

## **2003 Income and Capital Tax Convention and Final Protocol (English Translation)**

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### **CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF CUBA AND THE GOVERNMENT OF THE BOLIVARIAN REPUBLIC OF VENEZUELA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION AND FRAUD WITH RESPECT TO TAXES ON INCOME AND CAPITAL**

[TRANSLATION]

The Government of the Republic of Cuba and the Government of the Bolivarian Republic of Venezuela, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion and fraud with respect to taxes on income and capital, have agreed as follows:

Chapter I

Scope of Application of the Convention

#### **Article 1 Personal Scope**

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

#### **Article 2 Taxes Covered**

1. This Convention shall apply to taxes on income and capital imposed on behalf of a Contracting State, its political subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and capital all taxes imposed on total income or capital or on any elements of the same, including taxes on gains from the alienation of movable or immovable property, taxes on total wages and salaries paid by the enterprises as well as taxes on capital appreciation.
3. The existing taxes to which this Convention shall apply are in particular:
  - a) in Cuba:
    - i) the Tax on Profits (Impuesto sobre Utilidades);
    - ii) the Tax on Personal Income (Impuesto sobre Ingresos Personales);
    - iii) the Tax on Ownership or Possession of Specific Goods (Impuesto sobre la Propiedad or Posesión de Determinados Bienes), and  
(which shall be referred to hereinafter as "Cuban taxes")
  - b) in Venezuela:
    - i) income tax (Impuesto sobre la Renta; ISLR), and
    - ii) tax on corporate assets (Impuesto a los Activos Empresariales; IAE)  
(which shall be referred to hereinafter as "Venezuelan tax").
4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other, at the end of each year, of significant changes which have been made in their respective taxation laws.

Chapter II

Definitions

#### **Article 3 General Definitions**

1. For the purposes of this Convention, unless the context requires a different interpretation:
  - a) the term "Cuba" refers to the Republic of Cuba, whose national territory is formed by the island of Cuba, the Isla de Juventud, the other adjacent islands and cays, the domestic waters and the waters on the exterior thereof over which the Cuban state exercises its sovereignty or sovereign rights and over which it has jurisdiction, for the purpose of exploration and exploitation of the natural, biological and mineral resources of the water column, the sea floor and subsea floor, in conformity with domestic legal regulations and International Law.
  - b) the term "Federation of Venezuela" refers to the Bolivarian Republic of Venezuela, as established in its National Constitution.
  - c) the terms "Contracting State" or "the other Contracting State" refer to Cuba or Venezuela, according to the context herewith.

- d) the term "person" refers to any individual or company or other group of people.
- 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" refer, respectively, to an enterprise carried on by a resident of a Contracting State and to an enterprise carried on by a resident of the other Contracting State.
- g) the term "national" means:
- i) insofar as Cuba is concerned, any individual having Cuban citizenship in accordance with its laws and who is a permanent resident on its national territory.
  - ii) insofar as Venezuela is concerned, any individual having Venezuelan citizenship,
  - iii) all bodies corporate, companies, and associations constituted in conformity with the laws in effect in a Contracting State.
- h) the term "international traffic" refers to any transport by a ship or aircraft operated by an enterprise having its place of effective management in a Contracting State, except when the ship or aircraft is solely operated between points located in the other Contracting State;
- i) the term "Concerned Authority" refers to:
- i) in the case of Cuba, the Minister of Finance and Prices (Ministro de Finanzas y Precios), or his or her authorized representative, and
  - ii) in the case of Venezuela, the National Customs and Tax Superintendent (Superintendente Nacional Aduanero y Tributario), or his or her authorized representative.
2. As regards the application of this Convention by a Contracting State at any given point in time, any expression or term not defined therein shall, unless the context requires a different interpretation, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies. The meaning of such term under the tax legislation shall prevail over any meaning this term may have in accordance with other types of laws of this State.

#### **Article 4 Resident**

1. For the purposes of this Convention, the term "resident of a Contracting State" refers to any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, headquarters or any other criterion of a similar nature and also includes that State itself and any political subdivisions or local authorities of such State. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in said State situated therein, or from capital located in the same.
2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his or her status shall be determined as follows:
- a) such person shall be deemed to be a resident of the State in which he has a permanent home available to him or her; if he or she has a permanent home available to him in both States, such person shall be deemed to be a resident of the State with which his personal and economic relations are closer (center of vital interests);
  - b) if the State in which such person has his or her center of vital interests cannot be determined, or if such person has not a permanent home available to him or her in either State, such person shall be deemed to be a resident of the Contracting State in which he or she has an habitual abode;
  - c) if such person has an habitual abode in both States or in neither of them, he or she shall be deemed to be a resident of the State of which he or she is a national;
  - d) in case the above criteria do not make it possible to determine the Contracting State in which the person is a resident, the competent authorities of the two 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 such person shall be deemed to be a resident of the State in which its place of effective management is located.

