

2000 Income Tax Convention and Final Protocol (English Translation)

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

[TRANSLATION]

The Portuguese Republic and the Federative Republic of Brazil, considering the special relationship existing between the two countries and desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to tax on income, 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. The existing taxes to which this Convention shall apply are in particular:

a) in the case of Brazil:

Federal Income Tax (Imposto Federal sobre a Renda)
(which shall be referred to hereinafter as "Brazilian tax").

b) in the case of Portugal:

tax on income of natural persons (Imposto sobre o Rendimento das Pessoas Singulares - IRS)

tax on income of legal persons (Imposto sobre o Rendimento das Pessoas Colectivas - IRC)

local tax on the income of legal persons (derrama)

(which shall be referred to hereinafter as "Portuguese Tax").

2. This present Convention shall apply also to any identical or substantially similar taxes which come into effect 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 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 "Brazil" means the continental and insular territory of the Federative Republic of Brazil, including its territorial waters, as defined in the Convention of the United Nations on Marine Law, and the corresponding sea bed and subsoil, as well as any marine area beyond the territorial waters, including the seabed and its subsoil, to the extent that Brazil, in accordance with international law, exercises rights pertaining to the exploration and use of natural resources in that area;

b) the term "Portugal" means the territory of the Republic of Portugal located on the European continent, the archipelagos of the Azores and of Madeira, the respective territorial waters as well as other areas over which, in accordance with Portuguese laws and international law, the Portuguese Republic has sovereign rights or jurisdiction to conduct research and exploration, preservation, and management of the natural resources of the sea bed, whether living or not, the water column over the sea bed, the sea bed itself, and its subsoil.

c) the term "nationals" means

(i) all natural or individual persons possessing the nationality of a Contracting State.

(ii) a collective or legal person, societies of persons and associations constituted in conformity with the laws in effect in a Contracting State.

(iii) an entity which, although not a collective or legal person, is treated as such for fiscal purposes under the legislation of a Contracting State.

d) the term "a Contracting State" and "the other Contracting State" mean, depending on the context, Brazil or Portugal.

e) the term "Person" refers to any individual or natural person, company or other group of people.

- f) the term "company" means any collective or legal person or any entity which is treated as a collective or legal person for tax purposes;
- g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean, respectively, an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- i) the term "competent authority" refers to:
 - (i) in Brazil: the State Minister of Finance, the Secretary of the Federal Revenue Service, or his/her authorized representatives;
 - (ii) in Portugal: the Minister of Finance, the Executive Manager of the Tax Administration, or his/her authorized representatives.

2. As regards the application of the Convention by a Contracting State at any given time, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that Contracting State concerning the taxes to which the Convention applies. The meaning of such term under the tax legislation of a Contracting State shall prevail over any meaning this term may have in accordance with other laws of this State.

Article 4 Tax Domicile or Residence

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 domicile, residence, place of management or any other criterion of a similar nature and also applies to that State as well as its political or administrative subdivisions or local authorities.
2. Where by reason of the provisions of paragraph 1 an individual or natural person is a resident of both Contracting States, then his status shall be determined as follows:
 - a) he shall be deemed to be a resident of the State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (center of vital interests);
 - b) if the State in which he has his center of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
 - c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
 - d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by virtue of the provisions of paragraph 1 a person other than an individual or natural person is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

Article 5 Stable Establishment or Permanent Establishment

1. For the purposes of this Convention, the term "stable establishment" or "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, and
 - f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. A construction or assembly site or location shall only be deemed a permanent establishment as long as its duration exceeds nine months.
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 purpose of storage, display or delivery of merchandise belonging to the enterprise;
 - b) the maintenance of a stock of merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

- c) the maintenance of a stock of 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 merchandise or of 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) through (e), provided that the overall activity of the fixed place of business resulting from this combination is 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 6 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 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. An enterprise shall not be deemed to have a permanent establishment in a State merely because it carries on business in that 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.
7. 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 be sufficient to make either company a permanent establishment of the other.

Chapter 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; 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 arising out of immovable property of an enterprise.
5. The above provisions shall also apply to income derived from movable property and services related with the immovable property, which, in accordance with the tax laws of the Contracting State in which such goods are located or the services are rendered, is similar to income derived from immovable goods.

Article 7 Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions duly proven expenses which are incurred for the purposes of the permanent establishment, including

executive and general administrative expenses, which must also be proven and incurred for aforesaid purposes.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of 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 especially 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 Sea and Air Traffic

1. The provisions of letters 1 to 4 of Article 7 notwithstanding, the profits from the operation of ships and aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. If the place of effective management of a shipping enterprise is aboard a ship or boat, then the place of effective management shall be deemed to be situated in the Contracting State in which the home harbor of the ship or boat is situated, or, if there is no such home harbor, in the Contracting State of which the operator of the ship or boat is a resident.

