

1996 Income and Capital Tax Convention and Final Protocol (English Translation)

Signed date: December 18, 1996

In force date: March 18, 2004

Effective date: Income subject to withholding tax, from January 1, 2005; capital tax, from January 1, 2005; provisions regarding other income taxes, from December 31, 2005. See Article 28.

Status: In Force

CONVENTION BETWEEN THE KINGDOM OF BELGIUM AND THE REPUBLIC OF ECUADOR FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

[TRANSLATION]

The Government of the Kingdom of Belgium and the Government of the Republic of Ecuador, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital have agreed to the following provisions:

Chapter I

Scope of Application of the Convention

Article 1 Personal Scope

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

Article 2 Taxes Covered

1. This Convention shall apply to taxes on income and capital imposed on behalf of a Contracting State, its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital, taxes imposed on total income, total capital, or on any elements of the same, including taxes on gains from the alienation of movable or immovable property, taxes on total wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which this Convention shall apply are in particular:

a) in the case of Belgium:

1° impôt des personnes physiques (individual income tax);

2° impôt des sociétés (corporate income tax);

3° impôt des sociétés (tax on corporate bodies);

4° impôt des non-résidents (tax on non-residents);

5° cotisation spéciale assimilée à l'impôt des personnes physiques (special contribution deemed to be a tax on individuals);

6° contribution complémentaire de crise (supplementary crisis contribution);

including withholdings at the source, surcharges (centimes additionnels) on the said taxes and withholdings, as well as supplements to the individual income tax, referred to hereinafter as "Belgian tax";

b) in the case of Ecuador:

1° impôt sur le revenu des personnes physiques et des sociétés ("Ley de Régimen Tributario Interno Ecuatoriano" or individual income tax and corporate income tax);

2° impôt sur les actifs des entreprises (tax on the assets of enterprises);

including supplements to the said taxes, (referred to hereinafter as the "Ecuadorian tax").

4. This Convention shall also apply to any identical or similar taxes which are imposed after the date of signature of the Convention and which would be in addition to or would replace the existing taxes. The competent authorities of the Contracting State shall notify each other of important changes that 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) 1° the term "Belgium" designates the Kingdom of Belgium; and

2° the term "Ecuador" designates the Republic of Ecuador.

These terms include the national territories of each Contracting State, including the territorial waters, as well as the maritime areas adjacent to the outer boundary of these territorial waters, over which

the Contracting State concerned may, in accordance with its legislation and with international law, exercise its sovereignty, its sovereign rights, or its jurisdiction;

b) the expressions "a Contracting State" and "the other Contracting State" designate Belgium or Ecuador, as the case may be;

c) the term "person" includes individuals, companies, and any other groups of people;

d) the term "company" designates any corporate body or entity which is treated as a corporate body for tax purposes in the State of which it is a resident;

e) the expressions "enterprise of a Contracting State" and "enterprise of the other Contracting State" designate 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;

f) the expression "international traffic" designates 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 points in the other Contracting State;

g) the expression "competent authority" designates:

1° in the case of Belgium, the Minister of Finance or his authorized representative, and

2° in the case of Ecuador, the Minister of Finance and Public Credit, the Director General of Revenue, or their authorized representative;

h) the term "national" designates:

1° any individual possessing the nationality of a Contracting State;

2° any corporate body, partnership, or association deriving its status as such from the laws in force in a Contracting State;

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

Article 4 Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" refers to any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, or any other criterion of a similar nature. However, this term does not include any person who is liable to tax in that State in respect only of income derived from sources in that State or from capital located in the same.

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

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

b) if the State in which such person has his center of vital interests cannot be determined, or if such person does not have a permanent home available to him in either State, such person shall be deemed to be a resident of the State in which he has an habitual abode;

c) if such person 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 such person 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 reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

Article 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 office,

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 only constitutes a permanent establishment as long as its duration exceeds 12 months.

4. Notwithstanding the previous 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 merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- c) the maintenance 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 collecting information for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination maintains its preparatory or auxiliary character.

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 and which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent, or any other independent agent, provided that such persons are acting in the ordinary course of their business.

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 constitute either of the two companies 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. Said term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of private law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources, and other natural reserves; ships, boats, 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 farm tenancy, as well as use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income derived from the immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7 Business Profits

1. The profits of an enterprise of a Contracting State shall be subject to tax only in that State, unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be subject to tax in the other State, but only so much of them as is attributable to 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 enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

4. Insofar as it is customary, in a Contracting State, to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, no provision in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed in such a manner; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

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

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

7. Where profits include items of income 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 Transport

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

2. For the purposes of the present article, profits derived from the operation of ships or aircraft in international traffic also include:

- a) profits derived from the dry or wet lease of ships or aircraft used in international traffic,
- b) profits derived from the use, maintenance, or lease of containers and related equipment used for the transportation of containers used in international traffic, provided that such profits are related to the profits to which the provisions of paragraph 1 are applicable.

