

# **CONVENTION BETWEEN THE FEDERATIVE REPUBLIC OF BRAZIL AND THE REPUBLIC OF PERU FOR THE AVOIDANCE OF DOUBLE TAXATION AND PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME**

**The Government of the Federative Republic of Brazil  
and  
the Government of the Republic of Peru,**

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:

## **CHAPTER I Scope of the Convention**

### **ARTICLE 1 Persons Covered**

This Convention shall apply to persons residing in one or both Contracting States.

### **ARTICLE 2 Taxes Covered**

1. This Convention shall apply to taxes on income imposed on behalf of each of the Contracting States, regardless of the tax demand system.
2. Taxes imposed on total income or on any portion thereof shall be regarded as taxes on income.
3. The current taxes to which this Convention shall apply are as follows:
  - a) in Peru:

- the taxes levied under the "Income Tax Law" (hereinafter referred to as "Peruvian tax");

b) in Brazil:

- the federal income tax (hereinafter referred to as "Brazilian tax").

4. The Convention shall also apply to any identical or substantially similar taxes that are imposed after the date of its signature in addition to, or in place of, the taxes mentioned in the previous paragraph. The competent authorities of the Contracting States shall notify each other yearly of any significant changes that have been made in their respective taxation laws.

## **C H A P T E R II**

### **Definitions**

### **ARTICLE 3**

#### **General Definitions**

1. For the purposes of the Convention, unless the context otherwise requires:

a) the term "Peru" means the Republic of Peru;

b) the term "Brazil" means the Federative Republic of Brazil;

c) the terms "a Contracting State" and "the other Contracting State" mean Brazil or Peru, as the context requires;

d) the term "person" comprises entities or individuals, the enterprises, the trusts, the partnerships and any other body of persons;

e) the term "enterprise" means any legal person or any entity that is regarded as a legal person for tax purposes;

f) the terms "enterprise from a Contracting State" and "enterprise from the other Contracting State" mean respectively an enterprise an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

g) the term "international traffic" means any transport by a ship, aircraft or land transport vehicle operated by an enterprise from a Contracting State, except when such transport is carried on solely between places in the other Contracting State;

h) the term "competent authority" means:

i) in Peru, the Minister of Economy and Finance or his/her authorized representatives;

ii) in Brazil, the Minister of Finance, the Secretary of the Federal Revenue or their authorized representatives.

i) the term "national" means:

i) any individual possessing the nationality of a Contracting State; or

ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

## **ARTICLE 4**

### **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 liable to tax therein by reason of his/her domicile, residence, place of management, place of incorporation or any other criterion of a similar nature, and also includes that State and any political subdivision thereof. However, this term shall not include persons who are subject to tax therein exclusively for the income obtained from sources situated in the aforementioned State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

a) such person shall be deemed to be a resident only of the Contracting State in which he/she has a permanent home available to him/her; if he/she has a permanent home in both States, he/she shall be deemed to be resident only of the State with which his/her personal and economic relations are closer (center of vital interests);

b) if the State in which he/she has his/her center of vital interest cannot be defined, or if he/she has no permanent home available to him/her in either State, he/she shall be deemed to be a resident only of the State in which he/she has an habitual abode;

c) if he/she has an habitual abode in both States or in neither of them, he/she shall be deemed to be a resident only of the State of which he/she is a national; and;

d) if the person is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the issue 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 the competent authorities of the Contracting States shall endeavour to resolve the case. In the absence of a mutual agreement, such a person will not be entitled to any tax benefits or exemptions provided for in this Convention.

## **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) a place of management;

b) a branch;

c) an office;

d) a factory;

e) a workshop;

f) a mine, an oil or gas well, a quarry or any other place of extraction or exploration or exploitation of natural resources.

3. The term "permanent establishment" also includes a building site or construction, installation or assembly project or a supervisory activity directly connected therewith, but only when said building, construction, installation or assembly project or activity lasts for more than six months. For the purposes of calculating the time limits referred to in this paragraph, the activities executed by an enterprise associated with another enterprise pursuant to Article 9 shall be added to the period during which activities are executed by the enterprise to which it is associated, if the activities of both enterprises are identical or substantially similar.

