

No. 21595

**BRAZIL
and
ARGENTINA**

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (with protocol). Signed at Buenos Aires on 17 May 1980

Authentic texts: Portuguese and Spanish.

Registered by Brazil on 9 February 1983.

**BRÉSIL
et
ARGENTINE**

Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu (avec protocole). Signée à Buenos Aires le 17 mai 1980

Textes authentiques : portugais et espagnol.

Enregistrée par le Brésil le 9 février 1983.

[TRANSLATION—TRADUCTION]

CONVENTION¹ BETWEEN THE FEDERATIVE REPUBLIC OF BRAZIL AND THE ARGENTINE REPUBLIC 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 Argentine Republic,

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 I. PERSONAL SCOPE

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

Article II. TAXES COVERED

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

- (a) In the Federative Republic of Brazil: the income tax (*imposto sobre a renda*), with the exception of excess remittance taxes and taxes on activities of minor importance (hereinafter referred to as “Brazilian tax”);
- (b) In the Argentine Republic:
 - The income tax (*impuesto a las ganancias*);
 - The capital gains tax (*impuesto a los beneficios eventuales*); (hereinafter referred to as “Argentine tax”).

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

Article III. GENERAL DEFINITIONS

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

- (a) The term “Brazil” means the Federative Republic of Brazil;
- (b) The term “Argentina” means the Argentine Republic;
- (c) The term “nationals” means:

¹ Came into force on 7 December 1982 by the exchange of the instruments of ratification, which took place at Brasilia, in accordance with article XXVIII.

- (I.) Any individual possessing the nationality of a Contracting State;
- (II.) Any legal person, partnership and association deriving its status as such from the laws in force in a Contracting State;
- (d) The terms “a Contracting State” and “the other Contracting State” mean Brazil or Argentina, as the context requires;
- (e) The term “person” includes an individual, a company and any other body of persons;
- (f) The term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (g) The terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (h) The term “international traffic” means any transport by a ship, aircraft or motor vehicle operated by an enterprise which has its place of effective management in a Contracting State, except when the ship, aircraft or motor vehicle is operated solely between places in the other Contracting State;
- (i) The term “tax” means Brazilian tax or Argentine tax, as the context requires;
- (j) The term “competent authority” means:
- (I.) In Brazil: the Minister of Finance (Ministro da Fazenda), the Secretary of Federal Revenue (Secretário da Receita Federal) or their authorized representatives;
- (II.) In Argentina: the Ministry of Economic Affairs, Department of Finance (Ministerio de Economía, Secretaría de Estado de Hacienda).

2. As regards the application of this Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies. Where the meanings are contradictory or conflicting, the competent authorities of the Contracting States shall establish by mutual agreement, the interpretation to be given.

Article IV. RESIDENT

1. For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that State, is considered a resident of that State by reason of his domicile or residence, his 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 closer (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 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 V. PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term “permanent establishment” includes especially:

- (a) A place of management;
- (b) A branch;
- (c) An office;
- (d) A factory;
- (e) A workshop;
- (f) A mine, a quarry or any other place of extraction of natural resources;
- (g) A construction, assembly or installation project which lasts for more than six months.

3. The term “permanent establishment” shall not 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 of collecting information, for the enterprise;
- (e) The maintenance of a fixed place of business solely for the purpose of advertising, supply of information, scientific research or similar activities of 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 if it collects premiums or insures risks in that other State.

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, provided that 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 in that other Contracting State an activity consisting of the provision of the services of the artists and athletes referred to in article XVII.

Article VI. INCOME FROM IMMOVABLE PROPERTY

1. Income from immovable property (including income from agriculture or forestry) may be taxed in 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 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.

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

3. The provisions of paragraph 1 shall also 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 VII. 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 VIII. AIR TRANSPORT, LAND TRANSPORT, SHIPPING AND INLAND WATERWAYS TRANSPORT

1. Profits from international traffic derived by an enterprise engaged in air transport, land transport, shipping or inland waterways transport 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 or of an inland waterways transport enterprise is aboard a ship or a boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.

