

No. 15165

**BRAZIL
and
SPAIN**

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (with protocol). Signed at Brasília on 14 November 1974

*Authentic texts: Portuguese and Spanish.
Registered by Brazil on 16 December 1976.*

**BRÉSIL
et
ESPAGNE**

Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu (avec protocole). Signée à Brasília le 14 novembre 1974

*Textes authentiques : portugais et espagnol.
Enregistrée par le Brésil le 16 décembre 1976.*

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE FEDERATIVE REPUBLIC OF BRAZIL AND THE SPANISH STATE FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Federative Republic of Brazil and the Government of the Spanish State,

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

Have agreed as follows:

Article 1. PERSONAL SCOPE

This Convention shall apply to persons who are residents of one or both of the Contracting States.

Article 2. TAXES COVERED

1. This Convention shall apply to taxes on income imposed by each Contracting State, 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 (excluding social security contribution), as well as taxes on capital appreciation.

3. The existing taxes to which this Convention shall apply are:

(a) in Brazil:

— the income tax, excluding the tax on excess remittances and on activities of minor importance (hereinafter referred to as “Brazilian tax”);

(b) in Spain:

(i) the general income tax on individuals;

(ii) the general income tax on corporations, including the special charge of 4 per cent established by article 104 of Law 41/1964 of 11 June;

(iii) the following prepayments: the tax on rural land, the tax on urban land, the tax on earned income, the tax on income from capital and the tax on business and industrial activities;

(iv) in Sahara, the income taxes (on earned income and on income from capital) and the taxes on profits of enterprises;

(v) the surface royalty, the tax on gross yield and the special tax on corporation profits, regulated by Law No. 21/1974 of 27 June, from prospecting and exploiting oil wells;

(vi) the local taxes on income

(hereinafter referred to as “Spanish tax”).

¹ Came into force on 3 December 1975 by the exchange of the instruments of ratification, which took place at Madrid, in accordance with article 29.

4. This Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

Article 3. GENERAL DEFINITIONS

1. In this Convention, unless the context otherwise requires:

- (a) The term "Brazil" means the Federative Republic of Brazil;
- (b) The term "Spain" means the Spanish State;
- (c) The terms "a Contracting State" and "the other Contracting State" mean Brazil or Spain, as the context requires;
- (d) The term "person" comprises 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 terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (g) The term "international traffic" includes any voyage by a ship or aircraft operated by an enterprise of a Contracting State, except when the voyage is solely between places in the other Contracting State;
- (h) The term "competent authority" means:
 - (i) in Brazil: the Minister of Finance, the Secretary of Federal Revenue or their authorized representatives;
 - (ii) in Spain: the Minister of Finance, the Director-General of Taxation or any other authority designated by the Minister.

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 which are the subject of the Convention.

Article 4. FISCAL DOMICILE

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

2. Where, by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then this case shall be determined in accordance with 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 a habitual abode.

(c) If he has a 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 State 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.

Article 5. PERMANENT ESTABLISHMENT

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” shall include especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, quarry or other place of extraction of natural resources;
- (g) 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 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 for collecting information, for the enterprise;
- (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 independent agent to whom paragraph 6 applies—shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that 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.

5. An insurance enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it collects premiums or insures risks in that other State through a person other than those referred to in paragraph 6.

6. 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 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.

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 from immovable property may be taxed by the Contracting State in which such property is situated.

2. (a) Subject to the provisions of subparagraphs (b) and (c), the term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated.

(b) The term "immovable property" shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct or 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.

(c) Ships, boats and aircraft shall not be regarded as immovable property.

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

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional 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. Where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment 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. Where profits include items of income which are dealt with separately in other articles of this Convention, then the provisions of those articles shall not be affected by the provisions of this article.

Article 8. SHIPPING AND AIR TRANSPORT

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

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

3. Profits from the operation of ships or aircraft in international traffic derived by an enterprise of a Contracting State through participation in a pool or a joint business shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

Article 9. ASSOCIATED ENTERPRISES

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 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 be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

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

3. 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 7 shall apply.