#### **Article 5 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) places of management;
  - b) branch offices;
  - c) offices;
  - d) factories;
  - e) workshops, and

f) mines, oil or gas wells, quarries or all other places of extraction of natural resources.

3. A construction, installation or assembly site only constitute a permanent establishment as long as its duration exceeds six (6) months.

4. The term "permanent establishment" furthermore includes the provision of services by an enterprise, including consulting services, carried out through employees or other staff hired by the enterprise for that purpose, but only as long as such activities continue to be carried out (in conjunction with the same project or a joint project) in the country for a period in excess of six months.

5. Notwithstanding the preceding provisions of this Article, 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, always provided this does not constitute a sale;

b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery, always provided this does not constitute a sale;

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 collecting information, for the enterprise;

e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination maintains its preparatory or auxiliary character.

6. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 7 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 5 and which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other independent agent, provided that such persons are acting in the ordinary course of their business. However, in case such representative carries out all or almost all of his or her activities on behalf of the company, such representative shall not be deemed an independent representative for the purposes of this paragraph.

8. 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 of the two companies a permanent establishment of the other.

### Chapter III

#### Taxation

### **Article 6 Income From Immovable Property**

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the laws of the Contracting State in which the property is situated. Said 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 private 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 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 income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

## **Article 7 Business Profits**

1. The profits of an enterprise of a Contracting State shall be subject to tax 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 subject to tax in the other State but only so much of them as is attributable to

- a) that permanent establishment;
- b) sales performed in the other State of goods or merchandise whose class is the same as or similar to those sold through a permanent establishment, or
- c) other commercial or industrial activities carried out in the other State whose nature is the same as or similar to those carried out through such permanent establishment.

2. Without prejudice 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 determining 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, whether in the State in which the permanent establishment is situated or elsewhere. However, no deduction shall be permitted with respect to any sums paid (under circumstances that are different from the reimbursement of actual expenses) by the permanent establishment to the parent company of the enterprise or to any of its offices in terms of royalties, fees or other similar payments such as payments for the use of patents or other rights or as commissions for special services performed or for management services, or, except in the case of financial institutions, for interest on funds loaned to the permanent establishment. Accordingly, when determining the profits of a permanent establishment, any sums received (under circumstances that are different from the reimbursement of actual expenses) by the permanent establishment from the parent company of the enterprise or any of its offices in terms of royalties, fees or other similar payments for the use of patents or other rights or as commissions for special services performed or for management services, or, except in the case of financial institutions, for interest on funds loaned to the parent company of the enterprise or any of its offices shall also not be included.

4. Insofar as it is customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed in such a manner; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. 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.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year after year unless there are good and sufficient reasons to proceed otherwise.

7. Where profits include items of income that 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 Transport by Sea or Air**

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

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 harbor of the ship is situated, or, in case there is no such home harbor, 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 from the participation in a consortium or pool, a joint business, or an international operating agency.

## **Article 9 Associated Enterprises**

1. 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 subjected to tax accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State, and taxes accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention, and the competent authorities of the Contracting States shall if necessary consult each other.

3. The provisions of paragraph 2 shall not apply in the case of fiscal fraud.

### **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 also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient of the dividends is the beneficial owner, the tax so charged shall not exceed:

a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company (excluding partnerships) which holds directly at least 25 per cent of the capital of the company paying the dividends;

b) 15 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall mutually agree on the method of application of these limits.

This paragraph does not affect taxation of the company with respect to profits out of which such dividends are paid.

3. The term "dividends" as used in this Article refers to income from shares, "jouissance" shares, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident. The term "dividend" also covers income from joint ventures.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, either an entrepreneurial activity through a permanent establishment situated therein, or independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed place of business. In these cases, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. 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 insofar as such dividends are paid to a resident of that other State or insofar 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, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist, whether as a whole or in part, of profits or income arising in such other State.

### **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 also be taxed in the Contracting State in which it arises and according to the laws of that State, but in case the recipient of the interest is the beneficial owner, the tax so charged shall not exceed 10 per cent of the gross amount of interest.