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

4. The Convention between Brazil and Argentina of 21 June 1949 for the avoidance of double taxation with respect to income from shipping and air transport and the Agreement between Brazil and Argentina of 15 March 1972 for the avoidance of double taxation with respect to income from land transport operations in international traffic shall cease to apply with respect

to the taxes covered by this Convention during the period for which this Convention is in force.

Article IX. 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 X. 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 laws of that State.

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 or a fixed base with which the holding by virtue of which the dividends are paid is effectively connected. In such case the provisions of article VII or article XIV, as the case may be, 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 laws of the State of which the company making the distribution is a resident.

5. Where a company which is a resident of Argentina has a permanent establishment in Brazil, that permanent establishment may be subjected therein to a tax deducted at source in accordance with Brazilian law.

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, except in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in 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.

Article XI. 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 laws of that State.

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 or a political subdivision thereof or to particular institutions (including financial institutions) wholly owned by that Government or political subdivision thereof shall be exempt from taxation in the first-mentioned Contracting State;

(b) Interest from government securities and from bonds or debentures issued by the Government of a Contracting State, or a political subdivision thereof or by any institutions (including financial institutions) wholly owned by that Government shall be taxable only in that 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 laws of the State in which the income arises.

5. 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 or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

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 or a fixed base with which the debt-claim from which the interest arises is effectively connected. In such case the provisions of article VII or article XIV, as the case may be, shall apply.

7. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by 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 such 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 XII. 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.

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, or films or tapes used 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 or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base 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 or a fixed base with which the right or property giving rise to the royalties is effectively connected. In such case the provisions of article VII or article XIV, as the case may be, 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 such 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 XIII. CAPITAL GAINS

1. Gains from the alienation of property may be taxed in a Contracting State according to its internal laws.

2. Notwithstanding the provisions of paragraph 1, gains from the alienation of a vehicle, including any movable property pertaining to such vehicle, which is operated in international traffic and is owned by an enterprise covered by article VIII shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

Article XIV. 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:

- (a) The remuneration for such services or activities is paid by a company which is a resident of the other Contracting State or is borne by a permanent establishment or a fixed base situated in that other State; or
- (b) Such services or activities are performed in that other Contracting State, and the recipient:
 - (1) Is present in the other State for a period or periods exceeding in the aggregate 183 days in the fiscal year concerned; or
 - (2) Has a fixed base regularly available to him in the other State for the purpose of performing his activities; the income arising therefrom being taxable, however, only to the extent that it is attributable to that fixed base.

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 XV. DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of articles XVI, XVIII, XIX, XX and XXI, 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; 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 derived in respect of an employment exercised in a vehicle operated in international traffic by an enterprise covered by article VIII shall be taxable only in the Contracting State in which the place of effective management of that enterprise is situated.

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

Article XVII. ARTISTS AND ATHLETES

Notwithstanding the provisions of articles XIV and XV, income derived by an entertainer, such as a theatre, motion picture, radio or television artist, or a musician, or as an athlete, from his personal activities as such may be taxed in the Contracting State in which the activities are exercised.

Article XVIII. PENSIONS AND ANNUITIES

1. Pensions and other similar remuneration arising from the rendering of personal services, and any annuity or other similar income, shall be taxable only in the Contracting State from which the payments are made.

2. For the purposes of this article:

(a) The term "pensions and other similar remuneration" means periodic payments after retirement in consideration of past employment or as compensation for injury sustained in the course of past employment;

(b) The term "annuity or other similar income" 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 (other than services rendered).

Article XIX. GOVERNMENTAL REMUNERATION AND SOCIAL SECURITY SYSTEM PAYMENTS

1. (a) 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.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual:

- (1) Is a national of that State; or
- (2) While not a national of that State, was, during the period prior to the rendering of services, a resident of that State.

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.

3. The provisions of articles XV, XVI and XVIII shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

4. Pensions paid to an individual out of funds from the social security system of a Contracting State shall be taxable only in that State.