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

4. In case companies of different countries agree to engage in air transportation activities in the form of a consortium, the provisions of paragraph 1 shall apply to that part of the profits of the consortium which corresponds to the share held in such consortium by a company residing in a Contracting State.

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 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% (ten per cent) of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25 per cent of the capital of the company paying the dividends, during an uninterrupted period of 2 (two) years prior to the payment of the dividends;

b) 15% (fifteen per cent) of the gross amount of the dividends in all other cases. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

3. 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 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. The term "dividends" also includes income derived from a joint account or venture.

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 through a permanent establishment situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 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 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 such other State.

6. The profits remitted or paid or credited by a permanent establishment situated in a Contracting State to an enterprise of the other Contracting State to which it belongs shall also be considered dividends, subject to the provisions of paragraph 2, letter a.

7. The provisions of letter 2 and 6 shall not affect the taxation of the company or the permanent establishment insofar as profits giving rise to the income mentioned therein are concerned.

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 person receiving such interest is the beneficial owner of such interest, the tax so charged shall not exceed 15% (fifteen per cent) of the gross amount of the interest.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limit.

3. The provisions set forth in letters 1 and 2 notwithstanding, the interest arising in a Contracting State and paid to the Government of the other Contracting State, to one of its political or administrative subdivisions or local authorities or to any institutions (including financial institutions) fully owned by that Government or political or administrative subdivision or local authority shall be exempt from tax in the first State.

4. The limit established in letter 2 shall not apply to interest arising in a Contracting State that is attributed or paid to a permanent establishment of a resident of the other Contracting State situated in a third-party State.

5. The term "interest" as used in this Article refers to income from public claims, debt-claims, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, as well as any other income treated in a manner similar to income from funds loaned under the tax laws of the State in which the income arises.

6. 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 activity in the other Contracting State in which the interest arises, through a permanent establishment situated therein, and the debt-claim in respect of which the interest is paid is effectively connected therewith. In such case the provisions of Article 7 shall apply.

7. Interest shall be deemed to arise in a Contracting State in case the payer is a resident of such Contracting State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a 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 State in which the permanent establishment is situated.

8. Where, by reason of a special relationship between the payer and the beneficial owner 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 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 in accordance with 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 whose beneficial owner is a resident of the other Contracting State shall only be taxable in that other Contracting State.

2. These royalties, however, are also taxable in the Contracting State in which they arise and in accordance with the laws of this other State; however, in case the beneficial owner is a resident of the other Contracting State, the tax established in such a manner can not exceed 15% (fifteen per cent) of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind attributed or paid for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films and recording tapes for radio and television broadcasting, of any patent, industrial or trade mark, design or model, plan, secret formula or process, as well as for the use of, or the right to use, any industrial, commercial, or scientific equipment and for information concerning experience acquired in the industrial, commercial, or scientific sector.

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 activity in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State in case the payer is a resident of such Contracting State. However, in case the payer of the royalties, whether a resident of a Contracting State or not, has a permanent establishment in a Contracting State for which the contract giving rise to the payment of the royalties has been entered and which as such incurs the charge thereof, these royalties are deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, 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 referred to in Article 6 and situated in the other Contracting State may be taxed in that other Contracting 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, including gains from the alienation of such a permanent establishment (alone or with the whole enterprise) may be taxed 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 situated.

4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, and 3 can be taxed in both Contracting States.

Article 14 Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that Contracting State, unless such remuneration is paid by a resident of the other Contracting State or belongs to a permanent establishment situated therein. In this case, such income can be taxed in the other Contracting State.

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 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 employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, the corresponding remuneration 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 employment exercised in the other Contracting State shall be taxable only in the first-mentioned Contracting State if:

a) the beneficiary owner remains in the other State for a period or periods not exceeding in the aggregate 183 days during any 12-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. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16 Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of management, the board of directors, the tax board, or any other similar entity 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 taxed 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. The provisions of paragraphs 1 and 2 are not applicable if the activities exercised in a Contracting State are primarily financed with public funds of the other Contracting State or by one of its political or administrative subdivisions or local authorities or by entities more than 50% of the capital stock of which is held by one of the aforementioned persons. In this case, the income derived from such activities can only be taxed in the other States. Comments Doctrine.

