

ANNEXES
UNITED NATIONS MODEL CONVENTION
OECD MODEL CONVENTION
BRAZIL INDIA CONVENTION
CHINA UNITED STATES CONVENTION
MEXICO AUSTRALIA CONVENTION
NEW ZEALAND SOUTH AFRICA CONVENTION
FOR THE AVOIDANCE OF DOUBLE TAXATION

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United Nations

2001 U.N. Model Income and Capital Tax Convention

PUBLICATION-DATE: January 11, 2001

2001 WTD 116-41; Doc 2001-16597

2001 U.N. Model Income and Capital Tax Convention

TEXT:
CONVENTION BETWEEN (STATE A) AND (STATE B) WITH RESPECT TO TAXES ON INCOME AND ON
CAPITAL n1

Preamble of the Convention n2

Chapter I
Scope of the Convention

Article 1
Persons Covered

3. Where by reason of the provisions of paragraph 1

3. If the place of effective management of a shippi

3. The provisions of paragraph 2 shall not apply where judicial, administrative or other legal proceedings have resulted in a final ruling that by actions giving rise to an adjustment of profits under paragraph 1, one of the enterprises concerned is liable to penalty with respect to fraud, gross negligence or wilful default.

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.

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

3. The term "interest" as used in this article means income from debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtors profits, and in particular, income from

permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

(a) If he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or

(b) If his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

Article 15

Dependent Personal Services

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

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

(a) The recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; 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 an employment exercised aboard a ship or aircraft operated in international traffic, or aboard a boat engaged in inland waterways transport, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16

Directors' Fees and Remuneration of Top-Level Managerial Officials

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

2. Salaries, wages and other similar 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:

Article 18
Pensions and Social Security Payments

Article 18 (alternative A)

1. Subject to the provisions of paragraph 2 of article 19, pensions and other similar remuneration pai

education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

Article 21

Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing articles of this Convention shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therei

2. Where a resident of a Contracting State derives items of income which, in accordance with the provisions of articles 10, 11 and 12, may be taxed in the other Contracting State, the first-mentioned State shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in that other State. Such deduction

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. 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. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of article 24, to that of the Contracting State of which he is a national. The case must be presented 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 endeavour, 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 this Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour 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, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs. The competent authorities, through consultations, shall develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this article. In addition, a competent authority may devise appropriate unilateral procedures, conditions, methods and techniques to facilitate the above-mentioned bilateral actions and the implementation of the mutual agreement procedure.

Article 26

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention, in so far as ~~so~~ if an ~~the~~ HT

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(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, 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

Members of Diplomatic Missions and Consular Posts

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

Chapter VII

Final Provisions

Article 28

Entry Into Force

n2 The Preamble of the Convention shall be drafted in accordance with the constitutional procedures of the Contracting States.

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

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

a) (in State A):

b) (in State B):

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

CHAPTER II

DEFINITIONS

Article 3

General Definitions

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

a) the term "person" includes an individual, a company and any other body of persons;

b) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

c) the term "enterprise" applies to the carrying on of any business;

d) 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;

e) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

f) the term "competent authority" means:

(i) (in State A):

(ii) (in State B):

g) the term "national", in relation to a Contracting State, means:

(i) any individual possessing the nationality or citizenship of that Contracting State; and

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

h) the term "business" includes the performance of professional services and of other activities of an independent character.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes

of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4
Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and an

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

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

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

Article 7

Business Profits

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

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly inde

situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provision

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, or aboard a boat engaged in inland waterways transport, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16
Directors Fees

Directors fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of 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 Sportsmen

1. Notwithstanding the provisions of Articles 7 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

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

Article 18
Pensions

Subject to the provisions of paragraph 2 of Article

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

Article 21
Other Income

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

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

CHAPTER IV

TAXATION OF CAPITAL

Article 22
Capital

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated 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 in a Contracting State may be taxed in that State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be

a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or

b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the firstmentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article 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

2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

a) (in State A):

b) (in State B):

Article 31
Termination

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 In such event, the Convention shall cease to have effect:

a) (in State A):

b) (in State B):

Terminal Clause n5

FOOTNOTES:

n5 The terminal clause concerning the signing shall be drafted in accordance with the constitutional procedure of both Contracting States.

