

JAPAN-BRAZIL CONVENTION

Date of Conclusion: 24 January 1967

Effective Date: 1 January 1968

Decree signed in 14 December 1967

CONVENTION BETWEEN THE *FEDERATIVE REPUBLIC OF BRAZIL* AND JAPAN FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME

The Government of the *United States of Brazil* and the Government of Japan,

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

Have agreed as follows:

ARTICLE 1

1. The taxes that are the subject of this Convention are:

- a. In the case of the *United States of Brazil*, the federal income tax (hereinafter referred to as "Brazilian tax");
- b. In the case of Japan, the income tax and the corporation tax (hereinafter referred to as "Japanese tax").

2. This Convention shall also apply to taxes substantially similar to those covered by paragraph 1 which are introduced in either Contracting State after the date of signature of this Convention.

ARTICLE 2

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

- a. the term "Brazil" means the *United States of Brazil*;
- b. the term "Japan" when used in a geographical sense, means all the territory in which the laws relating to Japanese tax are in force;
- c. the terms "a Contracting State" and "the other Contracting State" mean Brazil or Japan, as the context requires;
- d. the term "tax" means Brazilian tax or Japanese tax 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 "competent authority" in relation to a Contracting State means the Minister of Finance of that Contracting State or his authorized representative.

2. As regards the application of this Convention by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which this Convention applies.

ARTICLE 3

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

2. Where by reason of the provisions of paragraph 1 a person is a resident of both Contracting States, then the competent authorities shall determine by mutual agreement the Contracting State of which that person shall be deemed to be a resident for the purposes of this Convention.

ARTICLE 4

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

2. The term "permanent establishment" includes especially:

- a. a place of management;
- b. a branch;
- c. an office;
- d. a workshop;
- e. a factory;
- f. a warehouse;
- g. a mine, quarry or other place of extraction of natural resources;
- h. a building site or construction or assembly project which exists for more than six months.

3. The term "permanent establishment" shall not be deemed to include:

- a. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- b. the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
- c. the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- d. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- e. the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4. A person acting in a Contracting State on behalf of an enterprise of 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 Contracting State if he:

- a. has, and habitually exercises in that Contracting 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; or
 - b. maintains in that Contracting State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise, consecutive to a contract previously concluded by the enterprise without specifying either the quantity to be delivered, or the date and the place of delivery.
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 Contracting State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.
6. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other Contracting State (whether through a permanent establishment or otherwise), shall not of itself constitute for 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 business which consists in whole or in part of providing in that other Contracting State the services of public entertainers referred to in Article 15.

ARTICLE 5

1. The profits of an enterprise of a Contracting State shall be taxable only in that Contracting 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 Contracting State but only so much of them as is attributable to that permanent establishment.
2. Where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred.
4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
5. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
6. 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 6

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 7

1. Profits from the operation of ships or aircraft in international traffic carried on by an enterprise of a Contracting State shall be taxable only in that Contracting State.

2. In respect of the operation of ships or aircraft in international traffic carried on by an enterprise which is a resident of Brazil, that enterprise shall be exempt from the local inhabitant taxes and the enterprise tax in Japan.

ARTICLE 8

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

2. The term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated. 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 immovable property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; 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 as immovable property.

4. The provisions of paragraph 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 9

1. Dividends paid by a company that is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other Contracting 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 Contracting State, but

the tax so charged shall not exceed 10 per cent of the gross amount of the dividends if the recipient is a company which owns at least 25 per cent of the voting shares of the company paying such dividends during the period of six months immediately before the end of the accounting period for which the distributions of profits takes place.

3. The provisions of paragraph 2 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

4. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation law of the Contracting State of which the company making the distribution is a resident.

5. In the application of preceding paragraphs, in the case of Brazil, there shall also be considered as dividends all forms of disposition of profits by a permanent establishment, situated in Brazil, of an enterprise which is a resident of Japan, in which case the tax on such disposition of profits shall not exceed the rate of tax referred to in paragraph 2.

6. The provisions of paragraphs 2 and 5 shall not apply to the Brazilian tax on activities of minor importance and excess remittance tax.

7. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the dividends, being a resident of a Contracting State, has in the other Contracting State, of which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provisions of Article 5 shall apply.

ARTICLE 10

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

2. However, such interest may be taxed in the Contracting State in which it arises, and according to the laws of that Contracting State, but the tax so charged shall not exceed 10 per cent of the gross amount of the interest if:

- a. the interest is received by a bank or other financial institution which is a resident of the other Contracting State;
- b. the interest arises from loans made by an enterprise of the other Contracting State to an enterprise of the first-mentioned Contracting State engaged in an industrial undertaking, provided that the funds for such loans have been obtained by the first-mentioned enterprise from a bank or other financial institution solely for the purpose of financing that other enterprise, and that the first-mentioned enterprise owns at least 25 per cent of the voting capital of that other enterprise at the time either such loans are made or such interest is to be paid;
- c. the interest arises from debentures or other similar bonds; or
- d. the interest arises from treasury bills or other public bonds.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to the Government of the other Contracting State, a political subdivision or local authority thereof or any agency or instrumentality (including financial institution) wholly

owned by that Government, political subdivision or local authority shall be exempt from tax of the first-mentioned Contracting 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 other income assimilated to income from money lent by the taxation law of the Contracting State in which the income arises.

5. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the interest, being a resident of a Contracting State, has in the other Contracting State in which the interest arises a permanent establishment with which the debt-claim from which the interest arises is effectively connected. In such a case, the provisions of Article 5 shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision, a local authority or a resident of that Contracting State. Where, however, the person paying the interest, whether it is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

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 that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 11

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

2. However, such royalties may be taxed in the Contracting State in which it arises, and according to the laws of that Contracting State, but the tax so charged shall not exceed 10 percent of the gross amount of royalties. This limitation shall not apply to royalties derived from Brazil during the first three calendar years of the application of this Convention during which period of time Brazil may thus apply the tax on royalties provided for in the taxation law of Brazil:

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 scientific work, any patent, 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; but does not include payments of any kind received as a consideration for the use of, or the right to use, trade marks, cinematograph films, films or tapes for radio or television broadcasting.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties

arise a permanent establishment with which the right or property giving rise to the royalties is effectively connected. In such a case the provisions of Article 5 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision, a local authority or a resident of that Contracting State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such a permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where any royalties exceed a fair and reasonable consideration in respect of the rights for which they are paid, the provisions of this Article shall apply only to so much of the royalties as represents such fair and reasonable consideration. 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 those cases, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 12

1. Gains from the alienation of immovable property, as defined in Article 8 paragraph 2, may be taxed in the Contracting State in which such property is situated.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other Contracting State. However, gains derived by a resident of a Contracting State from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft shall be exempt from tax of the other Contracting State.

3. Gains derived by a resident of a Contracting State from the alienation of any property other than those mentioned in paragraphs 1 and 2 shall be taxable only in that Contracting State.

ARTICLE 13

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 exempt from tax of the other Contracting State unless he has a fixed base regularly available to him in that other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in that other contracting 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 and accountants.

ARTICLE 14

1. Subject to the provisions of Articles 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be exempt from tax of the other Contracting 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 Contracting State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be exempt from tax of that other Contracting State if:

- a. the recipient is present in that other Contracting State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned, and
- b. the remuneration is paid by, or on behalf of an employer who is not a resident of that other Contracting State, and
- c. the remuneration is not borne by a permanent establishment or a fixed base which the employer has in that other Contracting State.

3. Notwithstanding the provisions of paragraphs 1 and 2 remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that Contracting State.

ARTICLE 15

Notwithstanding the provisions of Articles 13 and 14, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

ARTICLE 16

A professor or teacher who makes a temporary visit to a Contracting State for period not exceeding two years for the purpose of teaching or conducting research at a university, college, school or other educational institution and who is, or immediately before such visit was, a resident of the other Contracting State shall be exempt from tax of the first-mentioned Contracting State in respect of remuneration for such teaching or research.