4. 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 purposes of storage, display or delivery of goods or merchandise belonging to the enterprise, unless when it constitutes a sale;

b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purposes of storage, display or delivery, unless when it constitutes 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 of collecting information, for the enterprise;

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

5. 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 on behalf 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 such activities are limited to those mentioned in paragraph 4 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.

6. Notwithstanding the prior provisions in this Article, an insuring enterprise residing in a Contracting State is deemed to have, except as for reinsurance, a permanent establishment in the other Contracting State in case it collects premiums in the territory of that other State or in case it insures risks situated in it through a representative who is not an independent agent to which paragraph 7 shall apply.

7. 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.

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 company a permanent establishment of the other.

## **C H A P T E R III** **Taxation of Income**

### **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 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 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. The ships, boats, aircraft and land transport shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or sharecropping or use in any other form of exploration of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and from immovable property used for rendering independent personal services.
5. Where the ownership of stock, shares or other corporate rights in a company or another entity entitles the owner of such shares the enjoyment of immovable property situated in a Contracting State and kept by this corporation or that other entity, the income from the direct use, letting, or use in any other form of such right to enjoyment may be taxed in the other State. The provisions of this paragraph shall be applied without prejudice to the provisions of Article 7.

### **ARTICLE 7** **Business Profits**

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a

permanent establishment situated therein. If the enterprise carries on or has carried 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 or has carried 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 necessary expenses which are effectively incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

## **ARTICLE 8**

### **Shipping and Air, Land and River Transport**

1. Profits derived by an enterprise of a Contracting State originated from the operation of ships, boats, aircraft or land transport vehicle in international traffic shall be taxable only in that Contracting State.

2. For the purposes of this Article, the term "operation of ships boats, aircraft or land transport vehicle" by an enterprise also includes:

a) the charter or rental of ships, boats or aircraft on a bareboat basis, or land transport vehicle;

b) the rental of containers and related equipment.

provided that such charter or rental is accessory to the operation, by this enterprise, of ships, boat, aircraft or land transport vehicles in international traffic.

3. The provisions of paragraph 1 shall also apply to profits from the participation in a "joint business or an international operating agency, but only to the extent that such profits are attributed to the participant proportionally to its part in the joint operation.

## **ARTICLE 9**

### **Associated Enterprises**

**Where :**

a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

## **ARTICLE 10**

### **Dividends**

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

2. However, such dividends may 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 beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

a) 10 percent of the gross amount of the dividends if the beneficial owner is a company which holds directly or indirectly at least 20 percent of the voting rights of the company paying the dividends;

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

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

3. The term "dividends" as used in this Article means income from shares, participating shares or usufruct on shares, shares from mining enterprises, parts from founder or other profit participation rights except of credits, 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 State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 of this Article 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 through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding by virtue of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case 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 wholly or partly of profits or income arising in that other State.

6. Where a resident of a Contracting State has a permanent establishment in the other Contracting State, such a permanent establishment may be subject in that Contracting State to a tax other than the tax on the profits of the permanent establishment in that other Contracting State and in accordance with the law of that other State. However, this tax other than the tax on the profits shall not exceed the limit provided for in subparagraph (a) of paragraph 2 of this Article.

7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.

## **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, if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and, in particular, income from government securities, bonds or debentures, as well as other income assimilated to income from money lent by the tax law of the Contracting State in which the income arises.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business 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 such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. The tax rate limitation provided for in paragraph 2 of this Article shall not apply to interest arising in a Contracting State and paid to a permanent establishment of an enterprise of the other Contracting State which is situated in a third State.

6. Interest shall be deemed to arise in a Contracting State when the payer is 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 the fixed base is situ.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and third parties, 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 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 a case, the excess part of the payments may be taxed according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

8. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

## **ARTICLE 12**

### **Royalties**

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but, if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 15 percent of the gross amount of the royalties.
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 and films, tapes or other means of image and sound reproduction, for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process or other intangible property, 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. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business 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 right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is 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 obligation 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 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 or between both of them and third parties, the amount of the royalties, 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 beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the payments may be taxed according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.