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

4. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business, or an international operating agency.

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 15 percent of the gross amount of the dividends.

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

3. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, as well as income attributed even in the form of interest 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 shall not apply if the beneficial owner of dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the

company paying the dividends is a resident, either an industrial or commercial activity through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such cases, the provisions of Article 7 or Article 14, as the case may be, are applicable.

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.

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 10 percent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, the interest arising from a Contracting State is tax-exempt in the said State if:

a) the interest is from commercial debt obligations, including those represented by commercial instruments, resulting from deferred payment for the supply of equipment, merchandise, or products by the enterprises;

b) the interest is paid in connection with a loan granted or guaranteed, or a credit granted or guaranteed, by public financial institutions for the purpose of promoting export;

c) the interest is on loans of any kind not represented by bearer securities and granted by banking enterprises;

d) the interest is paid to the other Contracting State or to one of its political subdivisions or local authorities.

4. The term "interest" as used in this Article refers to income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities. However, the term does not include, for the purposes of this article, surcharges for late payment or interest treated like dividends by virtue of paragraph 3 of Article 10.

5. The provisions of paragraphs 1, 2, and 3 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, either an industrial or commercial activity through a permanent establishment situated therein or performs independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In these cases, the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some third party, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the 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 the Contracting State from which the interest is derived, in accordance with its laws.

Article 12 Royalties

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

2. These royalties, however, are also taxable in the Contracting State in which they arise and in accordance with the laws of this State; however, if the beneficial owner of the royalties is a resident of the other Contracting State, the tax levied in such a manner can not exceed 10 per cent 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 or recordings for radio or television, for the use of, or the right to use, any computer program, patent, industrial or commercial trademark, 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 or for information pertaining to industrial, commercial, or scientific know-how.

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

5. Royalties shall be deemed to arise in a Contracting State where the payer is that State itself, a political subdivision, a local authority, or a resident of that State.

Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base for which the contract giving rise to payment of the royalties was made, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or the 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 some third party, the amount of the royalties, having regard to the benefit 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 the Contracting State in which the royalties arise.

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 subjected to tax in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be subjected to tax in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is located.

4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, and 3 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14 Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless such resident has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If such resident has such a fixed base, such income may be taxed in the other State, but only so much of it as is attributable to that fixed base.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational, or teaching activities, as well as the independent activities of physicians, lawyers, engineers, architects, dentists, and accountants.

Article 15 Dependent Personal Services

1. Subject to the provisions of Articles 16, 18, 19, and 20, salaries, wages, and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be 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 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 where the place of effective management of the enterprise is situated.

Article 16 Directors' Fees

1. Directors' fees, royalties, and other similar payments received by a resident of a Contracting State in his capacity as a member of the Board of Directors or Supervisory Board or similar body of a company which is a resident in the other Contracting State may be taxed in that other State.

The preceding provision shall also be applied to payments received in respect of the performance of duties which, by virtue of the laws of the Contracting State in which the company is a resident, are treated as duties similar in nature to those performed by a person referred to in the said provision.

2. The payments that a person referred to in paragraph 1 receives from the company by virtue of discharging daily managerial or technical duties, as well as the payments that a resident in a Contracting State derives from his personal activity, in his capacity as an associate of a company, other than an incorporated company, who is a resident of the other Contracting State, may be taxed in accordance with the provisions of Article 15, as if they were payments that an employee derives from an employment and as if the employer were the company.

Article 17 Artistes and Athletes

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

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

Article 18 Pensions

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

2. However, pensions and other benefits, whether or not they are periodical, paid within the framework of social legislation in a Contracting State shall be taxable in that State.

This provision is also applied to the pensions and benefits paid within the scope of a public scheme organized by that Contracting State for the purpose of complementing the benefits provided for by the said legislation.

Article 19 Government Service

1. a) Remuneration, other than pensions, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State, political subdivision or local authority shall be taxable only in that State.

b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

1° is a national of that State, or

2° did not become a resident of that State for the sole purpose of rendering the services.

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

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

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

Article 20 Students and Trainees

A student or trainee, who is or was immediately before visiting a Contracting State, a resident of the other Contracting State and who is present temporarily in the first-mentioned State solely for the purpose of his education or training, shall not be taxed in that State:

a) on amounts received from sources located outside the State, for the purpose of his maintenance, education, or training;

b) on payments he receives in respect of an employment exercised in that State in connection with studies or training and for the normal duration of such studies or training, insofar as such payments do not exceed 120,000 Belgian francs per calendar year or the equivalent of this amount in Ecuadorian currency at the official exchange rate, as the case may be.

Article 21 Other Income

1. Items of income of a resident of a Contracting State, whose type or sources are not dealt with in the foregoing Articles of this Convention and which are subjected to taxation in that State 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, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State, either an industrial or commercial activity 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 income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

Chapter IV

Taxation of Capital

Article 22 Capital

1. Capital represented by immovable property as defined by Article 6 that is held by a resident of a Contracting State and which is located in the other Contracting State may be taxed in that other State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services may be taxed in that other State.

3. Capital consisting of ships or aircraft operated in international traffic, as well as movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Chapter V

Methods for the Elimination of Double Taxation

Article 23

1. In the case of Belgium, double taxation shall be avoided as follows:

a) Where a resident of Belgium derives income or holds capital items which, in accordance with the provisions of this Convention, may be taxed in Ecuador, with the exception of the provisions of paragraph 2 of Article 10, paragraphs 2 and 7 of Article 11, and paragraphs 2 and 6 of Article 12, Belgium shall exempt such income or capital items from taxes, but it may, in order to calculate the amount of the taxes on the rest of the income or capital of such resident, apply the same rate as if the income or capital items concerned had not been exempted.

b) Subject to the provisions of Belgian law concerning the setting off of taxes paid abroad against Belgian taxes, when a resident of Belgium receives income items which are included in his overall income subject to Belgian tax and which consist of taxable dividends in accordance with paragraph 2 of Article 10, not exempted from Belgian tax by virtue of c) below, taxable interest in accordance with paragraphs 2 or 7 of Article 11, or taxable royalties in accordance with paragraphs 2 or 6 of Article 12, the Ecuadorian tax levied on this income is set off against the Belgian tax pertaining to the said income.

c) The dividends, as defined in paragraph 3 of Article 10, which a company that is a resident of Belgium derives from a company which is a resident of Ecuador, are exempted from corporate income tax in Belgium, subject to the conditions and limitations provided for by Belgian law.

2. In the case of Ecuador, double taxation shall be avoided as follows:

a) When a resident of Ecuador derives income or holds capital items which are taxable in Belgium in accordance with the provisions of this Convention, with the exception of those in paragraph 2 of Article 10, paragraphs 2 and 7 of Article 11, and paragraphs 2 and 6 of Article 12, Ecuador exempts such income or capital items from taxation, but it may, in order to calculate the amount of its taxes on the rest of the income or capital of such resident, apply the same rate as if the income or capital items in question had not been exempted.

b) When a resident of Ecuador derives dividends subject to tax in Belgium in accordance with paragraph 2 of Article 10, not exempted from the Ecuadorian tax by virtue of c) below, interest subject to tax in Belgium in accordance with paragraphs 2 or 7 of Article 11, or royalties subject to tax in Belgium, in accordance with paragraphs 2 or 6 of Article 12, Ecuador shall permit a deduction from the tax that it levies on the income of such resident in an amount equal to the tax paid in Belgium. This deduction shall not, however, exceed that portion of the Ecuadorian tax, calculated prior to deduction, corresponding to such income items derived from Belgium.

c) Dividends as defined in paragraph 3 of Article 10, which a company that is a resident of Ecuador derives from a company that is a resident of Belgium, are exempted from tax in Ecuador as if both companies were residents of Ecuador.

3. When the losses sustained by an enterprise, operated by a resident of a Contracting State in a permanent establishment situated in the other Contracting State, have effectively been deducted from the profits of that enterprise for its taxation in the first-mentioned Contracting State, in accordance with the legislation of that State, the exemption provided for in paragraph 1, a) or in paragraph 2, a), as the case may be, shall not apply in the first Contracting State to the profits from other taxable periods which are attributable to that establishment, insofar as such profits were also exempted from tax in the other Contracting State, to compensate for the said losses.

Chapter VI

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, especially in terms of residence. This provision shall also apply, notwithstanding the provisions of Article 1, to persons who are not residents of a Contracting State or of either Contracting State.

2. Stateless persons who are residents of a Contracting State shall be subjected in neither 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 the State in question in the same circumstances are or may be subjected.

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

4. Except where the provisions of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties, and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. In the same way, the debts of an enterprise of a Contracting State contracted towards a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted towards 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 are or may be subjected.