ARTICLE 17

Payments or income received for the purpose of his maintenance, education or training by a student or business apprentice who is present in a Contracting State solely for the purpose of his education or training and who is, or immediately before being so present, was a resident of the other Contracting State shall be exempt from tax of the first-mentioned Contracting State, provided that such payments are made to him from outside that first-mentioned Contracting State and that such income is received in respect of his personal services performed in the first-mentioned Contracting State in an amount not in excess of US\$ 1,000

or its equivalent in Brazilian or Japanese currency for any taxable year for a period not exceeding three consecutive taxable years.

ARTICLE 18

Remuneration 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 Contracting State in accordance with the law of that other Contracting State.

ARTICLE 19

Wages, salaries, and similar compensation, and pensions, or similar benefits paid by, or out of funds to which contributions are made by, a Contracting State, a political subdivision or local authority thereof to an individual who is a national of that Contracting State for services rendered to that Contracting State, political subdivision or local authority in the discharge of governmental functions shall be taxable only in that Contracting State.

ARTICLE 20

1. Private pensions and private life annuities paid to individuals who are residents of a Contracting State shall be taxable only in that Contracting State.
2. The term "pensions", as used in this Article, includes periodic payments made in consideration for, or by way of compensation for injuries received in connection with, past employment.
3. The term "life annuities", as used in this Article, includes a stated sum paid periodically at stated times during life, or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration.

ARTICLE 21

Any income not dealt with in the foregoing provisions derived by a resident of a Contracting State from sources in the other Contracting State may be taxed in both Contracting States.

ARTICLE 22

1. Where a resident of Brazil derives income which, in accordance with the provisions of this Convention, may be taxed in Japan, Brazil shall allow as a deduction from the tax on the income of that person, an amount equal to the income tax paid in Japan. The deduction shall not, however, exceed that part of the income tax as computed before the deduction is given, which is appropriate to the income which may be taxed in Japan.
2.
 - a. Where a resident of Japan derives income from Brazil which may be taxed in Brazil in accordance with the provisions of this Convention, the amount of the Brazilian tax payable in respect of that income shall be allowed as a credit against the Japanese tax imposed on that resident. The amount of credit, however, shall not exceed that part of the Japanese tax which is appropriate to that income.

- b. For the purposes of the credit referred to in sub-paragraph (a) above, there shall be deemed to have been paid by a taxpayer the amount which would have been paid if the Brazilian tax would not have been reduced or relieved in accordance with
 - i. the provisions of paragraph 2 of Article 9, paragraph 2 of Article 10 and paragraph 2 of Article 11; and
 - ii. the special incentive measures designed to promote economic development in Amazonian Region and Northern and Northeastern Region of Brazil.
- c. In the application of the provisions of sub-paragraph (b) above, there shall not, in any event, be deemed to have been paid an amount of tax higher than that which, but for the reduction or relief of tax due to the special incentive measures mentioned in sub-paragraph (b) (ii), would result from the application of the Brazilian tax laws effective on the date of signature of this Convention.
- d. For the purposes of this paragraph, the terms "Japanese tax" includes the local inhabitant taxes.

ARTICLE 23

- 1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other Contracting State in the same circumstances are or may be subjected.
- 2. The term "nationals" means all individuals possessing the nationality of either Contracting State and all juridical persons created or organized under the laws of that either Contracting State and all organizations without juridical personality treated for the purposes of tax of that either Contracting State as juridical persons created or organized under the laws of that either Contracting State.
- 3. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities.

This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

- 4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement, connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned Contracting State are or may be subjected.

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

ARTICLE 24

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection, including judicial determination, of the taxes to which this Convention applies.

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 or the administrative practice of that or of the other Contracting State;
- b. to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c. to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

3. The competent authorities of the Contracting States may take appropriate measures and exchange the information for the prevention of fiscal evasion in the Contracting States concerning the taxes to which this Convention applies.

ARTICLE 25

1. Where a resident of a Contracting State considers that the actions taken in the other Contracting State result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the laws of those Contracting States, present his case to the competent authority of the Contracting State of which he is a resident.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with this Convention.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Convention. They may also consult together for the elimination of double taxation in cases not provided for in this Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Convention.

ARTICLE 26

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