Article XX. TEACHERS OR 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 of a university, college, school, museum or other cultural institution in that first-mentioned Contracting State or under an official programme of cultural exchange, is present in that State for a period not exceeding two years solely for the purpose of teaching, giving lectures or carrying out research at such institution shall be exempt from tax in that State on the remuneration he receives for such activity, provided that the payment of such remuneration arises from sources outside that State.

Article XXI. STUDENTS AND APPRENTICES

1. An individual 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:

- (a) As a student at a university, college or school in the first-mentioned Contracting State,
- (b) As the recipient of a scholarship, grant allowance or award for the primary purpose of study or research from a religious, charitable, scientific or educational organization,
- (c) As a member of a technical co-operation programme carried out by the Government of the other Contracting State, or
- (d) As an apprentice

shall be exempt from tax in that first-mentioned Contracting State in respect of remittances from abroad for the purposes of his maintenance, education or training.

2. An individual 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 his education or training shall be exempt from tax in that first-mentioned Contracting State for a period not exceeding three consecutive fiscal years in respect of remuneration which he receives from employment in that State exercised in order to further his study or training.

Article XXII. OTHER INCOME

Items of income of a resident of a Contracting State not dealt with in the foregoing articles and arising in the other Contracting State may be taxed in that other State.

Article XXIII. METHODS FOR THE 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 Argentina or Brazil shall, subject to the provisions of paragraph 2, allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in Argentina.

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 Argentina.

2. Dividends which are paid by a company which is a resident of Argentina to a company which is a resident of Brazil and holds more than 10 per cent of the capital of the company paying the dividends and which are taxable in Argentina in accordance with the provisions of this Convention shall be exempt from tax in Brazil.

3. Where a resident of Argentina derives income which, in accordance with the provisions of this Convention, may be taxed in Brazil, Argentina shall not tax such income unless it is deemed to arise in Argentina.

Article XXIV. NON-DISCRIMINATION

1. 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 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.

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 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 the first-mentioned State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State, are or may be subjected.

4. This article shall apply only to the taxes which are the subject of this Convention.

Article XXV. 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 the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident within two years from the first notification of the action resulting in taxation not in accordance with the provisions of this Convention.

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 which is 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 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 establish personal contacts, an exchange of views may take place through a commission consisting of representatives of the competent authorities of the two Contracting States.

Article XXVI. 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 be disclosed only to persons or authorities (including courts and administrative bodies) involved in 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 a Contracting State the obligation:

- (a) To carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) To supply information which is not obtainable under the laws or in the course of the administration of that or of the other Contracting State; and

- (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 XXVII. DIPLOMATIC AGENTS AND CONSULAR OFFICERS

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

Article XXVIII. ENTRY INTO FORCE

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

2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall apply:

- (I.) In respect of taxes deducted at source, to amounts paid on or after 1 January of the calendar year immediately following that in which the Convention enters into force;
- (II.) In respect of other taxes covered by the Convention, to the fiscal period beginning on or after 1 January of the calendar year immediately following that in which the Convention enters into force.

Article XXIX. TERMINATION

This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention, through the diplomatic channel, by giving notice of termination at least six months before the end of any calendar year after the expiry of a period of three years from the date of its entry into force. In such event, the Convention shall apply for the last time:

- (I.) In respect of taxes deducted at source, to amounts paid before the end of the calendar year in which the notice of termination is given;
- (II.) In respect of other taxes covered by the Convention, to amounts received during the fiscal period beginning in the calendar year in which the notice of termination is given.

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

DONE at Buenos Aires on 17 May 1980, in duplicate in the Portuguese and Spanish languages, both texts being equally authentic.

For the Government
of the Federative Republic of Brazil:

[Signed]

RAMIRO SARAIVA GUERREIRO
Minister of State for Foreign Affairs

For the Government
of the Argentine Republic:

[Signed]

CARLOS W. PASTOR
Minister for Foreign Affairs
and Worship

PROTOCOL

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

1. *With reference to article II*

It is understood that the tax on profit remittances provided for by the Argentine foreign investment laws is not covered by the provisions of article II and shall accordingly not be an integral part of the Convention.