4. The term "dividends" as used in this article means income from shares, *jouissance* shares of *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. Where a company which is a resident of Spain has a permanent establishment in Brazil, that permanent establishment may be subject in that State to a tax withheld at source in accordance with Brazilian taxation law. However, such tax

shall not exceed 15 per cent of the gross amount of the profits of the permanent establishment, determined after payment of the corporation tax related to such profits.

Nevertheless, the tax shall be applicable only if the profits are effectively transferred abroad.

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 be taxed in the Contracting State in which it arises, and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. The tax on interest paid to financial institutions of a Contracting State by virtue of loans and credits granted for a minimum term of 10 years and for the purpose of financing the purchase of capital goods shall not exceed, in the Contracting State in which the interest arises, 10 per cent of the gross amount of the interest.

4. Notwithstanding the provisions of paragraphs 1 and 2:

a) Interest arising in a Contracting State and paid to the Government of the other Contracting State, a political subdivision thereof or any agency (including a financial institution) wholly owned by that Government or a political subdivision thereof shall be exempt from tax in the first-mentioned Contracting State.

b) Interest on securities, bonds or debentures issued by the Government of a Contracting State or any agency (including a financial institution) owned by that Government shall be taxable only in that State.

5. 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.

6. 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 7 shall apply.

7. The limitation established in paragraph 2 shall not apply to interest arising in a Contracting State and paid to a permanent establishment of an enterprise of the other Contracting State which is situated in a third State.

8. 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 in connexion 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.

9. 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 the payer and the recipient in the absence of such relation-

ship, 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 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 be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax so charged shall not exceed:

(a) 10 per cent of the gross amount of royalties paid as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films, films or tapes for television or radio broadcasting, if produced by a resident of one of the Contracting States);

(b) 15 per cent in all other cases.

3. The term "royalties" as used in this article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films, films or tapes for television or radio broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. 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 in connexion 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.

5. 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 7 shall apply.

6. 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 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 13. CAPITAL GAINS

1. Gains from the alienation of immovable property, as defined in article 6, 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 the other State. However, gains from the alienation of ships or aircraft operated in international traffic and of movable property pertaining to the operation of such ships and aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

3. Gains from the alienation of any property or right other than those mentioned in paragraphs 1 and 2 may be taxed in both Contracting States.

Article 14. INDEPENDENT PERSONAL SERVICES

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 taxable only in that State unless the remuneration for such services and activities is paid by a permanent establishment situated in the other Contracting State or by a company which is a resident of that other State. In that case, such income may be taxed in the other State.

2. The term "professional services" includes, especially, independent technical, scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15. DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of articles 16, 18, 19, 20 and 21, 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 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 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 in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16. DIRECTORS' FEES

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

Article 17. ARTISTS AND ATHLETES

1. Notwithstanding any other provision of this Convention, income derived by public entertainers, such as theatre, motion picture, radio or television artists, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

2. Where the services mentioned in paragraph 1 of this article are provided in a Contracting State by an enterprise of the other Contracting State, the income derived by the enterprise from the provision of those services may, notwithstanding any other provision of this Convention, be taxed in the first-mentioned Contracting State.

Article 18. PENSIONS AND ANNUITIES

1. Subject to the provisions of article 19, pensions and other similar remuneration not exceeding an amount equivalent to \$US 3,000 in a calendar year paid to a resident of a Contracting State shall be taxable only in that State. The amount which exceeds the above-mentioned limit may be taxed in both Contracting States.

2. Annuities shall be taxable only in the Contracting State of which the recipient is a resident.

3. For the purposes of this article:

(a) The term "pensions and other similar remuneration" means periodic payments made after retirement and as a result of past employment or by way of compensation for injuries received in connexion with past employment;

(b) 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. GOVERNMENTAL REMUNERATION

1. 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.

However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the recipient of the remuneration is a resident of that State who:

(a) is a national of that State; or

(b) did not become a resident of that State solely for the purpose of rendering the services.

2. 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.

However, such pension shall be taxable only in the Contracting State of which the recipient is a resident if the recipient is a national of that State.

3. The provisions of articles 15, 16 and 18 shall apply to remuneration or pensions in respect of services rendered in connexion with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

4. Pensions paid out of social security funds of a Contracting State to a resident of the other Contracting State shall be taxable only in that other State.

Article 20. TEACHERS AND RESEARCHERS

An individual who is, or was immediately before visiting a Contracting State, a resident of the other Contracting State and who, at the invitation of the first-mentioned Contracting State or a university, college, school, museum or other cultural institution in that first-mentioned Contracting State or under an official cultural exchange programme, is present in that State for a period not exceeding two years solely for the purpose of teaching, lecturing or carrying out research at such institutions shall be exempt from tax in that State on his remuneration for such activities.

Article 21. STUDENTS

1. An individual who is, or was immediately before visiting a Contracting State, a resident of the other Contracting State and who is temporarily present in the first-mentioned Contracting State solely as:

- (a) a student at a university, college or school in the first-mentioned Contracting State,
 - (b) a trainee, or
 - (c) the recipient of a grant, allowance or award for the primary purpose of study or research from a religious, charitable, scientific or educational organization,
- shall be exempt from tax in that first-mentioned Contracting State on payments which he receives from abroad for the purpose of this maintenance, education or training.

2. A student or trainee 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 Contracting State solely for the purpose of study or training shall be exempt from tax in that first-mentioned Contracting State, for a period not exceeding four consecutive calendar years, on any remuneration which he derives in respect of an employment exercised in that State for the purpose of assisting him in his studies or training.

Article 22. INCOME NOT EXPRESSLY MENTIONED

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing articles may be taxed in both Contracting States.

Article 23. METHODS FOR ELIMINATION OF DOUBLE TAXATION

1. Where a resident of a Contracting State derives income which, in accordance with the provisions of this Convention, may be taxed in the other Contracting State, the first-mentioned State shall, subject to the provisions of paragraphs 2, 3 and 4, allow as a deduction from the tax on the income of that person an amount equal to the income tax paid in that other Contracting State.

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 the other Contracting State.

The provisions of this paragraph shall apply, in Spain, both to general taxes and to prepayments.

2. For the purpose of the deduction referred to in paragraph 1, the tax on interest and royalties shall in all cases be deemed to have been paid at the rates of 20 per cent and 25 per cent respectively.

3. Where a resident of Spain receives dividends which, in accordance with the provisions of this Convention, may be taxed in Brazil, Spain shall exempt such dividends from tax but may, in calculating tax on the remaining income of that person, apply the rate of tax which would have been applicable if the exempted dividends had not been so exempted.

4. Where a resident of Brazil receives dividends which, in accordance with the provisions of this Convention, may be taxed in Spain, Brazil shall exempt such dividends from tax.

Article 24. NON-DISCRIMINATION

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:

- (a) all individuals possessing the nationality of a Contracting State;
- (b) all legal persons, partnerships and associations deriving their status as such from the law in force in a 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 State than the taxation levied on enterprises of that other State carrying on the same activities.

This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and deduction 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. This article shall apply to all taxes, whether or not covered by this Convention.

Article 25. 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 may result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those 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 itself 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 reaching an agreement in the sense of the preceding paragraphs. If it proves advisable in order to reach agreement to establish personal contacts, the exchange of views may take place through a commission consisting of representatives of the competent authorities of the Contracting States.

Article 26. EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention and of the domestic laws of the Contracting States concerning taxes covered by this Convention in so far as the taxation thereunder is in accordance with 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 of the taxes which are the subject of this Convention.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on one of the Contracting States 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.

Article 27. DIPLOMATIC AND CONSULAR OFFICIALS

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 28. METHODS OF APPLICATION

The competent authorities of the Contracting States shall establish by mutual agreement the methods of application of this Convention.

Article 29. ENTRY INTO FORCE

This Convention shall be ratified in accordance with the respective constitutional procedures and the instruments of ratification shall be exchanged at Madrid as soon as possible.

The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall apply for the first time:

(a) in Brazil:

- I. as regards taxes withheld at source, to amounts paid on or after the first day of January of the calendar year immediately following the year in which the Convention enters into force;
- II. as regards other taxes on income, to amounts received during the fiscal year beginning on or after the first day of January of the calendar year immediately following the year in which the Convention enters into force;

(b) in Spain:

- I. as regards taxes withheld at source, to taxes payable on or after the first day of January of the calendar year immediately following the year in which the Convention enters into force;
- II. as regards other taxes on income, to income received during the fiscal year beginning on or after the first day of January of the calendar year immediately following the year in which the Convention enters into force.