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

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

a) (in State A):

b) (in State B):

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

CHAPTER II

DEFINITIONS

Article 3

General Definitions

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

a) the term "person" includes an individual, a company and any other body of persons;

b) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

c) the term "enterprise" applies to the carrying on of any business;

d) 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;

of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4 Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

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) he shall be deemed to be a resident only 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, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);

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

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

d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by 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 only of the 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;

c) an office;

d) a factory;

e) a workshop, and

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 of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person -- other than an agent of an independent status to whom paragraph 6 applies -- is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent e

Article 9
Associated Enterprises

1. Where

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

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

situated therein and the right or property in respe

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, or aboard a boat engaged in inland waterways transport, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16
Directors Fees

Directors fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of 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 Sportsmen

1. Notwithstanding the provisions of Articles 7 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, in the exercise of his profession, shall be taxable only in that State.

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Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

Article 21

Other Income

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

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

CHAPTER IV

TAXATION OF CAPITAL

Article 22

Capital

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated 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 may be taxed in that other State.

3. Capital represented by ships and aircraft operated in international traffic and by boats engaged in inland waterways transport, and by movable property pertaining to the operation of such ships, aircraft and boats, 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 ELIMINATION OF DOUBLE TAXATION

Article 23 A

Exemption Method

1. Where a resident of a Contracting State derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in the other Contracting State, the first-mentioned State shall, subject to the provisions of paragraphs 2 and 3, exempt such income or capital from tax.

2. Where a resident of a Contracting State derives items of income which, in accordance with the provisions of Articles 10 and 11, may be taxed in the other Contracting State, the first-mentioned State shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in that other State. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from that other State.

such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

5. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

6. 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. Where a person considers that the actions of one or both of the Contracting States result or will result for him in

b) to supply information which is not obtainable un

7. Where, at any time after a request has been made

2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

a) (in State A):

b) (in State B):

Article 31
Termination

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 In such event, the Convention shall cease to have effect:

a) (in State A):

b) (in State B):

Terminal Clause n5

FOOTNOTES:

n5 The terminal clause concerning the signing sh

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1988 Income Tax Convention and Final Protocol

PUBLICATION-DATE: April 26, 1988

EFFECTIVE-DATE: March 11, 1992; In Brazil, from J

- a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which

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.

4. Notwithstanding the provisions of paragraphs 1 and 2, where a person-other than an agent of an independent status to whom paragraph 5 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 3 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.

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, in accordance with the provisions of and subject to the limitations of the taxation laws of the Contracting State concerned.

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

7. Interest shall be deemed to arise in a Contracti

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6, which is situated in the other Contracting State, may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in the other State. However, gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
3. Gains from the alienation of any property other than that referred to in paragraphs 1 and 2, may 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 State, unless the remuneration for such services or activities is paid by a resident of the other Contracting State or is borne by a permanent establishment situated therein. In such case, the income may be taxed in that other State.
2. The term "professional services" includes especially independent scientific, technical, 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

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 theatre, 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.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply to income derived from activities performed in a Contracting State by an entertainer or an athlete if the visit to that Contracting State is substantially supported by public funds of, or sponsored by the other Contracting State, including those of any political subdivision or local authority.

Article 18

Pensions and social security payments

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions paid in respect of services rendered in connection with any business carried on by a Contracting State, a political subdivision or a local authority thereof.

Article 20

Teachers and researchers

1. An individual who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who, at the invitation of the Government of the first-mentioned State or of a university, college, school, museum or other cultural institution of that first-mentioned State or under an official programme of cultural exchange, is present in that State for a period not exceeding two consecutive years solely for the purpose of teaching, giving lectures or carrying out research at such institution shall be exempt from tax in that State on his remuneration for such activity, provided that the payment of such remuneration is derived by him from outside that State.

2. This Article shall not apply to income from rese

3. Where a company which is a resident of a Contracting State derives dividends which, in accordance with the provisions of paragraph 2 of Article 10, may be taxed in the other Contracting State, the first-mentioned State shall exempt such dividends from tax.

4. Where a resident of India derives profits which, in accordance with the provisions of paragraph 5 of Article 10 may be taxed in Brazil, India shall exempt such profit

1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of the Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention, in so far as the taxation thereunder is not contrary to the Convention, in particular for the prevention of fraud or evasion of such taxes. 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. However, if the information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Convention. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchange of information shall be made, including, where appropriate, exchange of information regarding tax avoidance.

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 or administrative practice of that or of the other Contracting State;

b) to supply information or documents 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 or documents 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.

Article 27

Diplomatic agents and consular officers

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

Article 28

Entry into force

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Brasilia as soon as possible.

