

# **1982 Income and Capital Tax Convention and Final Protocol (English Translation)**

**Signed date:** December 7, 1982

**In force date:** June 25, 1986

**Effective date:** January 1, 1987. See Article 29.

**Status:** In Force

## **CONVENTION BETWEEN THE REPUBLIC OF ECUADOR AND THE FEDERAL REPUBLIC OF GERMANY FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL**

[TRANSLATION]

The Republic of Ecuador and the Federal Republic of Germany, desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income and on capital, have agreed as follows:

### **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 on capital imposed on behalf of each Contracting State, its federal states, its political subdivisions or local authorities, according to its respective constitution and laws, irrespective of the manner in which they are levied.
2. The existing taxes to which the Convention shall apply are, in particular:
  - a) In the Federal Republic of Germany:  
the Einkommensteuer (income tax)  
the Körperschaftsteuer (corporation tax)  
the Vermögensteuer (capital tax); and  
the Gewerbesteuer (trade tax)  
which shall hereinafter be called "German tax",
  - b) In the Republic of Ecuador:  
the income tax, including the additional taxes established in the Income Tax Law; and the tax on circulating capital, which hereinafter shall be called "Ecuadorian tax."
3. The Convention shall also apply to any identical or substantially similar taxes that are subsequently imposed in addition to, or in place of, the existing taxes.

### **Article 3 Definitions**

1. In this Convention, unless the context otherwise requires:
  - a) the terms "a Contracting State" and "the other Contracting State" mean the Federal Republic of Germany or the Republic of Ecuador, as the context requires, and when used in the geographical sense, the area of application of the tax laws of the respective state;
  - b) the term "person" comprises an individual, a company and any other body of persons;
  - c) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - d) the terms "a person domiciled in one Contracting State" and "a person domiciled in the other Contracting State" mean a resident of the Federal Republic of Germany or a resident of the Republic of Ecuador, as the context requires;
  - e) 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, as the context requires;
  - f) the term "national" means:
    - aa) with respect to the Federal Republic of Germany, all Germans in the sense of paragraph 1 of Article 116 of the Constitution of the Federal Republic of Germany, as well as all legal entities, partnerships and other associations as established in accordance with the laws in effect in the Federal Republic of Germany;
    - bb) with respect to the Republic of Ecuador, all Ecuadorian nationals and legal entities, partnerships and other associations established in accordance with the Constitution and the laws in effect in the Republic of Ecuador.
  - g) the term "competent authority" means:

1. in the Federal Republic of Germany, the Federal Ministry of Finance
  2. in the Republic of Ecuador, the Ministry of Finance and Public Credit.
2. As regards the application of the Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of the Convention.

#### **Article 4 Fiscal Domicile**

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 taxation therein by reason of his domicile, residence, place of habitual abode, place of management or headquarters or any other criterion of a similar nature.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then this case shall be determined in accordance with the following rules:
  - a) He shall be deemed to be a resident of the Contracting 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 in which his personal and economic relations are closest (center of vital interests);
  - b) If the Contracting 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 Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
  - c) If he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
  - d) If he is a national of both Contracting 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 or administration is situated.

#### **Article 5 Permanent Establishment**

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partially carried on.
2. The term "permanent establishment" shall include especially:
  - a) an office or place of business administration or management;
  - b) a branch or agency;
  - c) a factory, industrial workshop or assembly plant;
  - d) a mine, quarry or other place of extraction of natural resources;
  - e) a building site or construction or assembly project which exists for more than twelve months.
3. A person who acts in one Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to have a permanent establishment in the first-mentioned state if he has, and habitually exercises, in that state an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for said enterprise.
4. The term "permanent establishment" shall not be deemed to include:
  - a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
  - b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
  - c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collection information, for the enterprise;
  - e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise, on the condition that these activities are carried out by the enterprise itself.
5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.
6. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other

State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

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

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

2. The term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated. Ships, boats and aircraft shall not be regarded as immovable property.

### **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. Where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

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

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

5. For the purposes of the preceding paragraphs 1 to 4, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

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

### **Article 8 Ships and Aircraft**

1. Profits 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 situated.

2. The provisions of paragraph 1 shall also apply to profits from an enterprise that operates ships or aircraft in international transport, 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 the Contracting State in which the company that pays the dividends is resident and in accordance with the legislation of that State, but the tax thus levied cannot exceed 15% of the gross amount of the dividends.