Article 18 Pensions

1. Subject to the provisions of paragraph 2 of Article 19, pensions and similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

2. The provisions of paragraph 1 of this Article notwithstanding, pensions and similar remuneration paid pursuant to the terms of social-security laws of a Contracting State or one of its political subdivisions can only be taxed in that State.

Article 19 Government Service

1. Remunerations paid by a Contracting State or one of its political or administrative subdivisions or local authorities, whether directly or by drawing on funds provided for that purpose, to an individual or natural person in respect of services rendered to that State or to that subdivision or local authority thereof in the exercise of public functions shall be taxable in that State.

2. The provisions of paragraph 1 notwithstanding, the remunerations, including pensions, paid by a Contracting State or one of its political or administrative subdivisions or local authorities, whether directly or by drawing on funds provided for that purpose, to an individual or natural person who is a national of that state in respect of services rendered to that State or to that subdivision or local authority thereof in the exercise of public functions shall only be taxable in that State.

3. The provisions of Articles 15 and 18 shall apply to remunerations as well as persons paid in respect of services rendered in connection with a commercial or industrial activity carried on by one of the Contracting State or one of its political or administrative subdivisions or local authorities.

Article 20 Professors

Any person who is, or was prior thereto, a resident of a Contracting State and who transfers to the other Contracting State upon invitation by the Government of that other State or a not-for-profit entity or a university or another institution engaged in teaching or scientific research which belongs to that State or to such entity where the only purpose of such transfer is to lecture or conduct scientific research in said institutions, for a period not exceeding two years, shall be exempt from taxes in both Contracting States for remuneration received as a result of such teaching or research.

Article 21 Students

1. Any resident which is, or was prior thereto, a resident of one of the Contracting States and who is temporarily present in the other Contracting State for the sole purpose of pursuing studies or education:

a) as a student enrolled at a university, college, or school, or

b) as an intern, or

c) as a recipient of a subsidy, pension, prize, or financial aid from a religious, charitable, scientific or educational institution,

shall be exempt from tax in that other State in terms of the payments he receives for the purpose of his maintenance, studies or training, provided such payments are received from sources outside of such other State.

2. Students enrolled at a university or another establishment of higher or technical education of a Contracting State which are employed in the other Contracting State, for a period not exceeding one year, shall be exempt from tax in that other State insofar as the remuneration such person receives for such employment is concerned, provided that its purpose is practical training with regard to their studies, and the payments to do not exceed USD 10,000 (ten thousand US dollars) per year.

Article 22 Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, that is received by a resident of a Contracting State who carries on an activity in the other Contracting State through a permanent establishment situated therein provided that the right or property in respect of which the income is paid is effectively connected therewith. In such case the provisions of Article 7 shall apply.

3. The provisions of paragraphs 1 and 2 of this Article notwithstanding, items of income of a resident of a Contracting State arising in the other Contracting State and not dealt with in the foregoing Articles of this Convention can also be taxed in that other State.

Chapter IV

Methods for Elimination of Double Taxation

Article 23 Method

1. Where a resident of a Contracting State receives income which, in accordance with the provisions of this Convention, is taxable in the other Contracting State, the first-mentioned State shall deduct, from the tax it charges on the income of such resident, an amount corresponding to the income tax paid in such other State.

This deduction, however, may not exceed the fraction of income tax, calculated before making such deduction, which corresponds to such income which is taxable in that other State.

2. In the case of Portugal, where a company residing in Portugal receives dividends from a company residing in Brazil which is subject to federal income tax and which is not exempted in any fashion whatsoever in which the former holds directly at least a 25% (twenty-five percent) interest, Portugal shall grant a deduction of 95% (ninety-five per cent) of such dividends included in its tax base, provided that the aforementioned interest has been held during the preceding two years, or since the date of constitution of the Brazilian company, whichever occurred later, although in both cases solely as long as the interest has been held without interruption during this period.

3. In the case of Brazil, where a company residing in Brazil receives dividends from a company residing in Portugal which is subject to Portuguese tax as defined in letter b) of paragraph 1 of Article 2 of this Convention and not exempted in any fashion whatsoever, the deduction provided for under paragraph 1 above shall include the tax which can be imposed on the company for the income giving rise to the dividends paid (indirect credit), as long as the provisions of Brazilian laws are met.

4. Where, in accordance with any provision of the Convention, the income which a resident of a Contracting State receives is exempt from tax in that State, such State can nonetheless, include such exempted income to calculate the tax on the rest of the income of such resident.

Chapter V

Special Provisions

Article 24 Non-Discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of Article 9, paragraph 8 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.

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 those to which other similar enterprises of the first-mentioned State are or may be subjected.

