japanese note)

Tokyo, January 24, 1967

Monsieur le Ministre,

I have the honour to acknowledge the receipt of Your Excellency's Note of today's date which reads as follows:

[See note I]

I have further the honour to confirm the understandings embodied in Your Excellency's Note, on behalf of the Government of Japan.

I avail myself of this opportunity to extend to Your Excellency, Monsieur le Ministre, the assurances of my highest consideration.

Takeo MIKI
Minister for Foreign Affairs of Japan

His Excellency Juracy Montenegro Magalhães
Minister of State of External Relations
of the United States of Brazil
