

No. 19195

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**BRAZIL
and
LUXEMBOURG**

**Convention for the avoidance of double taxation with
respect to taxes on income and capital (with protocol).
Signed at Luxembourg on 8 November 1978**

Authentic texts: Portuguese and French.

Registered by Brazil on 30 October 1980.

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**BRÉSIL
et
LUXEMBOURG**

**Convention tendant à éviter les doubles impositions en
matière d'impôts sur le revenu et sur la fortune (avec
protocole). Signée à Luxembourg le 8 novembre 1978**

Textes authentiques : portugais et français.

Enregistrée par le Brésil le 30 octobre 1980.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE FEDERATIVE REPUBLIC OF
BRAZIL AND THE GRAND DUCHY OF LUXEMBOURG FOR
THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT
TO TAXES ON INCOME AND CAPITAL

The Federative Republic of Brazil and the Grand Duchy of Luxembourg, desiring to conclude a convention for the avoidance of double taxation with respect to taxes on income and capital, have agreed as follows:

Article 1. PERSONAL SCOPE

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

2. It is understood that the Convention shall apply neither to the income nor to the capital of holding companies resident in Luxembourg which enjoy particular tax advantages under the law of Luxembourg in force or any other similar law which may enter into force in Luxembourg after the signing of the Convention, nor to the income which a resident of Brazil may derive from such companies, nor to the holdings owned by that resident in such companies.

Article 2. TAXES COVERED

1. The existing taxes to which the Convention shall apply are:

(a) In the case of the Grand Duchy of Luxembourg:

—The tax on the income of individuals (*l'impôt sur le revenu des personnes physiques*);

—The corporation tax (*l'impôt sur le revenu des collectivités*);

—The special tax on directors' fees (*l'impôt spécial sur les tantièmes*);

—The capital tax (*l'impôt sur la fortune*);

—The communal trade tax on profits and capital (*l'impôt commercial communal d'après les bénéfices et capital d'exploitation*);

—The payroll tax (*l'impôt sur le total des salaires*);

—The land tax (*l'impôt foncier*)

(hereinafter referred to as "Luxembourg tax");

(b) In the case of the Federative Republic of Brazil:

—The federal tax on income and receipts of any kind, excluding the tax on excess remittances and on activities of minor importance

(hereinafter referred to as "Brazilian tax").

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.

¹ Came into force on 23 July 1980 by the exchange of instruments of ratification, which took place at Brasilia, in accordance with article 30.

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 “Luxembourg” means the Grand Duchy of Luxembourg;
- (c) The terms “a Contracting State” and “the other Contracting State” mean Brazil or Luxembourg, as the context requires;
- (d) The term “person” comprises individuals, a company or any other group of individuals;
- (e) The term “company” means any body corporate or any entity which is deemed to be a body corporate for taxation 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 “nationals” means:
 - (i) All individuals possessing the nationality of a Contracting State;
 - (ii) All bodies corporate, partnerships and associations constituted in accordance with the law in force in a Contracting State;
- (h) The term “international traffic” means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (i) The term “competent authority” means:
 - (i) In the case of Brazil: The Minister of Finance, the Secretary of Federal Revenue or their authorized representatives;
 - (ii) In the case of Luxembourg: The Minister of Finance or his duly authorized representative.

The Minister of Finance or his duly authorized representative.

2. In 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 this 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 his 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 no 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.

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 be deemed not to include:

- (a) The use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or 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.

However, an insurance company of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State provided that, through a representative other than the persons to whom paragraph 5 below applies, it receives premiums in the territory of that other State or insurance risks in that territory.

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. 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.

7. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it carries on the activity of providing therein the services of artists or athletes referred to in article 17 of this Convention.

Article 6. INCOME FROM IMMOVABLE PROPERTY

1. Income from immovable property, including income from agriculture and forestry, may be taxed in the Contracting State in which such property is situated.

2. (a) 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 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 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, 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. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In 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. The provisions of paragraph 1 shall also apply to profits derived from participation in a pool, in a joint business or in an international operations agency.