2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect for the first time:

a) in Brazil:

I- in respect of taxes withheld at source, to amounts paid or credited on or after the first day of January of the calendar year immediately following that in which the Convention enters into force;

II- in respect of other taxes covered by the Convention, for the taxable year beginning on or after the first day of January of the calendar year immediately following that in which the Convention enters into force.

b) in India:

in respect of income arising in any previous year beginning on or after the first day of April immediately following the calendar year in which the Convention enters into force.

Article 29

Termination

Either Contracting State may terminate this Convention after a period of five years from the date on which the Convention enters into force by giving to the other Contracting State, through diplomatic channels, a written notice of termination, provided that any such notice shall be given only on or before the thirtieth day of June in any calendar year.

In such case the Convention shall cease to have effect:

a) in Brazil:

I- in respect of taxes withheld at source, to amounts paid or credited on or after the first day of January of the calendar

4. With reference to Article 24, paragraph 2.

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1986 Protocol to the 1984 Agreement

PUBLICATION-DATE: May 10, 1986

EFFECTIVE-DATE: November 21, 1986; As indicated in Article 27 of the Agreement.

STATUS: In Force

Treaty Doc. 99-26

89 TNI 23-51; Doc 93-31066

TIAS 12065

1986 Protocol to the 1984 Agreement

LEGIS-HISTORY: U.S.- China: P.R.C.: 1984 Income Tax Agreement

Doc 93-30982 Treasury Department Technical Explanaaa

AND THE PREVENTION OF TAX EVASION WITH RESPECT TO TAXES ON INCOME, SIGNED AT BEIJING ON APRIL 30, 1984.

The Government of the United States of America and the Government of the People's Republic of China, desiring to conclude a Protocol in addition to the Agreement between them for the avoidance of double taxation and the prevention of tax evasion, and the supplementary Protocol attached thereto, have agreed as follows:

Both sides have agreed, with respect to the interpretation of Paragraph 7 of the Protocol to the Agreement, that their understanding is as follows:

1. A person (other than an individual) which is a resident of a Contracting State shall not be entitled under this Agreement to relief from taxation in the other Contracting State unless:

(a)

(i) more than 50 percent of the beneficial interest in such person (or in the case of a company more than 50 percent of the number of shares of each class of the company's shares) is owned, directly or indirectly, by any combination of one or more of:

(A) individuals who are residents of one of the Contracting States;

(B) citizens of the United States;

(C) companies as described in subparagraph 1(b) of this protocol; and

(D) one of the Contracting States, its political subdivisions or local authorities; and

(ii) in the case of relief from taxation under Articles 9 (dividends), 10 (interest), and 11 (royalties), not more than 50 percent of the gross income of such person is used to make payments of interest to persons who are other than persons described in clauses (A) through (D) of subparagraph (a)(i), whether directly or indirectly; or

(b) it is a company which is a resident of a Contracting State and in whose principal class of shares there is substantial and regular trading on a recognized stock exchange.

2. Paragraph 1 shall not apply if the establishment, acquisition and maintenance of such person and the conduct of its operations did not have as a principal purpose the purpose of obtaining benefits under the Agreement.

3. For the purposes of paragraph 1(b), the term 'a recognized stock exchange' means:

(a) the NASDAQ System owned by the National Associa

Doc 2000-26180 Senate Floor Action and Debate (132 Cong. Rec. 17556-60, July 24, 1986)

after November 21, 1986, by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

IN TESTIMONY WHEREOF, I have signed this proclamation and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this fifth day of October in the year of our Lord one thousand nine hundred eighty-seven and of the Independence of the United States of America the two hundred twelfth.

RONALD REAGAN

By the President:
GEORGE P. SHULTZ
Secretary of State

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE

payments or by way of interest on money lent to the permanent establishment. Likewise, no account shall be taken, in the

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, 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 according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 11

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may

establishment (alone or together with the whole enterprise) or such a fixed base, may be taxed in that other Contracting State.

3. Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic and of movable (personal) property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of real property situated in a Contracting State may be taxed in that Contracting State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 representing a partic

1. Notwithstanding the provisions of Articles 13 and 14, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio, or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other Contracting State.