### **ARTICLE 13**

#### **Capital Gains**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property, such as those defined in Article 6, and situated in the other Contracting State may be taxed 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 taxed in that other State.

3. Gains from the alienation of ships, boats, aircraft or land transport vehicles operated in international traffic, or movable property pertaining to the operation of such ships, boats, aircraft or land transport vehicles shall be taxable only in the Contracting State where the selling party resides.

4. Nothing in this Convention shall affect the application of the law from a Contracting State to tax capital gains from the alienation of any other kind of property other than those mentioned in this Article.

### **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:

a) the remuneration for such services or activities is paid by 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 individual, his/her employees or any other persons employed by him/her remain, or the activities remain, in the other State for a period or periods that totalize or exceed 183 days in any twelve-month period; in such case, only so much of the income as is derived from the activities performed in that other State may be taxed in that other State; or

c) such services or activities are performed in the other Contracting State and the beneficial owner has a fixed base available in that other State for the purpose of performing his/her activities, but only to the extent that such income is attributable to the services performed in that other State.

2. The term "independent personal services" comprises especially independent scientific, technical, literary, artistic, educational or teaching activities, as well as independent activities of physicians, lawyers, engineers, architects, dentists, auditors and accountants.

## **ARTICLE 15**

### **Dependent Personal Services**

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

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

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned;

b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

c) 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 by a resident of a Contracting State in respect of an employment exercised aboard a ship, boat, aircraft or land transport vehicle operated in international traffic shall only be taxed in that State.

### **ARTICLE 16** **Directors' or Advisors' Fees**

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

### **ARTICLE 17** **Artists and Athletes**

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as a result of his/her personal activities in the other Contracting State as an entertainer in the theater, cinema, radio or television business, or as a musician or athlete, may be taxable 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 athlete, in their capacities as such accrues not to the entertainer or athlete him/herself but to another person, that income may be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

### **ARTICLE 18** **Pensions, Annuities and Payments from the Social Security System**

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remunerations derived from a previous job, as well as annuities derived from a Contracting State and paid to a resident of the other Contracting State shall be taxed in the State from which they are derived.

2. Notwithstanding the provisions of paragraph 1, pensions and other payments made due to an official pension program in the Social Security system of a Contracting State or a political subdivision or a local authority thereof shall be taxable only in that State.

3. In this Article:

a) the term "pensions and other similar remunerations" means periodic payments made after retirement in consideration of past employment or by way of compensation for injuries received in connection to said employment;

b) the term "annuity" means a stated sum paid 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 19**

### **Government Service**

1. a) salaries, wages and other similar 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 political subdivision or local authority shall be taxable only in that State.

b) however, such salaries, wages and other similar 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) has not become a resident of that State solely for the purpose of rendering the services.

2. Pensions paid by a Contracting State, one of its political subdivisions or local authorities, whether directly or by means of funds organized by it, to an individual in respect of services rendered to that State, that subdivision or authority, are taxable only in that State.

3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remunerations, as well as pensions, paid in respect of services rendered in connection with a business carried on by a Contracting State or one of its political subdivisions or local authorities thereof.

**ARTICLE 20**  
**Students and Apprentices**

1. Payments which a student, trainee or business apprentice 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 carrying on with his/her education or training, receives, for the purpose of his/her maintenance, education or training, shall not be taxed in that State, provided that such payments arise out of sources from outside that State.

2. In respect of grants, scholarships and remuneration from employment not covered by paragraph 1, a student or business apprentice referred to in paragraph 1 shall also be entitled during the period of such education or training to the same exemptions, reductions or allowances in respect of taxes which are available to residents of the State which he is visiting.

**ARTICLE 21**  
**Other Income**

Items of income of a resident of a Contracting State derived from the other Contracting State and not dealt with in the foregoing Articles of this Convention, may be taxed in that other Contracting State.