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 where, 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:

(a) 15 per cent of the gross amount of the dividends if the recipient is a company which holds directly at least 10 per cent of the capital of the company paying the dividends;

(b) 25 per cent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company on 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 Luxembourg has a permanent establishment in Brazil, this permanent establishment may be subject therein to a tax withheld at source in accordance with Brazilian law. However, such a tax cannot exceed 15 per cent of the profits of that permanent establishment determined after the payment of the corporate tax related to such profits.

6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company to persons who are not residents of that other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

7. The limitations foreseen in paragraphs 2(a) and 5 shall not apply to dividends or profits paid or accrued before the expiry of the fifth calendar year following the year in which the Convention enters into force.

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 shall be exempt from tax in the first-mentioned Contracting State;
- (b) Interest derived from government securities and from bonds or debentures issued by the Government of a Contracting State shall be taxable only in that State;
- (c) The tax rate may not exceed 10 per cent in respect of interest on loans and credits granted for a period of at least seven years by banking institutions in connection with the sale of capital goods or the study, installation or supplies of industrial or scientific units or public works.

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 any other income assimilated, under the taxation law of the Contracting State in which the income arises, to income from money lent.

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 limitations established in paragraphs 2 and 3 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, a local authority or a resident of that State. Where, however, the person paying the interest, whether or not he is a resident of a Contracting State, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and that 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 shall remain taxable according to the laws 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 laws of that State, but the tax so charged shall not exceed:

- (a) 25 per cent of the gross amount of the royalties arising from the use of, or the right to use, trade marks, cinematograph films, films or tapes for television or radio broadcasting;
- (b) 15 per cent of the gross amount of royalties in all other cases.

3. The term "royalties" as used in this article means payment 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 marks, design or model, plan, secret formula or process, as well as for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience or studies.

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 or not he is a resident of a Contracting State, has in a Contracting State a permanent establishment in connection with which the obligation to pay the royalties was incurred and such royalties are borne by the 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.

7. The tax rate limitation foreseen in paragraph 2(b) shall not apply to royalties paid to a resident of a Contracting State holding directly or indirectly at least 50 per cent of the voting capital of the company paying such royalties before the expiry of the fifth calendar year following the year in which the Convention enters into force.

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 in its entirety of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that 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 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 nature shall be taxable only in that State, unless the payment of such activities and services is borne by a company which is a resident of the other Contracting State or by a permanent establishment situated therein. In such a case, the income may be taxed in that other State.

2. The term "professional services" includes, especially, independent scientific, technical, 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, wages, salaries 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 fiscal year concerned;
- (b) The remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) Such 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 other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or a similar

organ of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17. ARTISTES AND ATHLETES

Notwithstanding the provisions of articles 14 and 15, 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 18. PENSIONS

1. Subject to the provisions of article 19, paragraphs 2 and 3, pensions and other similar remuneration not exceeding an amount equivalent to US\$ 3,000 annually arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State. The amount which exceeds US\$ 3,000 may be taxed in the first-mentioned Contracting State.

2. As used in this article, the term "pensions and other similar remuneration" means periodic payments made after retirement in consideration of past employment or by way of compensation for injuries received in connection with past employment.

Article 19. GOVERNMENT SERVICE

1. (a) Remuneration other than a pension paid by a Contracting State or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

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

- (i) Is a national of that State; or
- (ii) Did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State. The same provision shall apply to pensions and other allowances, whether periodic or not, paid in implementation of the social legislation of a Contracting State.

(b) However, such pension shall be taxable only in the other Contracting State if the recipient is a resident and a national of that State.

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

Article 20. TEACHERS

An individual who is a resident of a Contracting State at the beginning of his stay in the other Contracting State and who, at the invitation of the Govern-

ment of that other Contracting State or of a university or other officially recognized teaching or research establishment in that other State is present in that State primarily for the purpose of teaching or carrying out research, or for both purposes, shall be exempt from tax in that State on his remuneration for such teaching or research activities for a period not exceeding two years from the date of his arrival in that State.

Article 21. STUDENTS

1. Payments which a student or 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 services 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 State.

The same shall apply to any remuneration received by a student or apprentice in respect of employment exercised in the Contracting State in which he is pursuing his studies or training, provided that such remuneration is strictly necessary for his maintenance.

