

**No. 15752**

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**BRAZIL  
and  
AUSTRIA**

**Convention for the avoidance of double taxation with respect to taxes on income and fortune (with protocol). Signed at Vienna on 24 May 1975**

*Authentic texts: Portuguese and German.*

*Registered by Brazil on 28 June 1977.*

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**BRÉSIL  
et  
AUTRICHE**

**Convention en vue d'éviter les doubles impositions en matière d'impôts sur le revenu et sur la fortune (avec protocole). Signée à Vienne le 24 mai 1975**

*Textes authentiques : portugais et allemand.*

*Enregistrée par le Brésil le 28 juin 1977.*

## [TRANSLATION — TRADUCTION]

CONVENTION<sup>1</sup> BETWEEN THE FEDERATIVE REPUBLIC OF BRAZIL  
AND THE REPUBLIC OF AUSTRIA FOR THE AVOIDANCE OF  
DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME  
AND FORTUNE

The Federative Republic of Brazil and the Republic of Austria, desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income and fortune, 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 BY THE CONVENTION*

1. The existing taxes to which this Convention shall apply are:
  - (a) in the case of Brazil:

The income tax, excluding the tax on excess remittances and on activities of minor importance (hereinafter referred to as “Brazilian tax”);
  - (b) in the case of Austria:
    1. the income tax;
    2. the corporation tax;
    3. the contribution from income for the promotion of residential building and for the equalization of family burdens;
    4. the contribution from income to the Disaster Fund;
    5. the special tax on income;
    6. the tax on directors’ fees;
    7. the tax on fortune;
    8. the contribution from fortune to the Disaster Fund;
    9. the special tax on fortune;
    10. the tax on property exempt from the inheritance tax;
    11. the business tax, including the payroll tax;
    12. the land tax;
    13. the tax on agricultural and forestry enterprises;
    14. the contributions from agricultural and forestry enterprises to the equalization fund for family subsidies;
    15. the tax on the land value of undeveloped real estate.
2. The 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 changes which have been made in their respective taxation laws, especially with respect to article 23, paragraph 7.

<sup>1</sup> Came into force on 1 June 1976 by the exchange of the instruments of ratification, which took place at Brasilia, in accordance with article 28 (2).

*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 “Austria” means the Republic of Austria;
- (c) The terms “a Contracting State” and “the other Contracting State” mean Brazil or Austria, 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 “competent authority” means:
  - (i) in Brazil: the Minister of Finance, the Secretary of the Federal Revenue or their authorized representatives;
  - (ii) in Austria: the Federal Minister of Finance.

2. As regards the application of the 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 States shall proceed in accordance with the provisions of article 25.

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 agent of an independent status to whom paragraph 5 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 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.

6. An insurance company of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if, through a representative, it receives premiums or insures risks in that other State.

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 in the Contracting State in which such property is situated.

2. (a) Subject to the provisions of subparagraphs (b) and (c) below, 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 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.

(c) 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 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 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 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.

6. The provisions of paragraphs 1 to 5 shall also apply to income derived by a sleeping partner in a sleeping partnership (*stille Gesellschaft*) under Austrian law.

#### Article 8. SHIPPING AND AIR TRANSPORT

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.

#### 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 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 State of which the company making the distribution is a resident.

5. Where a company which is a resident of Austria has a permanent establishment in Brazil, that permanent establishment may be subject to a tax withheld at the source in accordance with Brazilian law. However, such tax shall not exceed 15 per cent of the gross amount of the profits of the permanent establishment, as determined after payment of the corporation tax related to such profits.

6. The tax rate limitations provided for in paragraphs 2 and 5 shall not apply to dividends or profits paid or remitted from Brazil before 1 January 1976.

#### 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. 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 political subdivision thereof shall be exempt from tax in the first-mentioned Contracting State;
- (b) interest arising from securities, bonds or debentures issued by the Government of a Contracting State or any agency (including a financial institution) owned by that Government and paid to a resident of the other Contracting State shall be taxable only in the first-mentioned 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 7 shall apply.

6. 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.

7. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision 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.