2. However, the limitation specified in paragraph 1 does not apply in the case of the Republic of Ecuador for dividends that a company that is a resident of that Contracting State pays to a person that is a resident of the Federal Republic of Germany, provided that, in accordance with Ecuadorian law, the tax on profits, whether or not they are distributed, is not affected by the tax on dividends.

3. The term "dividends" as used in this Article means income from shares or equity interests in corporations, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights subjected to the same taxation as income from

shares by the tax law of the State of which the company making the distribution is resident; and in the case of the Federal Republic of Germany, income derived from a brokerage custody account, and distributions from equity mutual funds.

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

5. Where a company which is a resident of a Contracting State derives profit or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company to persons who are not residents of that other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

### **Article 11 Interest**

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the first-mentioned State according to its law, but the tax so charged shall not exceed

a) 10% of the gross amount of such interest if said interest is paid by virtue of debt-claims resulting from the sale of industrial, commercial or scientific equipment, or arises from any type of loan granted by a bank, as well as interest pertaining to the financing of public works;

b) 15% of the gross amount of such interest in all other cases.

2. The provisions of paragraph 1 notwithstanding, the following shall apply:

a) Interest arising in the Federal Republic of Germany and paid to the Ecuadorian government and to the other non-profit agencies and entities of the Ecuadorian public sector, is exempt from the German tax.

b) Interest arising in the Republic of Ecuador and paid to the German State, to the Deutsche Bundesbank, to the Kreditanstalt für Wiederaufbau and the Deutsche Gesellschaft für wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) is exempt from the Ecuadorian tax.

The competent authorities of the Contracting States shall by mutual agreement settle with the public sector agencies and entities that to which this paragraph applies

3. The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as whatever other income which the tax law of the State in which the interest arises attributes as income from the debt claims.

4. The provisions of paragraph 1 shall not apply if the recipient of the interest, being a resident of a Contracting State, has in the other Contracting State in which the interest arises a permanent establishment with which the debt-claim from which the interest arises is effectively connected. In such a case, the provisions of Article 7 shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, one of its federal states, political divisions or subdivisions, local authorities 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 in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, having regard to the debt claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

### **Article 12 Royalties**

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable in the Contracting State from which they arise and according to the laws of that State, but the tax thus charged shall not exceed 15% of the gross amount of the royalties.

2. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or tapes recorded for television or radio, any patent, trade mark, design or model, plan, secret formula or process, or scientific equipment, or for information concerning industrial, commercial or scientific experience.

3. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise a permanent establishment with which the right or property giving rise to the royalties is effectively connected. In such a case, the provisions of Article 7 shall apply.
4. Royalties shall be deemed to arise in a Contracting State when the payer is the State itself, one of its federal states, political divisions or subdivisions, local authorities or a resident of that State. However, when the payer of the royalties, whether or not he is a resident of a Contracting State, has in a Contracting State a permanent establishment in relation to which the liability to pay the royalties was incurred and this establishment bears the payment of said royalties, the royalties where the permanent establishment is [situated].
5. Where, by reason of a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

### **Article 13 Capital Gains**

1. Gains from the alienation of immovable property, as defined in paragraph 2 of Article 6, may be taxed in the Contracting State in which such property is situated.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise), may be taxed in the other State. However, gains from the alienation of movable property of the kind referred to in paragraph 3 of Article 22 shall be taxable only in the Contracting State in which such movable property is taxable according to the said Article.
3. Gains from the alienation of shares and equity interest in a company which is a resident of a Contracting State may be taxed by that State.
4. Gains from the alienation of any property other than those mentioned in paragraphs 1 to 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 an individual resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless said individual, in order to perform such activity, has remained in the other Contracting State for 180 days or more during the corresponding fiscal year. In such case, the income may be taxed in the other Contracting State but only so much of it as is attributable to the activity performed there.
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, 20 and 21, salaries, wages and similar remuneration obtained by a resident of one Contracting State in respect of an employment exercised in the other Contracting State may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of 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 180 days in the fiscal year concerned;
  - b) the remuneration is paid by, or on behalf of, a person who is not a resident of the other State; and
  - c) the remuneration is not borne by a permanent establishment that the employer has in the other State.
3. Notwithstanding the provisions of paragraphs 1 and 2, remuneration in respect of an employment exercised aboard a ship or aircraft 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**