**C H A P T E R I V**  
**Methods for the Elimination of Double Taxation**

**ARTICLE 22**  
**Elimination of Double Taxation**

1. In the case of Peru, double taxation shall be prevented as follows:

a) Peru shall allow that its residents credit against the income tax payable in Peru, as credit, the Brazilian tax paid by the income taxed according to the Brazilian law and the provisions of this Convention. By no means shall the credit concerned exceed that part of the income tax in Peru attributable to the income that may be taxed in Brazil,

b) where a company which is a resident of Brazil derives dividends to a company which is a resident of Peru in which it holds, directly or indirectly, at least 10 percent of voting shares of the company, the credit shall take into account the tax paid in Brazil by the company in relation to profits on which such dividend is paid, however, only to the extent the Peruvian tax exceeds the amount of credit defined without taking this subparagraph into account.

2. In the case of Brazil, double taxation shall be prevented as follows:

Where a resident of Brazil derives income which, according to the provisions of this Convention, may be taxed in Peru, Brazil shall allow, as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Peru, according to the applicable provisions from the Brazilian law. However, such deduction shall not exceed that part of the income tax calculated before the deduction, corresponding to taxable income in Peru.

3. Where, in accordance with any provision of the Convention, income derived by a resident of a Contracting State is exempt from tax in that State, such State may, nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

## **CHAPTER V** **Special Provisions**

### **ARTICLE 23** **Non-Discrimination**

1. Nationals of a Contracting State shall not be subject, in the other Contracting State, to any taxation or requirement connected therewith, which is other or more burdensome than those to which the nationals of that other State in the same situation are or may be subject, especially as regards 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 favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

3. This Article 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. Except where the provisions of Article 9, of paragraph 7 of Article 11, or of paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State, pursuant to the law of that 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.

5. 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.

6. In this Article, the term "taxation" means taxes to which this Convention applies.

## **ARTICLE 24**

### **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 may result in taxation for him/her not in compliance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his/her case to the competent authority of the Contracting State of which he/she is a resident. The case shall be presented according to the terms set forth in the respective domestic law.

2. The competent authority shall endeavour, if the objection appears to 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, in order to avoid the taxation which is not in compliance with this Convention.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising out of the interpretation or application of the Convention.

4. The competent authorities of the Contracting States may communicate directly with each other aiming at reaching an agreement in the terms of the previous paragraphs.

## **ARTICLE 25**

### **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 of any class or name established by the Contracting States to the extent that the taxation provided therein is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2. 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) in charge of assessment or collection of the taxes concerned in the Convention or domestic law as defined in this paragraph, of the declaratory or executive procedures related to said taxes, or the decision of appeals related thereto. Such persons or authorities shall use the information only for such purposes and, if required, may disclose it in judicial courts, in compliance with the constitutional and legal rules of both Contracting States.

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 regular course of the administration of that or of the other Contracting State;

c) to provide information which may disclose business, commercial, industrial or professional secrets, commercial procedures or information whose disclosure would be contrary to the public policy.

3. Notwithstanding the provisions of paragraph 2 in this Article, the competent authority of the requested Contracting State shall, taking into account the constitutional and legal limitations and the reciprocity of treatment, obtain and supply information owned by the financial institutions, legal representatives or persons that act as representatives, agents or trustees. In relation to equities or participations in capital companies, the competent authority shall also obtain and supply information on bearer shares. In case the information is especially requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide the information in the terms of this Article, as statements from witnesses and certified copies of undisclosed original documents (including books, reports, statements, accounting records and notes) with the same range with which these statements and documents may be obtained in the terms set forth by the administrative laws and practices of that other State.

4. Where the information is requested by a Contracting State pursuant to this Article, the other Contracting State shall obtain the information requested the same way as if it was its own taxation, regardless of the fact that the other State may not need such information at that moment.