5. The provisions of Article 2 notwithstanding, the provisions of this present Article shall apply to taxes of any kind and description.

Article 25 Mutual Agreement Procedure

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this present Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident. The case must be presented within two years from the first notification of the tax giving rise to the objection or, in the case of taxation in both States, from the second taxation, or, in the case of withholding at the source, from the date of payment of the income being taxed, even if this represents the second taxation.

2. That competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic laws of the Contracting States.

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

Article 26 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 this Convention insofar as the taxation thereunder is not contrary to this Convention, in particular to prevent fraud or evasion of such taxes. 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 taxes covered by this Convention, or the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Convention. Such persons or authorities shall use the information obtained in such manner only for the specified purposes. The competent authorities shall determine, through inquiries, the appropriate methods and techniques for the issues with respect to which the information is exchanged, including, whenever applicable, the exchange of information pertaining to fiscal evasion.

2. The competent authority of a Contracting State can provide the competent authority of the other Contracting State, without requiring a prior request, with the information in its hands whenever

a) it has reason to believe that less than the actual tax was paid as a result of the artificial transfer of profits within a group of companies;

b) the use of information received prior thereto by the other Contracting State yields new data or background information which are useful for taxation in that other Contracting State;

c) any other circumstances lead to the assumption that the other Contracting State has lost proceeds.

3. The competent authority of a Contracting State shall provide the competent authority of the other Contracting State, on a yearly basis, by means of prior identification of taxpayers, with the following data, which are normally supplied by the taxpayers, or can provide them, even without prior identification:

a) information pertaining to the profits realized on its territory by legal persons or permanent establishments situated thereon, to be remitted to the competent authority of the Contracting State where such associated legal person or its headquarters or corporate seat is domiciled;

b) information on profits reported by legal persons domiciled in the first Contracting State pertaining to operations carried out in the other Contracting State by associated legal persons or permanent establishments;

c) any other information they agree to exchange.

4. The competent authority of the Contracting State to which such a request is directed shall be entitled to authorize the representatives of the requesting Contracting State to gain access to the first-mentioned State in order to participate, as observers, in the interviews of individuals or the inspection of books and records being conducted by the State to which such a request is made.

5. The Contracting States shall be entitled to consult with each other in order to determine cases and procedures for simultaneous tax inspection.

For the purposes of this Convention, the term "simultaneous inspection" refers to an understanding between the Contracting States to simultaneously inspect, each of them on its respective territory, the tax situation of a person or persons with joint or associated interests in order to exchange the relevant information obtained thereby.

6. In no case shall the preceding provisions be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures violating 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 administrative practice of that or of the other Contracting State;

c) to supply information which would disclose any trade, industrial, or professional secrets or processes, or information, the disclosure of which would be contrary to public policy (ordre public).

7. For the purpose of mutual assistance and reciprocal learning with regard to fiscal policy and the tax system of both Contracting States, the respective competent authorities can consult with each other and promote the exchange of qualified personnel, information, studies, and matters of tax administration organization.

Article 27 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 under the provisions of special agreements.

Chapter VI

Final Provisions

Article 28 Entry Into Force

1. This present Convention shall be ratified by the Contracting States in conformity with the respective constitutional requirements, and the instruments of ratification shall be exchanged as soon as possible.

2. The Convention shall come into effect one month after the exchange of the instruments of ratification, and the provisions of the Convention shall apply for the first time:

a) in Portugal:

i) to taxes levied at the source which are based on circumstances arising on or after January 1, 2000

ii) to other taxes on income arising during the fiscal year commencing on or after January 1, 2000.

b) in Brazil:

i) insofar as taxes levied at the source are concerned, to funds paid, remitted, or credited on or after January 1, 2000;

ii) insofar as other taxes covered by this present Convention are concerned, to income arising during the fiscal year commencing on or after January 1, 2000.

Article 29 Termination

This present Convention shall remain in force until terminated by one of the Contracting States. Each Contracting State can terminate this Convention by notifying the other Contracting State thereof in writing through diplomatic channels and indicating the year of termination at least six months before the end of the calendar year specified in the aforementioned notice. In this case, the Convention shall no longer apply to the following:

a) in Portugal:

i) insofar as taxes levied at the source are concerned, to those taxes which are based on circumstances arising after January 1 of the calendar year following the year specified in the aforementioned notice;

ii) insofar as other taxes are concerned, to income arising during the fiscal year commencing on or after January 1 of the calendar year following the year specified in the aforementioned notice.

b) in Brazil:

- i) insofar as taxes levied at the source are concerned, to funds paid, remitted, or credited on or after January 1 of the calendar year immediately following the year specified in the aforementioned notice;
- ii) insofar as other taxes covered by this present Convention are concerned, to income arising during the fiscal year commencing on or after January 1 of the calendar year immediately following the year specified in the aforementioned notice.