2. *With reference to article V*

It is understood that cases satisfying the requirements of article V, paragraphs 3 (d) and 4, shall be deemed to be covered also by paragraph 2 of that article when the goods or merchandise in question are exported after purchase.

3. *With reference to article VII, paragraph 1*

It is understood that, if the income tax laws of Brazil are changed so as to alter the treatment applicable to foreign subsidiaries of Brazilian enterprises which is in force on the date of signature of this protocol, Argentina may request the amendment of article VII, paragraph 1, of the Convention.

4. *With reference to article X, paragraph 4*

It is understood that, in the case of Brazil, the term "dividends" also includes all distributions relating to the certificates of an investment fund which is a resident of Brazil.

5. *With reference to article XI, paragraph 3 (a)*

It is understood that for the purposes of article XI, paragraph 3 (a), the term "particular institutions" shall be deemed to include any institutions which may be designated by mutual agreement between the competent authorities, as well as:

- (a) In the case of Argentina: the Banco Central de la República Argentina, the Banco Nacional de Desarrollo and the Banco Hipotecario Nacional;
- (b) In the case of Brazil: the Banco Central do Brasil, the Banco Nacional do Desenvolvimento Econômico, the regional and state development banks, and the Banco Nacional da Habitação.

6. *With reference to article XI, paragraph 5*

It is understood that:

- (a) In the case of Argentina, interest shall be deemed to arise in that State when the capital giving rise to the interest has been invested or used for economic purposes in its territory;
- (b) In the case of Brazil, interest shall be deemed to arise in that State when it is paid by a person who is a resident of or has a domicile in Brazil or by a permanent establishment or a fixed base situated therein belonging to a person residing or domiciled abroad.

7. *With reference to article XII, paragraph 3*

It is understood that the provisions of article XII, paragraph 3, shall apply to income arising from the use of, or the right to use, international news reports and from the performance of technical services and the rendering of technical, scientific, administrative or other assistance.

8. *With reference to article XII, paragraph 4*

It is understood that:

- (a) In the case of Argentina, royalties shall be deemed to arise in that State when the property the assignment of which gives rise to the royalties is invested or used for economic purposes in its territory;
- (b) In the case of Brazil, royalties shall be deemed to arise in that State when they are paid by a person who is a resident of or has a domicile in Brazil or by a permanent establishment or a fixed base situated therein belonging to a person residing or domiciled abroad.

9. *With reference to article XIV*

It is understood that the provisions of article XIV shall apply even if the activities in question are performed by a company.

10. *With reference to article XXIII*

It is understood that any total or partial exemptions or reductions affecting the Argentine income tax shall not result in a transfer of revenue to the Treasury of Brazil.

11. *With reference to article XXIII, paragraph 3*

It is understood that income shall be deemed to arise in Argentina when it derives from property situated, invested or used for economic purposes in the territory of Argentina or from any profit-making act or activity, performed therein or from events occurring within the limits of its territory.

12. *With reference to article XXIV, paragraph 2*

(a) It is understood that the provisions of article X, paragraph 5, are not in conflict with the provisions of article XXIV, paragraph 2.

(b) The provisions of Argentine law governing the taxation of any permanent establishment which a Brazilian enterprise has in Argentina shall not be deemed to be covered by article XXIV, paragraph 2.

13. *With reference to article XXIV, paragraph 3*

The provisions of Brazilian law whereby royalties, as defined in article XII, paragraph 3, paid by a company which is a resident of Brazil to a resident of Argentina which holds at least 50 per cent of the capital with voting power of that company, may not be deducted when determining the taxable income of a company which is a resident of Brazil are not in conflict with the provisions of article XXIV, paragraph 3, of the Convention.

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

DONE at Buenos Aires on 17 May 1980, in duplicate in the Portuguese and Spanish languages, both texts being equally authentic.

For the Government
of the Federative Republic of Brazil:

[Signed]

RAMIRO SARAIVA GUERREIRO
Minister of State for Foreign Affairs

For the Government
of the Argentine Republic:

[Signed]

CARLOS W. PASTOR
Minister for Foreign Affairs
and Worship