However, income derived by a resident of a Contracting State as an entertainer or athlete from activities exercised in accordance with a special program for cultural exchange agreed upon by the governments of both Contracting States shall be exempt from tax by the other Contracting 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, 13 and 14, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

However, if those activities are exercised in accordance with a special program for cultural exchange

Article 20

A student, business apprentice or trainee who is or was immediately before visiting a Contracting State, a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education, training or obtaining special technical experience shall be exempt from tax in that Contracting State with respect to:

- (a) payments received from abroad for the purpose of his maintenance, education, study, research or training;
- (b) grants or awards from a government, scientific, educational or other tax-exempt organization; and
- (c) income from personal services performed in that Contracting State in an amount not in excess of 5,000 United States dollars or its equivalent in Chinese yuan for any taxable year.

The benefits provided under this Article shall extend only for such period of time as is reasonably necessary to complete the education or training.

Article 21

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

2. The provisions of paragraph 1 shall not apply to income other than that from real 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 through a permanent establishment situated therein, or performs in that other Contracting 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 13, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting State may also be taxed in that other Contracting State.

Article 22

Editor's Note: See
Paragraph 2 of Final Protocol
Exchange of Notes signed April 30, 1986

1. In the People's Republic of China, double taxation shall be eliminated as follows:

(a) Where a resident of China derives income from the United States, the amount of the United States income tax payable in respect of that income in accordance with the provisions of this Agreement shall be allowed as a credit against the Chinese tax imposed on that resident. The amount of credit, however, shall not exceed the amount of the Chinese tax computed with respect to that income in accordance with the taxation laws and regulations of China.

(b) Where the income derived from the United States is a dividend paid by a company which is a resident of the United States to a company which is a resident of China and which owns not less than 10 percent of the shares of the company paying the dividend, the credit shall take into acc

(a) the income tax paid to China by or on behalf of such resident or citizen; and

(b) in the case of a United States company owning at least 10 percent of the voting rights in a company which is a resident of China and from which the United States company receives dividends, the income tax paid

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 paragraphs 2 and 3. To facilitate reaching a mutual agreement, the competent authorities of both Contracting States may meet for an oral exchange of opinions.

Article 25

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by this Agreement insofar as the taxation thereunder is not contrary to this Agreement, in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. 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

Article 22

FOR THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA:

Zhao Ziyang

PROTOCOL TO THE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF TAX EVASION WITH RESPECT TO TAXES ON INCOME

At the signing of the Agreement between the Government of the United States of America and the Government of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Tax Evasion with Respect to Taxes on Income (hereinafter referred to as "the agreement"), both sides have agreed upon the following provisions which form an integral part of the Agreement:

1. This Agreement shall not restrict in any manner any tax benefit which is or may hereafter be accorded in a Contracting State by the laws of that Contracting State or by any Agreement between the governments of the Contracting States.
2. Notwithstanding any provision of the Agreement, the United States may tax its citizens. Except as provided in paragraph 2 of Article 8, paragraph 2 of Article 17, and Articles 18, 19, 20, 22, 23, 24 and 26 of this Agreement, the United States may tax its residents (as determined under Article 4).
3. The United States may impose its social security tax, its personal holding company tax and its accumulated earnings tax notwithstanding any provision of this Agreement. However, a Chinese company shall be exempt from the personal holding company tax or the accumulated earnings tax in the United States during a taxable year if during that taxable year the company is wholly-owned, directly or indirectly, either by one or more individuals who are residents of China (and who are not citizens of the United States) or by the Government of China or any wholly-owned agency thereof.
4. The term "person" as defined in Article 3 of the Agreement shall include an estate or a trust.
5. In applying paragraph 2 of Article 4 of this Agreement, the competent authorities of both Contracting States shall be guided by the rules contained in paragraph 2 of Article 4 of the United Nations Model Double Taxation Convention between Developed and Developing Countries.
6. For purposes of paragraph 3 of Article 11 of this Agreement, it is agreed by both sides that, in the case of royalties paid for the rental of industrial, commercial or scientific equipment, the tax shall be imposed on 70 percent of the gross amount of such royalties.
7. It is agreed by both sides that the competent authorities of the Contracting States may through consultation deny the benefits of Articles 9, 10 and 11 to a company of a third country if the company becomes a resident of a Contracting State for the principal purpose of enjoying benefits under this Agreement.
8. This Agreement shall not affect the application of the agreement between the two governments with respect to mutual exemption from taxation of transportation income of shipping and air transport enterprises, signed at Beijing on March 5, 1982.