5. The Contracting States shall consult each other to determine the cases and procedures for simultaneous tax inspection. Simultaneous tax inspection, for the

purposes of this Convention, is understood as an agreement between the two Contracting States to simultaneously inspect, each one in its respective territory, the tax status of a person or persons that may have common or bound interest, so as to interchange relevant information to be obtained.

## **ARTICLE 26**

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

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

## **ARTICLE 27**

### **General Provisions**

1. If after the date of signature hereof a Contracting State introduces legislation in terms of which offshore income derived by a company from:

- a) shipping;
- b) banking, financing, insurance, investment or similar activities; or
- c) being the headquarters, co-ordination centre or similar entity providing administrative services or other support to a group of companies which carry on business primarily in other States;

is not taxed in that State or is taxed at a tax rate which is significantly lower than the tax rate which is applied to income from similar onshore activities, the other Contracting State shall not be obliged to apply any limitation imposed under this Convention on its right to tax the income derived by the company from such offshore activities or on its right to tax the dividends paid by the company.

2. A legal entity that is a resident of a Contracting State and derives profits or income from sources within the other contracting State, shall not be entitled in that other Contracting State to the benefits of this Convention if more than 50 percent of the beneficial interest in such entity (or in the case of a company, more than 50 percent of the aggregate vote and value of the company's shares) is owned, directly or indirectly, by a combination of one or more persons that are not residents of the first mentioned Contracting State. However, this provision shall not apply if that entity carries on, in the Contracting State of which it is a resident, substantive business activity other than the mere holding of security or any other assets, or the mere performance of similar activities in relation to other related entities.

3. The competent authorities of the Contracting States may regulate the application categories of this Convention and, particularly, the formalities that must be followed by the residents of a Contracting State to obtain the tax privileges provided for in the Convention. The said formalities may comprise the delivery of a residence certification form indicating, among others, the nature and amount of income involved and with certification of tax authorities in the first mentioned State.

## **CHAPTER VII**

### **Final Provisions**

#### **ARTICLE 28**

##### **Entry into Force**

1. Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Convention. The Convention shall enter into force on the date of receipt of the later of these notifications.

2. The provisions of the Convention shall apply:

a) in Peru, with regard to Peruvian taxes and amounts paid, credited in one account, made available or calculated as expense on or after the first day of January of the calendar year following that in which the Convention enters into force,

b) in Brazil:

i) with regard to taxes withheld at source, the amounts paid, remitted or credited on or after the first day of January of the calendar year immediately following that in which the Convention enters into force;

ii) with regard to other taxes, in respect of the other income provided for in this Convention, to income arising in the taxable year beginning from and including the first day of January of the calendar year immediately following that in which the Convention enters into force.

#### **ARTICLE 29**

##### **Termination**

1. This Convention shall remain in force until termination by one of the Contracting States. Any Contracting State may terminate this Convention through the diplomatic channel, by giving written notice of termination, within at least six months before the end of any calendar year, starting five years after the year it enters into force.

2. In such event, the Convention shall cease to apply:

a) in Peru, with regard to Peruvian taxes and amounts paid, credited in one account, made available or calculated as expense on or after the first day of January of the calendar year,

b) in Brazil:

i) with regard to taxes withheld at source, the amounts paid, remitted or credited on or after the first day of January of the calendar year immediately following that in which the termination occurred;

ii) with regard to other taxes, in respect of the other income provided for in this Convention, to income arising in the taxable year beginning on and after the first day of January of the calendar year immediately following that in which the termination occurred.

In witness whereof the undersigned, being duly authorized thereto, have signed this Convention in the city of Lima, on February 17th, 2006, in two original copies in English and castellano, being both of them equally identical.

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**FOR THE GOVERNMENT  
OF THE FEDERATIVE REPUBLIC OF BRAZIL**

**Celso Amorim  
Minister of Foreign Affairs**

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**FOR THE GOVERNMENT  
OF THE REPUBLIC OF PERU**

**Oscar Maúrtua of Romagna  
Minister of Foreign Affairs**

## **P R O T O C O L**

At the moment of the signature of the Convention between the Federative Republic of Brazil and the Government of the Republic of Peru for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect of Taxes on Income, the undersigned have agreed upon the following provisions which constitute an integral part of the Convention.