8. 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 relationship, the provisions of this article shall apply only to the last-mentioned amount. In that case, the excess part of the payments may be taxed 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, but the tax so charged shall not exceed:

- (a) 10 per cent of the gross amount of royalties for the use of, or the right to use, any copyright of literary, artistic or scientific work, excluding cinematographic films and films or tapes for television or radio broadcasting;
- (b) 25 per cent of the gross amount of royalties for the use of, or the right to use, any trade mark;
- (c) 15 per cent in 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 cinematographic films and 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 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 obligation 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 may be taxed 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 movable property pertaining to the operation of such ships or 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 rights 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 payment for such services and activities is made by a permanent establishment situated in the other Contracting State or a company which is a resident of that other State. In such a case, the income may be taxed in the other State.

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

#### *Article 15. DEPENDENT PERSONAL SERVICES*

1. Subject to the provisions of articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in 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 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 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 the provisions of articles 14 and 15, 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. Notwithstanding the other provisions of this Convention, income derived by an enterprise of a Contracting State as a consideration for providing, in the other Contracting State, the services of a person referred to in paragraph 1, whether that person is a resident of a Contracting State or not, may be taxed in the Contracting State in which the services are performed.

#### *Article 18. PENSIONS*

Subject to the provisions of article 19, pensions and other similar remuneration arising in a Contracting State and paid to a resident of the other Contracting State in consideration of past employment shall be taxable only in the first-mentioned State.

#### *Article 19. GOVERNMENTAL FUNCTIONS*

1. Remuneration, including pensions, paid by, or out of funds created by, a Contracting State or a political subdivision thereof to any individual in respect of services rendered to that State or political subdivision thereof in the discharge of functions of a governmental or other public nature shall be taxable only in that State.

2. Pensions paid under the social security scheme of a Contracting State shall be taxable only in that State.

3. The provisions of paragraph 1 shall apply to remuneration received by members of the Austrian Trade Mission to Brazil, provided that the recipient is not a national of Brazil.

4. The provisions of articles 15, 16 and 18 shall apply to remuneration or pensions in respect of services rendered in connexion with any trade or business carried on by one of the Contracting States or a political subdivision thereof.

#### *Article 20. STUDENTS*

1. Payments which a student or business apprentice who is or was formerly a resident of a Contracting State and who is present in the other Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that other State, provided that such payments are made to him from sources outside that other State.

2. Remuneration which a student or business apprentice who is or was formerly a resident of a Contracting State derives in respect of an employment which he exercises in the other Contracting State for the purpose of practical training for a period or periods not exceeding in the aggregate 183 days in the year concerned shall not be taxed in that other State.

*Article 21. INCOME NOT EXPRESSLY MENTIONED*

Income of a resident of a Contracting State not expressly mentioned in the foregoing articles of this Convention shall be taxable only in that State. However, such income may be taxed in the other Contracting State if it is paid by a resident of that other State or by a permanent establishment situated in that other State.

*Article 22. FORTUNE*

1. Fortune represented by immovable property, as defined in article 6, paragraph 2, may be taxed in the Contracting State in which such property is situated.

2. Fortune represented by movable property forming part of the business property of a permanent establishment of an enterprise, or by movable property pertaining to a fixed base used for the performance of professional services, may be taxed in the Contracting State in which the permanent establishment or fixed base is situated.

3. Ships and aircraft operated in international traffic, and 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.

4. All other elements of fortune of a resident of a Contracting State shall be taxable only in that State.

*Article 23. METHODS FOR ELIMINATION OF DOUBLE TAXATION*

1. Where a resident of Brazil derives income which, in accordance with the provisions of this Convention, may be taxed in Austria, Brazil shall, subject to the provisions of article 11, paragraph 3 (b), and articles 18 and 19, allow as a deduction from the tax on the income of that person an amount equal to the income tax paid in Austria.

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 Austria.

2. Dividends paid by a company which is a resident of Austria to a company which is a resident of Brazil and which holds at least 25 per cent of the capital shares of the company paying the dividends shall be exempt from the corporation tax in Brazil.

3. Where a resident of Austria derives income which, in accordance with the provisions of this Convention, may be taxed in Brazil, Austria shall, subject to the provisions of paragraphs 4 to 7, exempt such income 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 income had not been so exempted.

4. Where a resident of Austria derives income which, in accordance with the provisions of articles 10, 11, 12 and 13, paragraph 3, may be taxed in Brazil, Austria shall, subject to the provisions of article 11, paragraph 3 (b), allow as a deduction from the tax on the income of that person an amount equal to the tax paid in Brazil.

Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is appropriate to the income derived from Brazil.

5. For the purposes of paragraph 4, the tax paid on dividends, interest and royalties derived from Brazil shall be deemed to have been paid at the rate of 25 per cent of the gross amount of the income.