The competent authorities of the Contracting States shall mutually agree on the method of application of these limits.

3. Notwithstanding the provisions of paragraph 2, the interest mentioned in paragraph 1 must only be taxed in the Contracting State in which its recipient is a resident provided one of the following requirements is met:

(a) the recipient is the Government of a Contracting State, the Central Bank of a Contracting State, or a political subdivision or a local authority thereof;

(b) the interest is paid by one of the persons mentioned in Subparagraph (a), or

(c) the interest is paid in connection with a loan granted or guaranteed by a public financial institution for the purpose of export and development promotion.

4. The term "interest" as used in this Article refers to income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits and, in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, as well as any other income which the laws of the State in which the interest arises treat similar to amounts loaned. Surcharges for late payments shall not be considered interest for the purposes of this Article.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on an entrepreneurial activity in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In these cases, the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is the State itself, one of its political subdivisions or local authorities, or a resident of that State. Where, however, the person paying the interest, whether 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.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some third party, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the debtors and the creditor 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 12 Royalties**

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable in that other State.

2. These royalties, however, are also taxable in the Contracting State in which they arise and in accordance with the laws of this State; however, in case the recipient of the royalties is the beneficiary owner, the tax levied in such a manner can not exceed 5 per cent of the gross amount of the royalties. The competent authorities of the Contracting States shall mutually agree on the method of application of these limits.

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 for radio and television, for the use or the right to use any patent, industrial or commercial trademark, design or model, plan, secret formula or process as well as for the use or the right to use any industrial, commercial, or scientific equipment or for information pertaining to industrial, commercial, or scientific know-how.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on an entrepreneurial activity in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the property or right in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In these cases, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. The royalties are deemed to arise in a Contracting State in case the payer is that State itself, one of its political subdivisions or local authorities, or a resident of that State. In case the payer of the royalties, whether a resident of a Contracting State or not, however, has a permanent establishment or a fixed base in a Contracting State with respect to which the duty of payment of the royalties arises and which as such incurs the charge thereof, such royalties are deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner of the royalties or between both of them and some third party, the amount of the royalties, having regard to the service for which they are paid, exceeds the amount which would have been agreed upon by the

payer and the beneficial owner 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 13 Capital Gains**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property, as defined in Article 6, that is situated in the other Contracting State may be subjected to tax in that other State.
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 independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be subjected to tax in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic or 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 located.
4. Gains from the alienation of shares or other rights in a company whose assets are made up, whether directly or indirectly, of immovable property situated in a Contracting State or rights inherently related with such immovable property can be taxed in such State.
5. Gains from the alienation of shares which represent a holding of more than 10% of the capital stock of a company that is a resident of a Contracting State can be taxed in that State.
6. Gains from the alienation of elements of property that are different from those mentioned in the preceding paragraphs of this Article may only be taxed in the Contracting State of which the transmitting party is a resident.

### **Article 14 Independent Personal Services**

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless such resident has a fixed base regularly available to him in the other Contracting State for the purpose of performing his or her activities. If such resident has such a fixed base, such income may be taxed in the other State, but only so much of it as is attributable to that fixed base.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists, accountants, or book keepers.

### **Article 15 Dependent Personal Services**

1. Subject to the provisions of Articles 16, 18, 19, and 21, wages, salaries, and similar remuneration derived by a resident of a Contracting State in respect of employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. In case 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 not present in the other State for a period or periods exceeding in the aggregate one hundred and eighty-three days during any twelve-month period commencing or ending during the fiscal year in question, 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. The preceding provisions of this Article notwithstanding, remuneration obtained in respect of employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State where the place of effective management of the enterprise is located.

### **Article 16 Directors' Fees**

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

### **Article 17 Artistes and Sportsmen**

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be subjected to tax in that other State.

2. Notwithstanding the provisions of Articles 7, 14 and 15, where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, income generated through the exercise of the activities set forth in paragraph 1) that are carried out within the scope of cultural or athletic exchange programs implemented by the governments of the Contracting States and performed on a not-for-profit basis shall be exempt from taxes in the Contracting State on whose territory such activities are performed

4. The provisions of paragraphs 1 and 2 shall not apply to income obtained by a resident of a Contracting State through the exercise of his or her personal activities in the other Contracting State in case his or her stay in such other Contracting State is financed, whether mainly or completely, by public funds of the first-mentioned State or takes place on the basis of a cultural agreement between the Contracting States. In this case, the income derived from such activities can only be taxed in the Contracting State in which the artiste or sportsman resides.