2. A student of a university or other higher educational or technical institution of a Contracting State who exercises a paid activity in the other Contracting State solely for the purpose of gaining practical training relating to his studies shall not be taxed in that other State on the remuneration paid for such activity, provided that the period of activity does not exceed two years.

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 of this Convention may be taxed in both Contracting States.

Article 23. CAPITAL

1. Capital 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. Capital 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 capital of a resident of a Contracting State shall be taxable only in that State.

Article 24. METHODS FOR THE ELIMINATION OF DOUBLE TAXATION

1. In the case of Brazil, double taxation shall be avoided as follows:

(a) Where a resident of Brazil derives income which, in accordance with the provisions of this Convention, may be taxed in Luxembourg, Brazil shall allow as a

deduction from the tax on the income of that person an amount equal to the income tax paid in Luxembourg;

(b) The deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Luxembourg.

2. In the case of Luxembourg, double taxation shall be avoided as follows:

(a) Where a resident of Luxembourg derives income or owns capital other than that mentioned in subparagraphs (b) and (c) below which, in accordance with the provisions of this Convention, may be taxed in Brazil, Luxembourg shall exempt such income or capital from tax, but may, in calculating the amount of tax on the remaining income or capital of such resident, apply the rate of tax which would have been applicable if the income or capital in question had not been exempted;

(b) Subject to the provisions of subparagraph (c), where a company which is a resident of Luxembourg has held, continuously since the beginning of its financial year, a direct participation of at least 25 per cent in the capital of a company which is a resident of Brazil, the income derived from such holdings and the holdings themselves shall be exempted from tax in Luxembourg.

The exemption shall also apply where the sum of the participation of two or more companies which are residents of Luxembourg amounts to at least 25 per cent of the capital of the company which is a resident of Brazil and where one of the companies which are residents of Luxembourg owns more than 50 per cent of the capital of each of the other companies which are residents of Luxembourg;

(c) Where a resident of Luxembourg receives income which, in accordance with the provisions of article 10, paragraph 2, article 11, paragraphs 2 and 3(c), article 12, paragraph 2, article 13, paragraphs 1 and 3, and articles 14, 16, 17, 18 and 22, may be taxed in Brazil, Luxembourg shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Brazil. The amount thus deducted shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to the income received from Brazil;

(d) For the deduction provided for in subparagraph (c) above, the Brazilian tax shall always be deemed to have been paid:

- (i) At the rate of 25 per cent on dividends other than those referred to in subparagraph (b);
- (ii) At the rate of 20 per cent on interest;
- (iii) At the rate of 25 per cent on the royalties referred to in article 12, paragraph 2(b).

Article 25. 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 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 Convention 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.

3. 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.

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

Article 26. 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 a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation 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 27. EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this 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 the 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 information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) To supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

Article 28. DIPLOMATS AND INTERNATIONAL ORGANIZATIONS

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

2. This Convention shall not apply to international organizations, to organs or officials thereof or to persons who, being members of a diplomatic or consular mission of a third State, are present in a Contracting State and are not deemed to be resident of either Contracting State in relation to tax on their income and capital.

Article 29. METHODS OF APPLICATION

The competent authorities of the Contracting States shall settle by mutual agreement the methods of application of the Convention and shall communicate with each other directly for the purposes of the application of the Convention.

Article 30. ENTRY INTO FORCE

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Brasilia as soon as possible.

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

- (a) As respects taxes withheld at source, to amounts paid or available for payment on or after 1 January of the calendar year immediately following the year in which the Convention enters into force.
- (b) As respects other taxes covered by this Convention, to taxable periods beginning on or after 1 January of the calendar year immediately following the year in which the Convention enters into force.

Article 31. TERMINATION

1. This Convention shall remain in force indefinitely. However, either State may terminate it by giving written notice through the diplomatic channel six months before the end of any calendar year following the period of three years from the date on which the Convention enters into force.

2. In such a case, the Convention shall apply for the last time:

- (a) As respects taxes withheld at source, to amounts paid or available for payment before the expiration of the calendar year in which the notice of termination is given;

(b) As respects other taxes covered by this Convention, to the tax periods, beginning in the calendar year in which the notice of termination is given.

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

DONE at Luxembourg, on 8 November 1978, in duplicate, in the Portuguese and French languages, both texts being equally authentic.