Shares, attendance fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

### **Article 17 Artistes and Athletes**

1. Notwithstanding the provisions of Articles 7, 14 and 15, income derived by public entertainers, such as theater, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such or in a group, or income derived from the exercise of such activities by professional artistes in a company, may be taxed in the Contracting State in which these activities are exercised

2. The provisions of paragraph 1 shall not apply when the entire cost or an essential part thereof of a visit by the professional artistes or athletes to one Contracting State is defrayed by public institutions of the other Contracting State, or by one of its federal states, a political division or subdivision or a local authority.

### **Article 18 Government Service**

1. Notwithstanding the provisions of Article 19, remuneration paid by a Contracting State, one of its federal states, one of its political divisions or subdivisions or one of its local authorities, directly or charged against a special fund created by the Contracting State, one of its federal states, one of its political divisions or subdivisions or one of its local authorities, to an individual for dependent personal services may only be taxed only in that State. If the dependent services are performed in the other Contracting State by a national of this second State who is not a national of the first-mentioned State, the remuneration may only be taxed in the second State.

2. Paragraph 1 applies similarly to remuneration paid to a specialist or volunteer sent to the other Contracting State with the consent of that State within the scope of a development aid program of a Contracting State, one of its federal states, one of its political divisions or subdivisions or one of its local authorities, with funds contributed exclusively by that Contracting State, its federal states, its political divisions or subdivisions or its local authorities.

Articles 15, 16 and 17 apply to remuneration for dependent activities that are performed in relation to a for-profit industrial activity of a Contracting State, one of its federal states, one of its political divisions or subdivisions or one of its local authorities.

### **Article 19 Pensions**

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.

### **Article 20 Teacher, Students and Other Persons in Training**

1. Remuneration that a primary or secondary teacher who is, or has been immediately before, a resident of a Contracting State, and who moves to the other Contracting State for a maximum of two years for the purpose of extending his studies or performing research or carrying out a teaching activity at a university, secondary school, primary school or other teaching center, receives for such activity shall not be taxable in the other Contracting State, provided that said remuneration is paid to him from sources outside that other State.

2. If an individual has been a resident in one Contracting State immediately prior to moving to the other State, and who is present in the first-mentioned State temporarily, solely as student at a university, secondary school, primary school or other similar teaching center of the other State, or as an apprentice (in the Federal Republic of Germany, this includes "Volontar" or Praktikant"), said individual, from the first day of his arrival in the other State, and with reference to the sojourn there, shall be exempt from taxation by the other State:

a) on all transfers originating abroad, the purpose of which is his maintenance, education or training; and

b) for a maximum total period of three years, as concerns all remuneration for work performed in the other Contracting State in order to supplement his maintenance, education or training funds, for up to a total per fiscal year of DM 8,400.00 or its equivalent in Ecuadorian currency.

3. If an individual has been a resident of one Contracting State immediately prior to moving to the other, and remains in that second State temporarily, solely for purposes of study, research, training, or within the scope of a technical assistance program carried out by the Government of a Contracting State, receiving a subsidy, a portion of the maintenance expenses, or a scholarship by a scientific, pedagogical, religious or charity organization, said person, from the first day of his arrival in the other State, and as concerns that sojourn, shall be exempt from taxation by the other State:

a) on said subsidy for the maintenance expenses or scholarship portion;

b) on all transfers originating abroad, for the purpose of his maintenance, education or training.

## **Article 21 Other Income**

Items of income of a resident of a Contracting State which are not expressly mentioned in Articles 6 to 20 of this Convention shall be taxable only in that State.

## **Article 22 Capital**

Capital represented by immovable property, as defined in paragraph 2 of Article 6, may be taxed in the Contracting State in which such property is situated.

Capital represented by movable property forming part of the business property of a permanent establishment of an enterprise may be taxed in the Contracting State in which the permanent establishment is situated.