In witness whereof the undersigned, duly authorized to that effect, have signed this present Convention.

Done in Brasilia in two copies, both in Portuguese, on May 16, 2000.

FOR THE GOVERNMENT OF THE PORTUGUESE REPUBLIC:

FOR THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL:

PROTOCOL

During the signing of this present Convention between the Federative Republic of Brazil and the Portuguese Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, the undersigned, duly authorized to that effect, have agreed on the following additional provisions, which shall be an integral part of the Convention.

Ad Article 2, paragraph 1, Letter a)

It is understood that the taxes set forth under Article 2 paragraph 1 Letter a) include the Social Contribution on Net Profits (CSLL - Contribuição Social sobre o Lucro Líquido), established pursuant to Law No. 7.689 dated December 15, 1988.

Ad Article 2, paragraph 3, Letter b)

It is understood that the "derrama" refers to the additional local [tax] on the income of legal persons.

Ad Article 7, paragraph 3

It is understood that the provisions of paragraph 3 of Article 7 apply to executive and general administrative expenses incurred in the State in which the permanent establishment is situated, or in any other location.

Ad Article 11, paragraphs 3 and 5

It is understood that the provisions of paragraph 3 of Article 11 apply only to income received by an institution (including financial institutions) fully owned by the Government of a Contracting State or one of its political or administrative subdivisions as long as the aforementioned institution is the beneficial owner of the interest.

It is furthermore understood that, for the purposes of paragraph 5 of Article 11, the interest paid as "remuneration for equity" in accordance with Brazilian tax law is also deemed to constitute interest.

Ad Article 12, paragraph 3

It is understood that the provisions of paragraph 3 of Article 12 apply to any kind of payment received for the provision of technical assistance and technical services.

Ad Article 13, paragraph 4 and Article 14, paragraph 1

It is understood that in the event that, after the signing of this present Convention, Brazil concludes, with a third State not located in Latin America, a Convention which limits, with respect to the income referred to in the aforementioned paragraphs, the power of taxation of the other Contracting State other than that of which the beneficial owner of the income is a resident, an identical limitation shall automatically be applied to the relations between Brazil and Portugal.

Ad Article 23, paragraph 2

It is understood that, in the case the method used to eliminate double taxation of dividends arising from a foreign source that is currently specified in the Portuguese laws is substituted by the indirect credit method, the new method will automatically apply to the dividends paid by companies residing in Brazil to companies residing in Portugal.

Ad Article 24

a) It is understood that the provisions of paragraph 6 of Article 10 do not conflict with the provisions of paragraph 2 of Article 24.

b) It is understood that the provisions of the laws of the Contracting States which do not permit the deduction of "royalties", as defined in paragraph 3 of Article 12, paid by a permanent establishment situated in a Contracting State to a resident of the other Contracting State which carries on entrepreneurial activities in the first Contracting States via such permanent establishment as soon as the taxable income of the aforementioned permanent establishment is determined do not conflict with the provisions of Article 24 of this present Convention.

c) It is understood that the provisions of paragraph 4 of Article 24 do not apply to accessory obligations.

d) It is understood that, insofar as Article 24 is concerned, the provisions of the Convention do not prevent either Contracting State from applying the respective domestic rules regarding subcapitalization or excessive indebtedness.

e) Insofar as Brazil is concerned, it is understood that paragraph 5 of Article 24 only applies to taxes under the responsibility of the [Brazilian] Union.

Addition with refererence to the Free Zones of Ilha da Madeira, Ilha de Santa Maria and Manaus, SUDAM, and SUDENE.

It is understood that the benefits of this Convention are not granted to any person entitled to fiscal benefits pertaining to income tax in accordance with the tax instruments and other measures related with the Free Zones of Ilha da Madeira, Ilha de Santa Maria, Manaus, SUDAM, and SUDENE or similar benefits granted, available or made available to them pursuant to any law or other measure adopted by any Contracting State. The competent authorities of the Contracting States shall notify each other about any law or similar measure and shall consult with each other regarding the presence or absence of similarities of such benefits.

In witness whereof the undersigned, duly authorized to that effect, have signed this present Protocol. Done in Brasilia in two copies, both in Portuguese, on May 16, 2000.

FOR THE GOVERNMENT OF THE PORTUGUESE REPUBLIC:

FOR THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL: