Double Taxation Convention Between the Federative Republic of Brazil and the Republic of Chile (2001)

The Government of the Federative Republic of Brazil and the Government of the Republic of Chile, desiring to conclude a Convention for the avoidance of double taxation and prevention of fiscal evasion with respect to tax on income, have agreed as follows:

Chapter I
Scope of Application of the Convention

Article 1
Personal Scope
The 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 imposed on behalf of either Contracting State.
2. Those taxes shall be regarded as taxes on income which are imposed on the total income or on any elements of income.
3. The existing taxes to which this Convention shall apply are the following:
   a) in the Federative Republic of Brazil, the federal income tax (imposto federal sobre a renda), which shall be referred to hereinafter as “Brazilian tax”, and
   b) in the Republic of Chile, the taxes set forth in the Income Tax Law, Decree-Law 824, which shall be referred to hereinafter as “Chilean Tax”.
4. This Convention shall apply also to any identical or substantially similar taxes which come into effect after the date of signature of the Convention in addition to, or in place of, the taxes mentioned in the preceding paragraph. The competent authorities of the Contracting States shall notify each other each year of significant changes which have been made in their respective taxation laws.
Chapter II
Definitions

Article 3
General Definitions

1. For the purposes of the Convention, unless the context requires a different interpretation:
   a) the term “Brazil” means the Federative Republic of Brazil;
   b) the term “Chile” means the Republic of Chile;
   c) the term “a Contracting State” and “the other Contracting State” mean, depending on the context, “Brazil” or “Chile”;
   d) the term “Person” refers to any individual or natural person, company or other group of people;
   e) the term “company” means any collective or legal person or any entity which is considered a legal person for tax purposes;
   f) 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;
   g) the term “international traffic” means any transport carried out by ship, aircraft, or ground transportation vehicle operated by an enterprise of a Contracting State, except when such transport is carried out solely between places in the other Contracting State;
   h) the term “nationals” means
      i) all natural or individual person possessing the nationality of a Contracting
      ii) any legal person, society of persons and association constituted in conformity with the laws in effect in a Contracting State.
   i) the term “competent authority” refers to:
      i) in the case of the Federative Republic of Brazil: the Minister of Finance, the Secretary of the Federal Revenue Service, or his/her authorized representatives;
      ii) in the case of the Republic of Chile: the Minister of Finance or his/her authorized representatives.

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

**Article 4**

**Resident**

1. For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature and also applies to that State as well as any of its political subdivisions.

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

   a) such person shall be deemed to be only 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 only a resident of the Contracting State with which his personal and economic relations are closer (center of vital interests);

   b) if the State in which such person has his center of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be only 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 only a resident of the State of which he is a national; and

   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 virtue of the provisions of paragraph 1 a person other than an individual or natural person is a resident of both Contracting States, then the competent authorities shall do whatever is possible to resolve such case. Unless a mutual agreement is reached, said person shall not be entitled to any of the tax benefits or exemptions contemplated in this Convention.

**Article 5**

**Permanent Establishment**

1. For the purposes of this Convention, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term “permanent establishment” includes especially:
   a) a place of management;
   b) a branch;
   c) an office;
   d) a factory;
   e) a workshop, and
   f) a mine, an oil or gas well, a quarry or any other place related with the exploration, extraction, or use of natural resources.

3. The term “permanent establishment” also includes a job, construction, installation, or assembly site whose duration exceeds six months; the supervisory activities related for said activities shall be included only for the purpose of the calculation of this time period.

For the purposes of calculating the time limits to which this paragraph refers, the activities carried out by an enterprise associated with another enterprise as defined by Article 9 shall be added to the period during which the activities are carried out by the enterprise with which it is associated, in case the activities of both enterprises are identical or substantially similar.

4. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:
   a) the use of facilities solely for the 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 collecting information, for the enterprise;
   e) the maintenance of a fixed place of business solely for the purpose of advertising, supplying information or conducting scientific research or performing any other similar activities of a preparatory or auxiliary character, for the enterprise.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
6. An enterprise shall not be deemed to have a permanent establishment in a State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business and their commercial or financial relations with said enterprises are not based or subject to terms accepted or imposed which are different from those that are generally agreed upon by independent agents.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself be sufficient to make either company a permanent establishment of the other.

Chapter III
Taxation of Income

Article 6
Income From Immovable Property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. For the purposes of the Convention, the term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, aircraft, and ground transportation vehicles shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or renting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to income arising out of immovable property of an enterprise and the immovable property employed in the provision of independent personal services.
Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries or carried on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries or carried on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3), where an enterprise of a Contracting State carries on 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 the necessary and proven expenses which are incurred for the purposes of the permanent establishment, including any executive and general administrative expenses that are incurred.

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

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

Article 8

Ground, Sea, and Air Traffic

1. The profits of an enterprise of a Contracting State from the operation of ships, aircraft, and ground transportation vehicles in international traffic shall be taxable only in that Contracting State.

2. For the purposes of this Article:

   a) the term “profits” includes gross proceeds directly obtained through the operation of ships, aircraft, or ground transportation vehicles in international traffic;

   b) the term “operation of ships, aircraft, or ground transportation vehicles” by an enterprise also includes:

      i) the chartering or renting of ships, aircraft, or ground transportation vehicles or unmanned ships or boats, and
ii) the renting of “containers” and equipment related therewith, always provided such chartering or renting is accessory to the operation by that enterprise of ships, aircraft, or ground transportation vehicles in international traffic.

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

Article 9
Associated Enterprises

Where

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

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

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

Article 10
Dividends

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

   a) ten per cent of the gross amount of the dividends in case the beneficial owner is a company which holds directly or indirectly at least 25 per cent of the shares with voting rights of the company paying the dividends;

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

This paragraph does not affect taxation of the company with respect to the profits on which the payment of dividends is based.

3. The term “dividends” as used in this Article means income from shares and other rights, not being debt-claims, participating in profits, as well as income
from other participation rights which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected therewith. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a resident of a Contracting State maintains a permanent establishment in the other Contracting State, such permanent establishment may be subject in the other Contracting State to a tax that is different from that affecting the profits of the permanent establishment in that other Contracting State and in accordance with the laws of that State. However, such tax which is different from the tax on the profits may not exceed the limited set forth in Subparagraph a) of paragraph 2 of this Article.

That other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

6. 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 same, 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 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
such interest is a resident of the other Contracting State, the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. The term “interest” as used in this Article refers to income from debt-claims of every kind, whether or not secured by mortgage and, in particular, income from government securities and income from bonds or debentures, as well as any other income which, in accordance with the tax laws of the State in which the interest arises, are treated similar to income for loaned funds.

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

5. The limit established in letter 2 of this Article shall not apply to interest arising in a Contracting State that is paid to a permanent establishment of an enterprise of the other Contracting State situated in a third-party State.

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

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

8. The provisions of this Article shall not apply in case the main purpose or one of the main purposes of any person involved in the creation or the assignment of the debt-claim in respect of which the interest is paid is to benefit from this Article by creating or assigning such debt-claim.
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 that State; however, in case the beneficial owner is a resident of the other Contracting State, the tax established in such a manner can not exceed 15 per cent of the gross amount of the royalties.

3. The term “royalties” as used in this Article means payments of any kind that are effected for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films and films, and other means of image and sound reproduction and recording of radio and television programs), patent, industrial or trade mark, design or model, plan, secret formula or process or other intangible property, as well as for the use of, or the right to of use, any industrial, commercial, or scientific equipment and for information concerning know-how in the industrial, commercial, or scientific sector.

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

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

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and 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 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 be taxable in accordance with
the laws of each Contracting State, due regard being had to the other provisions of this Convention.

7. The provisions of this Article shall not apply in case the main purpose or one of the main purposes of any person involved in the creation or the assignment of rights in respect of which the royalties are paid is to benefit from this Article by creating or assigning such rights.

Article 13
Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property situated in the other Contracting State may be taxed in that other Contracting State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, or immovable property belonging to a fixed base which a resident of a Contracting State has in the other Contracting State for the purpose of providing independent personal services, including gains from the alienation of such a permanent establishment (alone or with the whole enterprise with which it is associated) or of that fixed base may be taxed in that other State.

3. Gains from the alienation of ground transportation vehicles, ships, or aircraft operated in international traffic or movable property pertaining to the operation of such ground transportation vehicles, ships, or aircraft, however, shall be taxable only in the Contracting State that is competent to impose taxes on the profits of the enterprise in accordance with Article 8.

4. Gains from the alienation of any property other than that referred to in the preceding paragraphs can be taxed in both Contracting States.

Article 14
Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that Contracting State, unless

   a) the remuneration for such services or activities is paid by a resident of the other Contracting State or belongs to a permanent establishment or a fixed base situated in that other State; or

   b) said person, his employees, or other persons designated by the same remain, or the activities continue, in the other Contracting State for a period or periods which in the aggregate are equal to or exceed 183 days, within any twelve-month period; in this case only, that part of the income
obtained through the activities carried out by such person in that other State can be taxed in the other State; or

c) such services or activities are rendered or performed, respectively, in the other Contracting State and the beneficiary owner habitually has in such other State a fixed base for the performance of his activities, but only to the extent in which such income is attributable to such fixed base.

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

Article 15

Dependent Personal Services

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

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

a) the beneficiary owner remains in the other State for a period or periods not exceeding in the aggregate 183 days during any twelve-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 obtained in respect of employment exercised aboard a ground transportation vehicle, ship, or aircraft operated in international traffic may only be taxed in that Contracting State.

Article 16

Directors Fees

Profit shares, remuneration, fees, and other similar compensation obtained by a resident of a Contracting State in his capacity as a member of management or any other board of directors or supervisory board of an enterprise which is a resident of the other Contracting State may be taxed in that other State.
Article 17

Artistes and Sportsmen

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

2. Notwithstanding the provisions of Articles 7, 14 and 15, where income in respect of personal activities exercised by a professional entertainer or a sportsman in his capacity as such accrues not to the professional entertainer or sportsman himself but to another person, such income may be taxed in the Contracting State in which the activities of the professional entertainer or sportsman are exercised.

Article 18

Pensions

1. Pensions and other similar remuneration arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that State.

For the purposes of this paragraph, the term “pensions and other similar remuneration” means periodic payments in terms of retirement pay for past employment or as compensation for losses suffered as a result of prior employment and the payments effected by or out of a pension fund of the social security system of a Contracting State.

2. Support and other maintenance payments made to a resident of a Contracting State can only be taxed in that State as long as they are deductible for the payer. In case they are not deductible, they can only be taxed in the State of residence of the payer.

Article 19

Government Service

1. a) Wages, salaries, and other remuneration, other than pensions, paid by a Contracting State or one of its political subdivisions or local authorities to a natural person or individual in respect of services rendered to that State or political subdivision or authority shall be taxable only in that State.

b) However, these wages, salaries, and other remuneration shall be taxable in the other Contracting State if the services are rendered in that State and the natural person or individual is a resident of that State and
(i) is a national of that State, or
(ii) did not become a resident of that State solely for the purpose of rendering these services.

2. The provisions of Articles 15, 16, 17, and 18 shall apply to remuneration as well as pensions paid in respect of services rendered in connection with a commercial or industrial activity carried on by a Contracting State or one of its political subdivisions or local authorities.

**Article 20**

**Students and Apprentices**

1. Payments which a student or apprentice who is or was, immediately prior to his visit to a Contracting State, a resident of the other Contracting State and who remains in the first-mentioned Contracting State for the sole purpose of studying or training receives for his maintenance, education, or training can not be taxed in that State as long as such payments originate in sources situated outside of that State.

2. Insofar as financial aid, stipends, and remuneration for employment not included under paragraph 1 is concerned, the student or apprentice dealt with or referred to in paragraph 1, during the period of such studies or such training, shall additionally be entitled to benefit from the same tax exemptions, reductions, or deductions granted to residents of the State visited by him.

**Article 21**

**Other Income**

Income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State shall be taxable in that other Contracting State.

**Chapter IV**

**Methods for Elimination of Double Taxation**

**Article 22**

**Credit Method**

1. Insofar as Chile is concerned, double taxation shall be prevented as follows:

   Where a resident of Chile receives income which, in accordance with the provisions of this Convention, can be taxed in Brazil, the taxes paid in Brazil can be credited against Chilean taxes pertaining to such income, in accordance
with the applicable provisions of Chilean laws. This paragraph shall apply to all income covered by the Convention.

2. Insofar as Brazil is concerned, double taxation shall be prevented as follows:

   Where a resident of Brazil receives income which, in accordance with the provisions of this Convention, can be taxed in Chile, Brazil shall allow the deduction, on the income tax of such resident, of any amount equal to the income tax paid in Chile, in accordance with the applicable provisions of Brazilian laws.

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

3. Where, in accordance with any provision of the Convention, the income which a resident of a Contracting State receives is exempt from tax in that State, such State can nonetheless include such exempted income for the purpose of calculating the tax on the remainder of the income of such resident.

Chapter V
Special Provisions

Article 23
Non-Discrimination

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

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that State than the taxation levied on enterprises of that other State carrying on the same activities.

3. This Article shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal tax 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.

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 Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than those to which other similar enterprises of the first-mentioned State are or may be subjected which are wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State.

6. For the purposes of this Article, the term “taxation” refers to the taxes covered by this Convention.

**Article 24**

**Mutual Agreement Procedure**

1. Where a resident of a Contracting State considers that the measures adopted by one or both of the Contracting States result or can result for him in taxation not in accordance with the provisions of this Convention, such resident may, irrespective of the remedies provided by the domestic laws 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 25, to that of the Contracting State of which he is a national.

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

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

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

**Article 25**

**Exchange of Information**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or those of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation provided thereunder is not contrary to this 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 covered by this Convention, or the enforcement or prosecution in respect of, or the determination of appeals in relation to the same. Such persons or authorities shall use such information only for the purposes mentioned in this paragraph.

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

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

   b) to supply information which is not obtainable under the laws or in the normal course of the administrative practice of that or of the other Contracting State;

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

3. The provisions of paragraph 2 of this Article notwithstanding, the competent authority of the Contracting State to which a request for information is directed can, as long as the constitutional and legal limits are observed and based on reciprocity of treatment, obtain and supply information owned by financial institutions, legal representatives or persons who act as representatives, agents, or trustees in the same manner as with respect to corporate holdings or stockholdings, including on non-registered stock.

4. Where information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain the requested information in the same manner as if its own taxation was concerned, regardless of whether such other State requires such information at that time or not.

**Article 26**

**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.

**Article 27**

**Entry Into Force**

1. Each Contracting State shall notify the other in writing through diplomatic channels as soon as the procedures required by their legal rules for the entry
into force of this Convention have been completed. This Convention shall come into force on the date on which the last notice is received.

2. The provisions of this Convention shall apply:

   a) in Chile:
      to taxes on income obtained and funds paid, credited, made available or booked as an expense on or after the first day of the month of January of the calendar year immediately following that during which the Convention comes into effect; and
   b) in Brazil:
      i) insofar as taxes levied at the source are concerned, to funds paid, remitted, or credited on or after the first day of January of the calendar year immediately following that during which the Convention comes into effect;
      ii) insofar as other taxes covered by this Convention are concerned, to income arising during the fiscal year commencing on or after the first day January of the calendar year immediately following that during which the Convention comes into effect.

3. The Convention on the Avoidance of Double Taxation of Income for Sea and Air Transport, entered into in Santiago through an exchange of notes on June 17 and 18, 1976, between Brazil and Chile shall cease to be in effect as of the date on which this Convention enters into force for the taxes to which it applies, in accordance with paragraph 1 of this Article.

**Article 28**

**Termination**

1. Each Contracting State can terminate this Convention by notifying the other Contracting State thereof in writing via diplomatic channels no later than on the thirtieth day of June of each calendar year following a period of three years from the entry into force of the Convention.

2. In this case, the Convention shall no longer apply to the following:

   a) in Chile:
      to taxes on income obtained and funds paid, credited, made available or booked as an expense on or after the first day of the month of January of the immediately following calendar year;
   b) in Brazil:
      i) insofar as taxes levied at the source are concerned, to funds paid, remitted, or credited on or after the first day of the month of January of the calendar year immediately following that during which the Convention was terminated;
ii) insofar as other taxes covered by this Convention are concerned, to income arising during the fiscal year commencing on or after the first day of the month of January of the calendar year immediately following that during which the Convention was terminated.

In witness whereof the undersigned, duly authorized to that effect, proceed to sign this Convention.

Protocol

During the signing of this Convention between the Federative Republic of Brazil and the Republic of Chile for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned, duly authorized to that effect, have agreed on the following additional provisions, which shall be an integral part of this Convention.

1. With reference to Article 1
   a) Any issue arising with respect to the interpretation or application of this Convention and, in particular, as to whether a tax measure is included hereunder shall be exclusively resolved in accordance with the provisions of Article 24 of this Convention, and
   b) The provisions of Article II and Article XVII of the General Agreement on the Traffic of Services shall not apply to a tax measure unless the competent authorities agree that such measure is not within the scope of Article 23 of this Convention.

2. With reference to Article 7
   It is understood that the provisions of paragraph 3 of Article 7 shall apply to any expenses incurred, whether in the State in which the permanent establishment is situated or in any other location.

3. With reference to paragraphs 2 and 5 of Article 10
   In the case of Chile:
   a) The provisions contained in paragraph 2 and 5 of Article 10 of this Convention shall not limit the application of the Additional Tax, provided that:
      i) the Tax of the First Category is fully creditable against the Additional Tax to be paid, and
      ii) the aliquot part of the Additional Tax does not exceed 42 per cent.
Furthermore, in case one of the conditions set forth in letter (i) or (ii) is no longer met, the provisions of paragraphs 2 and 5 of Article 10 shall not limit taxation in any of the Contracting States. In this case, the Contracting States shall consult with each other regarding a modification of this Convention in order to reestablish the balance of the benefits of the same.

b) Accordingly, the provisions of paragraphs 2 and 5 of Article 10 of this Convention shall not limit the application of the Additional Tax in the case of withdrawals or transfers of profits or dividends paid by an enterprise in case the investment is subject to a foreign investment contract covered by the Estatuto do Investimento Estrangeiro (Foreign Investment Act; Decree-Law 600), always provided the actual total tax burden on income does not exceed 42 percent.

4. With reference to paragraph 4 of Article 11

Funds paid as “remuneration on equity” in accordance with Article 9 of Brazilian Law No. 9.249/95 shall be considered interest for the purposes of paragraph 3 of Article 11 as long as it is deductible for the determination of the income of the legal person.

5. With reference to paragraph 3 of Article 12

The provisions of paragraph 3 of Article 12 apply to any kind of income arising out of the provision of technical assistance and technical services.

6. With reference to Article 14

In the event that, after the signing of this Convention, Brazil concludes with a third State a Convention specifying rules which, in any manner whatsoever, represent a waiver of the application of the principle established in letter (a) of paragraph 1 of Article 14 of this Convention regarding the right of taxation of a Contracting State with respect to income obtained through the provision of professional services or other activities of an independent character, as of the date on which the Convention with the third State comes into effect, the rule set forth in letter (a) of paragraph 1 of Article 14 of this Convention shall cease to be applicable.

7. With reference to Article 23

a) The provisions of paragraph 5 of Article 10 of the Convention and of paragraph 3 of the Protocol are not deemed to conflict with the provisions of paragraph 2 of Article 23.

b) The provisions of the laws of the Contracting States which do not permit the deduction of “royalties”, as defined in paragraph 3 of Article 12,
that are paid by a permanent establishment situated in a Contracting State to a resident of the other Contracting State which carries on entrepreneurial activities in the first-mentioned Contracting States via such permanent establishment at the time when the taxable income of the aforementioned permanent establishment is determined is not deemed to conflict with the provisions of Article 23 of this Convention.

c) Nothing contained in Article 23 of this Convention shall affect the application of the current provisions of Article 31, Number 12, contained in the “Income Law” of Chile, even if possibly modified without changing its general rules. However, the aliquot part of 30 per cent to which said rule refers shall be replaced by the aliquot part of 15 per cent for the beneficial owners of the payments pertaining to royalties who are residents in Brazil.

d) It is herewith clarified that the provisions of Article 23 of this Convention do not hinder the application by a Contracting State of the respective domestic rules concerning subcapitalization or excessive indebtedness.


a) Distributions of a Foreign Investment Fund created or organized to operate as such in a Contracting State shall be subject to taxation in conformity with the laws of that Contracting State.

b) Considering that the main purpose of this Convention is to avoid international double taxation and prevent fiscal evasion, the Contracting States herewith agree that, in the event that the provisions of the Convention are used in such a manner that they grant benefits neither contemplated nor envisioned hereunder, the competent authorities of the Contracting States shall, in accordance with the mutual agreement procedure set forth in Article 24, recommend specific changes to the Convention. The Contracting States furthermore agree that any of the recommendations referred to above shall be considered and discussed in an expeditious manner in order to modify the Convention to the extent that this is necessary.

c) In the event that, at a later date, in one of the Contracting States, a tax on capital is imposed, the Contracting States shall consult with each other in order to negotiate provisions on its treatment.

In witness whereof the undersigned, duly authorized to that effect, proceed to sign this Protocol.