6. No provision of this Article shall be construed as preventing Belgium:

- a) from taxing, at the rate provided for in its domestic legislation, the profits of a permanent Belgian establishment that owns a company that is a resident of Ecuador, provided that the aforementioned rate does not exceed the maximum rate that may be levied on the profits of companies which are residents of Belgium;
- b) from withholding at the source the movable property tax on the dividends attaching to an interest effectively tied to a permanent establishment which a company that is a resident of Ecuador has at its disposal in Belgium.

7. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 25 Mutual Agreement Procedure

1. In the event that a person believes that the actions of one or both of the Contracting States result or will result for him in taxation that is not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided for by the domestic law of those States, submit his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to the competent authority of the Contracting State of which he is a national. The case must be submitted within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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

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 this Convention.

4. The competent authorities of the Contracting States may consult each other to discuss the administrative measures required to carry out the provisions of the Convention, and in particular, the supporting documents the residents of each Contracting State must provide in order to enjoy in the other State the tax exemptions or tax reductions provided for in this Convention.

5. The competent authorities of the Contracting States may communicate with each other directly in order to implement the Convention.

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 those of the domestic legislation of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of the taxes levied by the Convention, or with the enforcement or prosecution in respect of, or the determination of appeals in relation to, those taxes. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c) to supply information which would disclose any trade, industrial, or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

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 VII

Final Provisions

Article 28 Entry Into Force

1. This Convention shall be ratified and the instruments of ratification shall be exchanged in Quito as soon as possible.
2. The Convention shall enter into force on the 15th day following the date of exchange of the instruments of ratification and its provisions shall have effect:
 - a) in respect of taxes withheld at the source, on income payable or paid, as from January 1 of the calendar year immediately following the year in which the instruments of ratification are exchanged;
 - b) in respect of other income taxes levied for taxable periods, ending as from December 31 of the year immediately following the year in which the instruments of ratification are exchanged;
 - c) in respect of taxes on capital levied on capital existing on January 1 of any year following the year in which the instruments of ratification are exchanged.

Article 29 Termination

This Convention shall remain in force and effect unless terminated by a Contracting State, but either Contracting State may terminate it by providing a written notice of termination through diplomatic channels to the other Contracting State up until and including June 30 of any calendar year as from the fifth year following the year in which the instruments of ratification are exchanged. In the event of termination before July 1 of such a year, the Convention shall cease to have effect:

- a) in respect of taxes withheld at the source, on income payable or paid at the latest on December 31 of the year of termination;
- b) in respect of other income taxes, on taxes payable for taxable periods terminating at the latest on December 31 of the year immediately following the year of the termination;
- c) in respect of taxes on capital levied on capital existing on January 1 of the year of the termination.

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

Done in duplicate at Quito, on December 18, 1996, in the French, Dutch, and Spanish languages, each version being equally authentic.

FOR THE GOVERNMENT OF THE KINGDOM OF BELGIUM:

Joris Couvreur

Ambassador of Belgium

FOR THE GOVERNMENT OF THE REPUBLIC OF ECUADOR:

Diego Ribadeneira

Minister of Foreign Affairs, a.i.

PROTOCOL

At the time of signing the Convention between the Kingdom of Belgium and the Republic of Ecuador for the avoidance of double taxation with respect to taxes on income and on capital and the prevention of fiscal evasion, the undersigned agreed upon the following provisions which are an integral part of the Convention.

1. Payments of any kind received for the use of, or the right to use, any industrial, commercial, or scientific equipment are taxable as business profits in accordance with the provisions of Article 7 and not as royalties covered by Article 12.

2. Payments received for technical aid or services are taxable in accordance with the provisions of Article 7 or Article 14, as the case may be, and not as payments received for the information referred to in paragraph 3 of Article 12.

3. If, by virtue of a Convention for the avoidance of double taxation drawn up between Ecuador and a third country after the date of signature of this Convention, Ecuador, in its capacity as State of the source, limits its taxation of dividends, establishing a rate that is lower than the rate provided for in paragraph 2 of Article 10 of this Convention or exempts such dividends from taxation, this lower rate or this exemption shall automatically apply, for the purposes of this Convention, as from the date of the entry into force of the convention drawn up between Ecuador and the third country in question.

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

Done in duplicate at Quito, on December 18, 1996, in the French, Dutch, and Spanish languages, each version being equally authentic.

FOR THE GOVERNMENT OF THE KINGDOM OF BELGIUM:

Joris Couvreur

Ambassador of Belgium

FOR THE GOVERNMENT OF THE REPUBLIC OF ECUADOR:

Diego Ribadeneira

Minister of Foreign Affairs, a.i.