1. With reference to Article 3 ("General Definitions"), paragraph 1 (d):

In the case of Peru, the term "person" also comprise marital relationships and indivisible successions.

2. With reference to Article 8 ("Shipping and Air, Land and River Transport"), paragraph 1:

For the purposes of this Article, the term "profits" comprise, in particular:

- i) gross revenue which derive directly from the operation of ships, boats, aircraft or land transport vehicles in international traffic, and
- ii) interest on sums derived directly from the operation of ships, boats, aircraft or land transport vehicles in international traffic, whenever such profit is related to operation.

3. With reference to Article 11 ("Interest"), paragraph 3:

The sum paid on behalf of "remuneration on own capital" according to Article 9 of the Brazilian Law no. 9.249/95 are considered interest for the purposes of paragraph 3 of Article 11.

4. With reference to Article 12 ("Royalties"), paragraph 3:

The provisions of paragraph 3 of Article 12 apply to any kind of payment received by the rendering of technical services and assistance.

The provisions of this item also apply to digital and business services, including consulting.

5. With reference to Article 23 ("Non-Discrimination"):

a) The provisions of paragraph 6 of Article 10 are not considered discriminatory in the terms of paragraph 2 of Article 23;

b) The provisions of the Brazilian tax law which prohibit that the "royalties", mentioned in paragraph 3 of Article 12, paid by a permanent establishment situated in Brazil to a resident that exercises business activities in Brazil through this permanent establishment, are deductible at the moment of assessing the taxable income of the said permanent establishment, are not discriminatory in the terms of paragraph 4 of Article 23. This paragraph shall equally apply to Peru if, in the future, a similar tax regime is constituted in the moment of signature of this Convention;

c) The provisions of the Peruvian tax law which establish that taxpayers that assess as expenses or costs the royalties, and compensations for services, technical service, assignment of use or others of similar kind, invoiced by non-residents (non domiciled), shall pay the tax administration the sum equivalent to the retention in the

month in which its accounting record occurs, regardless of whether the respective compensations are paid to the non-residents (non-domiciled), are not discriminatory in the terms of paragraph 4 of Article 23;

d) The provisions of this Convention, especially those of Article 23, shall not prevent a Contracting State from applying its domestic law as for the insufficient capitalization or to combat the deferral of tax on income, included in the Controlled Foreign Corporation law or another similar law.

6. With reference to Article 24 ("Mutual Agreement Procedure"):

Regardless of the participation of the Contracting States in the "General Agreement on Commerce of Services", or in any international agreements, the tax issues related to taxes covered in the Convention which occur between the Contracting States shall only be subject to the provisions of the Convention.

7. With reference to Article 25 ("Exchange of Information"), paragraph 1:

In the case of Brazil, the provision of paragraph 1 of Article 25 only applies to federal taxes;

In the case of Peru, the provisions of paragraph 1 of Article 25 only comprise taxes of the Federal Government.

8. With reference to Article 27 ("General Provisions"):

In the case of Peru, nothing in this Convention shall impair the application of the provisions of Legislative Decrees Nos 662, 757 and 109 and Laws Nos 26221, 27342, 27343, according to text in force on the date of signature of the Convention and all modifying laws which do not change its general principle nor the optional nature of the underwriting of tax stability agreements according to the aforementioned laws. A person that is party to an agreement which grants tax stability according to the referred legal provisions shall, notwithstanding the rates established in the Convention, remain subject to tax rates established in the agreement during its effect.

In witness whereof the undersigned, being duly authorized thereto, have signed this Convention in the city of Lima, on February 17th, 2006, in two original copies in English and castellano, being both of them equally identical.

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**FOR THE GOVERNMENT**

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**FOR THE GOVERNMENT**

**OF THE FEDERATIVE REPUBLIC OF BRAZIL**

**Celso Amorim  
Minister of Foreign Affairs**

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