6. Dividends paid by a company which is a resident of Brazil to a company which is a resident of Austria and which holds at least 25 per cent of the capital shares of the company paying the dividends shall be exempt from the corporation tax and the business tax in Austria.

7. Where royalties paid by a company which is a resident of Brazil to a company which is a resident of Austria and which holds more than 50 per cent of the voting capital of the company paying the royalties are not deductible for tax purposes in Brazil, such royalties shall be exempt from tax in Austria.

8. Where a resident of Austria owns fortune which, in accordance with the provisions of this Convention, may be taxed in Brazil, Austria shall exempt such fortune from tax.

9. Where a company which is a resident of Austria holds at least 25 per cent of the capital shares of a company which is a resident of Brazil, such holdings shall be exempt from taxes on fortune in Austria.

#### *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 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 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 State are or may be subjected.

5. In this article the term "taxation" means taxes of every kind and description.

#### *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 will 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 the 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 the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a commission consisting of representatives of the competent authorities of the Contracting States.

#### *Article 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 the 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. ENTRY INTO FORCE*

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Brasília.

2. The Convention shall enter into force on the date of the exchange of instruments of ratification and its provisions shall apply for the first time:

(a) in Brazil:

- I. as respects taxes withheld at the source, to amounts paid or remitted 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 respects other taxes covered by this Convention, to 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 Austria:

to any taxes collected in the calendar year immediately following the year in which the Convention enters into force.

3. Notwithstanding the provisions of paragraph 2, article 8 of this Convention shall apply to all taxes levied after 1 January 1968, with the exception of the Austrian payroll tax.

#### *Article 29. TERMINATION*

Either Contracting State may denounce this Convention, after the expiry 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, the Convention shall apply for the last time:

(a) in Brazil:

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

(b) in Austria:

to any taxes collected in 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 in duplicate at Vienna, on 24 May 1975, in the Portuguese and German languages, both texts being equally authentic.

For the Federative Republic of Brazil:  
[MARIO HENRIQUE SIMONSEN]

For the Republic of Austria:  
[HANNES ANDROSCH]

#### PROTOCOL

On the occasion of the signing of the Convention for the avoidance of double taxation with respect to taxes on income and fortune between the Federative Republic of Brazil and the Republic of Austria, the undersigned, being duly authorized thereto, have agreed upon the following provisions, which shall constitute an integral part of the present Convention.

1. It is agreed that the provisions of article 10, paragraph 5, do not conflict with the provisions of article 24, paragraph 3.

2. Loans and credits granted by the Österreichische Kontrollbank Aktiengesellschaft and the Bank of Brazil in their capacity as public financing institutions shall be treated as loans and credits granted by the Government of Austria or of Brazil. Interest arising from such loans and credits shall be taxed in accordance with the provisions of article 11, paragraph 3 (a). Double taxation shall be avoided, in the case of Austria, by the application of article 23, paragraphs 4 and 5.

3. Should Brazil, subsequent to the signing of the present Convention, allow royalties, as defined 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 holds 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, then an equivalent deduction shall automatically be applicable, under similar conditions, to a company which is a resident of Brazil and which pays royalties to a resident of Austria.

It is agreed that the existing provision of Brazilian law concerning the non-deductibility of royalties, as referred to above, does not conflict with article 24, paragraph 4, of the present Convention.

4. With respect to article 13, paragraph 3, it is agreed that a Contracting State does not have the right to tax gains derived by a resident of the other Contracting State if such gains arise from the sale of shares of or an interest in a company which is not a resident of the first-mentioned State.

5. The Brazilian tax on excess remittances shall not apply to income remitted which does not exceed 12 per cent of the capital registered with the Central Bank of Brazil. For the purpose of determining the amount which is subject to the Brazilian tax on excess remittances, the Brazilian tax on dividends and royalties shall be deemed, as from the beginning of the fifth year following the entry into force of the Convention, to have been paid at the rate of 25 per cent.

6. Should Brazil at any time introduce a tax on fortune, the two Contracting States shall renegotiate all the provisions relating to the taxation of fortune.

DONE in duplicate at Vienna, on 24 May 1975, in the Portuguese and German languages, both texts being equally authentic.

For the Federative Republic of Brazil:

[MARIO HENRIQUE SIMONSEN]

For the Republic of Austria:

[HANNES ANDROSCH]

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