For the Federative Republic
of Brazil:

[CARLOS FREDERICO DUARTE
GONÇALVES DA ROCHA]

For the Grand Duchy
of Luxembourg:

[GASTON THORN and JACQUES POOS]

PROTOCOL

At the time of signature of the Convention for the avoidance of double taxation with respect to taxes on income and capital and for the settlement of certain other questions, concluded this day between the Federative Republic of Brazil and the Grand Duchy of Luxembourg, the undersigned plenipotentiaries have agreed upon the following provisions, which constitute an integral part of this Convention.

1. *Ad article 4, paragraph 1*

In the case of Luxembourg, the term "resident of a Contracting State" also means any general or limited partnership under Luxembourg law which has its place of effective management in Luxembourg.

2. *Ad article 10*

Shares allotted in the form of a bonus issue by a joint-stock company of a Contracting State to a resident of the other Contracting State, and the bonus rights and subscription rights relating thereto, shall not be subject to income tax in the latter State in cases where the issuance of the said shares involves a corresponding reduction of the proportion represented by the old certificates held by the recipient of the allotment.

3. *Ad article 11*

It is understood that the commission paid by a resident of Brazil to a banking or financial institution which is a resident of Luxembourg for a service rendered by that institution shall be deemed to be interest and shall be treated in accordance with the provisions of article 11.

4. *Ad article 12, paragraph 3*

The expression "for information concerning industrial, commercial or scientific experience or studies" referred to in article 12, paragraph 3, also applies to income from the rendering of technical assistance and services.

5. *Ad article 14*

The provisions of article 14 shall apply even if the activities referred to therein are exercised within a partnership.

6. *Ad article 23*

In the event that Brazil establishes a capital tax, the two Contracting States shall renegotiate the provisions relating to that tax.

7. *Ad article 24, paragraph 2 (b)*

The term "company" as used in article 24, paragraph 2(b) applies to companies limited by shares, limited-liability companies and limited partnerships with share capital.

8. *Ad article 24, paragraph 2 (d)*

In determining the taxable income of, and tax payable by, a resident of Luxembourg in respect of income received from Brazil, as referred to in article 24, paragraph 2(d), Luxembourg may under no circumstances take into account an income which is higher than the gross amount of income paid in Brazil, as shown in the following example:

Gross bond interest arising in Brazil	1,000
Brazilian tax withheld (15%)	<u>150</u>
Net amount paid	850
Expenses and charges in respect of interest: 240	
Brazilian tax deductible in Luxembourg:	
20% of 1,000 = 200	
Taxation in Luxembourg:	
Gross interest (850 + 150)	1,000
Expenses and charges in respect of interest	<u>240</u>
Net interest	760
Tax in Luxembourg corresponding to this income (assuming a rate of 40%)	304
Brazilian tax deductible	<u>200</u>
Tax to be paid in Luxembourg	104

9. *Ad article 25, paragraph 2*

The provisions of article 10, paragraph 5, shall not be contrary to the provisions of article 25, paragraph 2.

10. *Ad article 25, paragraph 3*

The provisions of Brazilian law which do not allow royalties, as defined in article 12, paragraph 3, paid by a company which is a resident of Brazil to a resident of Luxembourg holding at least 50 per cent of the capital of that company, to be deducted in the determination of the profits of that company which are taxable in Brazil, shall not be contrary to the provisions of article 25, paragraph 3, of the Convention.

In the event that Brazil, subsequent to the signing of the Convention, allows royalties paid by a company which is a resident of Brazil to a company which is a resident of a third State situated outside Latin America and which holds at least 50 per cent of the capital of the first-mentioned company, to be deducted in the determination of the profits of that company which are taxable in Brazil,

the same deduction shall be automatically applied in relations between a company which is a resident of Brazil and a company which is a resident of Luxembourg and which is in the same situation.

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

DONE at Luxembourg on 8 November 1978 in duplicate in the Portuguese and French languages, both texts being equally authentic.

For the Federative Republic
of Brazil:

[CARLOS FREDERICO DUARTE
GONÇALVES DA ROCHA]

For the Grand Duchy
of Luxembourg:

[GASTON THORN and JACQUES POOS]