### **Article 18 Pensions**

1. Without prejudice to the provisions in paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State for prior employment shall be taxable only in that State.

2. Pensions and other amounts paid within the scope of a public scheme organized by a Contracting State for the purpose of complementing the social-security benefits of such State shall be taxable in that State.

### **Article 19 Government Service**

1. a) Remuneration, other than pensions, 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, political subdivision or local authority thereof 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 State and the individual 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 pensions paid by a Contracting State or one of its political subdivisions or local authorities, whether directly or by drawing on funds created for that purpose, to an individual in respect of services rendered to that State or a political subdivision or local entity thereof shall be taxable only in that State.

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

3. The provisions of Articles 15, 16, and 18 shall apply to remuneration and pensions paid in respect of services rendered in connection with an entrepreneurial activity carried on by a Contracting State or one of the political subdivisions or local authorities of such State.

### **Article 20 Students and Trainees**

Payments which a student or intern 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 State solely for the purpose of his education or training receives for the purpose of his maintenance, studies or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

### **Article 21 Professors and Researchers**

1. An individual who is or was a resident of a Contracting State immediately prior to traveling to the other Contracting State and who, upon invitation of a school, university or another similar, not-for-profit institution of higher studies remains in that other State for a period not exceeding two years from the date of his or her first arrival in that State for the sole purpose of teaching or research or both in such teaching institutions shall be exempt from tax in respect of the remuneration received for such teaching or research.

2. The provisions of paragraph 1 of this Article shall not apply to compensation received for research work if such work is not undertaken in the public interest, but mainly for the private benefit of a specific person or specific persons.

## **Article 22 Other Income**

1. Items of income of a resident of a Contracting State, wherever arising, whose type or sources are not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.
2. The provisions of paragraph 1 above shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the beneficial owner of such income, being a resident of a Contracting State, carries on an entrepreneurial activity in the other Contracting State through a permanent establishment situated in such other State, or performs in that other State independent personal services from a fixed base situated in that other State, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In these cases, the provisions of Article 7 or Article 14, as the case may be, shall apply.
3. The provisions of paragraphs 1 and 2 of this Article notwithstanding, items of income of a resident of a Contracting State that have not been addressed in the preceding Articles and which arise in the other Contracting State can be subjected to tax in such other State.

### Chapter IV

#### Taxation of Capital

## **Article 23 Capital**

1. Capital represented by immovable property as defined by Article 6 that is held by a resident of a Contracting State and which is located in the other Contracting State may be taxed in such other State.
2. Capital represented by 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 by 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 independent personal services may be taxed in that other State.
3. Capital consisting of ships or aircraft operated in international traffic as well as 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.
4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

### Chapter V

#### Methods for the Elimination of Double Taxation

## **Article 24 Elimination of Double Taxation**

1. Insofar as Cuban residents are concerned, double taxation shall be avoided, in accordance with the applicable provisions of Cuban laws, as outlined below:  
Where a resident of Cuba derives income or holds capital which, in accordance with the provisions of this Convention, may be taxed in Venezuela, Cuba shall permit the deduction of the tax on the income or capital of such resident in an amount equivalent to that effectively paid in Venezuela.  
Such credit, however, shall not exceed the amount that would be paid in Cuba for the same income or capital, in accordance with Cuban laws and tax regulations.
2. Insofar as Venezuelan residents are concerned, double taxation shall be avoided as outlined below:  
Venezuelan residents who receive income which, in accordance with the provisions of this Convention, can be taxed in Cuba shall receive, for the tax levied in Cuba, a credit against the Venezuelan taxes on such income, in accordance with the provisions of Venezuelan laws.  
However, such credit may not exceed that part of the tax on income or capital calculated prior to determining the credit which applies to the income or capital which can be subjected to taxation in Venezuela.
3. Where, in accordance with any provision of this Convention, income obtained by a resident of a Contracting State, or the capital held by such resident, is exempt from taxes in such State, said State may, however, include the exempt income or capital in calculating the amount of tax on the remaining income or capital of such resident.
4. Where a resident of Venezuela obtains income or holds assets which, in accordance with the provisions of this Convention, can be subjected to tax in Cuba, Venezuela shall grant a tax credit equivalent to the amount which theoretically would have had to be paid in Cuba for a similar tax, but which had not to be paid as a result of exemptions, credits, deductions and other tax reliefs that were granted in Cuba.