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

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

## **Article 23 Methods for Elimination of Double Taxation**

1.

a) In the case of a resident of the Federal Republic of Germany, the following income, which in accordance with the provisions of this Convention shall be taxable in the Republic of Ecuador, shall be excluded from the basis for estimating the German tax:

aa) Income from immovable property as defined in Article 6 and profits from the alienation of said property;

bb) Profits of enterprises as defined in Article 7, and the gains referred to in Article 13, paragraph 2;

cc) Dividends as defined in Article 10, paid to a company that is resident of the Federal Republic of Germany by a company that is resident of the Republic of Ecuador, at least 25% of the capital of which is directly owned by the German company;

dd) Payments as defined in Articles 15 and 18 paragraphs 1 and 2.

However, in calculating the tax, the Federal Republic of Germany reserves the right to take into account the income thus exempted.

The foregoing provisions shall also apply to any type of property situated in the Republic of Ecuador if the income from said property should or must be exempted from the basis for estimating the German tax.

b) On the condition that the rules in the preceding section are not applicable, the tax collected by the Ecuadorian treasury in accordance with Ecuadorian law and according to this Convention shall be deducted from the income tax and from the companies tax that is to be collected in the Federal Republic of Germany on income arising from the Republic of Ecuador. Also, the tax on capital collected by the Ecuadorian treasury in accordance with Ecuadorian law and according to this Convention shall be deducted from the tax on capital that is to be collected in the Federal Republic of Germany on income arising from the Republic of Ecuador. However, the amount of the deduction may not exceed the portion of the German tax that corresponds to said income or property prior to making the deduction.

c) Solely for the purposes of the deduction mentioned in the preceding section, the following will be separated from the base from which the Ecuadorian tax is raised:

aa) for the interest as defined in Article 11, 20% of the interest;

bb) for the royalties as defined in Article 12, 20% of the royalties.

2)

a) In the case of a resident in the Republic of Ecuador, the following income, which in accordance with the provisions of this Convention shall be taxable in the Federal Republic of Germany, shall be exempted from the basis for estimating the Ecuadorian tax:

aa) Income from immovable property as defined in Article 6 and profits from the alienation of said property;

bb) Profits from enterprises as defined in Article 7 and the gains referred to in Article 13 paragraph 2;

cc) Dividends as defined in Article 10, paid to a company that is resident of the Republic of Ecuador by a company that is resident of the Federal Republic of Germany, at least 25% of the capital stock of which is directly owned by the Ecuadorian company;

dd) Payments as defined in Articles 15 and 18 paragraphs 1 and 2.

However, in calculating the tax, the Republic of Ecuador reserves the right to take into account the income thus exempted.

The previous provisions shall also apply to any type of property situated in the Federal Republic of Germany if the income from said property should or must be excluded from the basis for estimating

the Ecuadorian tax b) Should the rules in the preceding section not apply, the tax collected by the German treasury in accordance with German law and according to this Convention shall be deducted from the income tax in the Republic of Ecuador which is attributable to income arising from the Federal Republic of Germany in accordance with Ecuadorian laws.

Likewise, the tax on capital collected by the German treasury in accordance with German law and according to this Convention shall be deducted from the tax on capital in the Republic of Ecuador attributable to all types of goods situated in the Federal Republic of Germany in accordance with Ecuadorian laws. However, the amount of the deduction may not exceed the portion of the Ecuadorian tax that corresponds to said income or property prior to making the deduction.

#### **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 the 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. With the exception of the cases mentioned in Articles 9, 11 paragraph 6, and 12 paragraph 5, the interest, royalties and other remuneration that an enterprise of a Contracting State pays to a resident of the other Contracting State shall be deductible in determining the taxable profits of that enterprise in the same way as payments made to a resident in 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 the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

#### **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 this Convention, he may, notwithstanding the remedies provided by the domestic laws of those States, present his case to the competent authority of the Contracting State of which he is a resident.

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

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

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of applying the present Convention.

#### **Article 26 Exchange of Information**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out of this Convention. Any information so exchanged shall be treated as secret and may only be revealed to the persons, authorities or courts that are responsible for the assessment or collection of the taxes that are covered by this Convention, or for examining administrative and legal recourses or prosecution relative thereto. This secrecy also does not include the revelation of the information during public hearings of the competent courts.

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

a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;

b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

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

### **Article 27 Diplomatic and Consular Officers**

1. Nothing in this Convention shall affect the fiscal privileges of diplomatic or consular officers under the general rules of international law or under the provisions of special agreements.
2. While the income or property of a person are not subject to taxation in the receiving State because of the privileges that said person has in accordance with the general rules of international law or by virtue of special international agreements, the right of taxation pertains to the sending State.
3. In application of this Convention, the members of a diplomatic mission or consular post that a Contracting State maintains in the other or in a third State, as well as their spouses, shall be considered as residents of the sending State if they have the nationality of that State, and are subject there to taxation on income and capital the same as residents of such State.
4. This Convention shall not apply to the members of diplomatic missions or consular posts of a third State who, living in one of the Contracting States, nevertheless are not considered as residents of either of the Contracting States for income and capital purposes.

### **Article 28 The Federal State Berlin**

1. This Convention shall also apply to the Federal State Berlin insofar as the Government of the Federal Republic of Germany makes no statement to the contrary to the Government of Republic of Ecuador within three months following the entry into force of this Convention.

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

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Bonn as soon as possible.
2. The Convention shall enter into force upon exchange of instruments of ratification and its provisions shall have effect:
  - a) in both Contracting States, on the taxes that are levied for the fiscal periods beginning on 1st January of the year following the year in which the instruments of ratification are exchanged;
  - b) in both Contracting States, on withholding taxes which are payable after 31st December of the year in which the instruments of ratification are exchanged.

### **Article 30 Termination**

1. This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the year it entered into force.
  2. In such a case, the Convention shall cease to be in force:
    - a) with respect to withholding taxes, on the amounts paid or credited after 31st December of the year in which notice of the termination was given;
    - b) with respect to the other taxes on income and capital, on those that are levied for fiscal periods beginning on 1st January of the year after the year in which notice of the termination was given.
- Done in duplicate in Quito, this 7th day of December 1982, in the Spanish and German languages, each version being equally authentic.

#### **FOR THE REPUBLIC OF ECUADOR:**

*Luís Valencia Rodríguez*  
*Minister of Foreign Relations*

#### **FOR THE FEDERAL REPUBLIC OF GERMANY:**

*Joseph Engels*  
*Ambassador*

### **PROTOCOL**

The Republic of Ecuador and the Federal Republic of Germany, on the occasion of signing the Convention for Avoidance of Double Taxation with Respect to Taxes on Income and on Capital, on 7th December 1982 in Quito, have agreed to the following provisions that comprise part of said Convention:

1. With respect to Article 11  
Article 11 paragraph 1 does not exclude application of the provisions of Executive Order number 506 issued by the Government of the Republic of Ecuador on 6th July 1976 and its amendments.
2. With respect to Article 23  
Where a company which is a resident of the Federal Republic of Germany distributes dividends on income arising from sources in the Republic of Ecuador, Article 23 does not exclude the offsetting levy of the companies tax in accordance with the tax law of the Federal Republic of Germany.

3. With respect to Article 23

Notwithstanding the provisions of paragraph 1 section (a) of Article 23 of the Convention, section (b) of the aforementioned Article, except for the additional provisions of section (c), shall be applied similarly to the profits of a permanent establishment, and to the property that constitutes the operating capital of a permanent establishment; to the dividends paid by a company and to the shares in a company; or to the profits mentioned in paragraphs 1 and 2 of Article 13 of the Convention, unless the resident in the Federal Republic of Germany shows that the income from the permanent establishment or from the company arise exclusively or nearly exclusively:

a) from one of the following activities carried out in the Republic of Ecuador: Production or sale of merchandise or products, technical consulting, rendering technical services, or the banking or insurance business; or

b) from dividends paid by one or more companies that are residents in the Republic of Ecuador whose capital is more than 25% owned by the first-mentioned company and which in turn derives its income exclusively or nearly exclusively from one of the following activities carried out in the Republic of Ecuador: Production or sale of merchandise or products, technical consulting, rendering technical services, or the banking or insurance business.

**FOR THE REPUBLIC OF ECUADOR:**

*Luís Valencia Rodríguez*

*Minister of Foreign Relations*

**FOR THE FEDERAL REPUBLIC OF GERMANY:**

*Joseph Engels*

*Ambassador*