Article 30. TERMINATION

Either Contracting State may denounce this Convention, after the expiration of a period of three years from the date of its entry into force, by giving notice of termination in writing to the other Contracting State through the diplomatic channel, provided that such notice is given on or before the thirtieth day of June of any calendar year. In such event, this Convention shall apply for the last time:

(a) in Brazil:

- I. as regards taxes withheld at source, to amounts paid before the expiration of the calendar year in which notice of termination is given;
- II. as regards other taxes covered by this Convention, to the fiscal year beginning during the calendar year in which notice of termination is given;

(b) in Spain:

- I. as regards taxes withheld at source, to taxes payable before the expiration of the calendar year in which notice of termination is given;
- II. as regards other taxes, to income received in the fiscal year beginning during the calendar year in which notice of termination is given.

IN WITNESS WHEREOF the Plenipotentiaries of the two Contracting States have signed this Convention and have thereto affixed their seals.

DONE at Brasília on 14 November 1974, in duplicate in the Portuguese and Spanish languages, both texts being equally authentic.

For the Government
of Brazil:

ANTONIO F. AZEREDO DA SILVEIRA

For the Government
of Spain:

JOSÉ PÉREZ DEL ARCO

PROTOCOL

At the time of signature of the Convention for the avoidance of double taxation with respect to taxes on income between the Federative Republic of Brazil and the Spanish State, the undersigned, being duly authorized thereto, have agreed on the following provisions, which shall form an integral part of the present Convention.

1. *Ad article 2, paragraph 3 (b) (vi)*
The residence tax (*arbitrio de radicación*) shall be deemed to be included.
2. *Ad article 6, paragraph 1*
Income from agriculture and forestry shall be deemed to be included.
3. *Ad article 10, paragraph 2*

In the event that Brazil, after the signature of the present Convention, reduces the tax on dividends as referred to in article 10, paragraph 2, paid by a company which is a resident of Brazil to a resident of a third State not situated in Latin

America who owns at least 25 per cent of the voting capital of the company which is a resident of Brazil, an equal reduction shall be automatically applicable to the tax on dividends paid to a company which is a resident of Spain and which is in similar circumstances.

4. *Ad article 12, paragraph 2*

In the event that Brazil, after the signature of the present Convention, reduces the tax on royalties as referred to in article 12, paragraph 2 (*b*), paid by a resident of Brazil to a resident of a third State not situated in Latin America, an equal reduction shall be automatically applicable to the tax on royalties paid to a resident of Spain who is in similar circumstances.

5. *Ad article 12, paragraph 3*

The phrase "for information concerning industrial, commercial or scientific experience" as used in article 12, paragraph 3, includes income from the provision of technical services and technical assistance.

6. *Ad article 14*

It is understood that the provisions of article 14 shall apply even if the activities are carried on by a company.

7. *Ad article 24, paragraph 4*

The provisions of Brazilian law under which royalties as referred to in article 12, paragraph 3, paid by a company which is a resident of Brazil to a resident of Spain who owns at least 50 per cent of the voting capital of that company, are not deductible for the purpose of determining the taxable income of the company which is a resident of Brazil shall be applicable notwithstanding the provisions of article 24, paragraph 4, of the present Convention.

In the event that Brazil, after the signature of the present Convention, permits royalties as referred to in article 12, paragraph 3, paid by a company which is a resident of Brazil to a resident of a third State not situated in Latin America who owns at least 50 per cent of the voting capital of the company which is a resident of Brazil to be deductible for the purpose of determining the profits of that company, an equal deduction shall be automatically applicable, in similar circumstances, to a company which is a resident of Brazil and which pays royalties to a resident of Spain.

IN WITNESS WHEREOF the Plenipotentiaries of the two Contracting States have signed this Protocol and have thereto affixed their seals.

DONE at Brasilia on 14 November 1974, in duplicate in the Portuguese and Spanish languages, both texts being equally authentic.

For the Government
of Brazil:

ANTONIO F. AZEREDO DA SILVEIRA

For the Government
of Spain:

JOSÉ PÉREZ DEL ARCO