### Chapter VI

#### Miscellaneous Provisions

## **Article 25 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, especially in terms of residence.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision may 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. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Accordingly, liabilities assumed by a company of a Contracting State with respect to a resident of the other Contracting State shall be deductible in determining the capital that is subject to tax of such company under the same conditions as if such liabilities had been assumed with respect to a resident of the first-mentioned State.
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 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 are or may be subjected.
5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

#### **Article 26 Mutual Agreement Procedure**

1. In the event that a person believes that the actions of one or both of the Contracting States result or will result for him or her in taxation that is not in accordance with the provisions of this Convention, he or she may, irrespective of the remedies provided for by the domestic law of those States, submit his case to the competent authority of the Contracting State of which he or she is a resident or, if such case comes under paragraph 1 of Article 25, to the competent authority of the Contracting State of which he or she is a national. The case must be submitted within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.
2. The competent authority shall endeavor, if the objection appears to it to be justified and if such competent authority 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 the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic Law of the Contracting States.
3. The competent authorities of the Contracting States shall to everything in their power to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also reach an agreement in an attempt to eliminate 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 of this Article. In the event that it is believed that such agreement can be facilitated by personal contacts, the exchange of opinions can take place within the scope of 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 or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic Laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the Taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Through consultations, the

competent authorities shall develop appropriate conditions, methods, and techniques for the issues which respect to which such exchanges of information need to take place, including, whenever this is pertinent, the exchange of information regarding tax evasion.

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 normal course of the administration of that or of the other Contracting State;
- c) to supply information which would disclose any trade, industrial, or professional secrets or trade processes or information, the disclosure of which would be contrary to public policy (ordre public).

### **Article 28 Members of Diplomatic Missions and Consular Posts**

The provisions of this Convention shall not affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international Law or by virtue of special agreements.

#### Chapter VII

#### Final Provisions

### **Article 29 Entry Into Force**

1. The Contracting States shall notify each other, through diplomatic channels and in writing, as soon as the respective formalities for the entry into force of the Convention have been accomplished in accordance with their domestic laws.

2. This Convention shall come into force and effect on the date of the last of the notices referred to in paragraph 1, and its provisions shall apply to taxes levied on or after the first day of January of the calendar year following the calendar year during which the Convention came into force and effect.

### **Article 30 Termination**

This Convention shall remain in force and effect unless terminated by one of the Contracting Parties. Five years after the date of entry into force of this Convention, either Contracting State can terminate this Convention by providing a written notice of termination through diplomatic channels at least six months prior to the end of each calendar year. In this case, the Convention shall cease to apply to taxes levied on or after the first day of January of the calendar year following the calendar year during which the notice of termination is communicated.

In witness whereof the undersigned, duly authorized to that effect by their respective Governments, have signed this Convention.

Done at Caracas on the 12th day of the month of May of two thousand and three, in two original copies in the Spanish language; both texts shall be equally binding.

**FOR THE GOVERNMENT OF THE REPUBLIC OF CUBA:**

**FOR THE GOVERNMENT OF THE BOLIVARIAN REPUBLIC OF VENEZUELA:**

### **PROTOCOL**

During the signing of the Convention between the Republic of Cuba and the Bolivarian Republic of Venezuela concerning the avoidance of double taxation and the prevention of fiscal evasion and fraud with respect to taxes on income and capital, the undersigned have agreed to the following provisions, which shall be deemed an integral part of this Convention:

1. With respect to paragraph 1 of Article 4, in the case of Cuba, it is understood that the term "residents" refers to any individuals who permanently reside on Cuban national territory.

3. With respect to paragraph 1 of Article 25, insofar as Venezuela is concerned, the provisions of Articles 2 (Taxes Covered) notwithstanding, this provision shall also apply to persons who are not residents of one or both Contracting States.

5. With respect to paragraph 1 of Article 27, the information which is obtained may not be used for any other purposes without the express authorization of the competent authority of the Contracting State providing such information.

The information may only be used in the territories of the Contracting States. In the event that it is necessary to use the information during public hearings, in courts, or in court sentences, the competent authority of the Contracting State which has sent such information shall be informed thereof, provided that the competent authority of the Contracting State which has requested such information is aware of such circumstance.

In witness whereof the undersigned, duly authorized to that effect by their respective Governments, have signed this Convention.

Done at Caracas on the 12th day of the month of May of two thousand and three, in two original copies in the Spanish language; both texts shall be equally binding.

**FOR THE GOVERNMENT OF THE REPUBLIC OF CUBA:**

**FOR THE GOVERNMENT OF THE BOLIVARIAN REPUBLIC OF VENEZUELA:**

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