Done at Beijing on the 30th day of April, 1984, in duplicate, in the Chinese and English languages, the two texts having equal authenticity.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Ronald Reagan

FOR THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA:

Zhao Ziyang

EXCHANGE OF NOTES

Beijing, April 30, 1984

His Excellency Zhao Ziyang,
Premier of the State Council
of the People's Republic of China

Excellency:

I have the honor to refer to the Agreement between the Government of the United States of America and the Government of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Tax Evasion with Respect to Taxes on Income which was signed on behalf of the Government of the United States of America, the following understanding reached between the two Governments:

Both sides agree that a tax sparing credit shall not be provided in Article 22 of this Agreement at this time. However, the Agreement shall be promptly amended to incorporate a tax sparing credit provision if the United States hereafter amends its laws concerning the provision of tax sparing credits, or the United States reaches agreement on the provisions of a tax sparing credit with any other country.

I have the honor to request Your Excellency to confirm the foregoing understanding on behalf to Your Excellency's Government.

I avail myself of this opportunity to assure Your Excellency of my highest consideration.

Ronald Reagan,
President of the United States of America

II.

His Excellency Ronald Reagan,
President of the United States of America.

Excellency:

I have the honour to acknowledge receipt of Your Excellency's Note of today's date, which reads as follows:

I have the honor to refer to the Agreement between the Government of the United States of America and the Government of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Tax Evasion with Respect to Taxes on Income which was signed today (hereinafter referred to as "the Agreement") and to confirm, on behalf of the Government of the United States of America, the following understanding reached between the two Governments.

Both sides agree that a tax sparing credit shall not be provided in Article 22 of the Agreement at this time. However, the Agreement shall be promptly amended to incorporate a tax sparing credit provision if the United States hereafter amends its laws concerning the provision of tax sparing credits, or the United States reaches agreement on the provision of a tax sparing credit with any other country.

I have the honor to request Your Excellency to confirm the foregoing understanding on behalf of Your Excellency's Government.

I avail myself of this opportunity to assure Your Excellency of my highest consideration.

I have the honour to confirm the understanding contained in Your Excellency's Note, on behalf of the Government of the People's Republic of China.

I avail myself of this opportunity to assure Your Excellency of my highest consideration.

Zhao Ziyang,
Premier of the State Council of the People's Republic of China

Article 3
General Definitions

1 For the purposes of this Agreement, unless the context otherwise requires:

(a) the term " Mexico " means the United Mexican States; when used in a geographical sense, it includes the territory of the United Mexican States: being the integrated parts of the Federation; the islands, including the reefs and cays in the adjacent waters; the island of Guadalupe and Revillagigedo; the continental shelf and the seabed and submarine shelves of the islands, cays and reefs, where Mexico may exercise sovereign rights in accordance with intern

(i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely from a place or between places in the other Contracting State;

(j) the term "person" includes an individual, a company and any other body of persons;

(k) the term "tax" means Mexican tax or Australian tax, as the context requires, but does not include any penalty or interest imposed under the law of either Contracting State relating to its tax.

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

Article 4 Resident

1 For the purposes of this Agreement, a person is a resident of a Contracting State if the person is a resident of that Contracting State for the purposes of its tax.

2 A person is not a resident of a Contracting State for the purposes of this Agreement if the person is liable to tax in that State in respect only of income from sources in that State.

3 A person, who in relation to any income, is a partnership, an estate of a deceased individual, or a trust (other than a partnership, an estate of a deceased individual, or a trust the income of which is exempt from taxation under the law of a Contracting State relating to its tax) shall not be treated as a resident of a Contracting State except to the extent that the income is subject to tax in that State as the income of a resident of that State, either in the hands of that person or in the hands of a partner or beneficiary, or, if that income is exempt from tax in that State, it is so exempt solely because it is subject to tax in the other State.

4 Where by reason of the preceding provisions of this Article an individual is a resident of both Contracting States, then the status of the person shall be determined in accordance with the following rules:

(a) the person shall be deemed to be a resident only of the Contracting State in which a permanent home is available to the person;

(b) if a permanent home is available to the person in both Contracting States, or in neither of them, the person shall be deemed to be a resident only of the Contracting State in which the person has a habitual abode.

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and

(g) an agricultural, pastoral or forestry property.

3 An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it has a building site or construction or installation project in that State, or a supervisory or consultancy activity connected therewith, which lasts more than 6 months.

4 An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if:

(a) heavy equit

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

9 The principles set forth in the preceding paragraphs of this Article shall be applied in determining for the purposes of paragraph 6 of Article 11 and paragraph 6 of Article 12 of this Agreement whether there is a permanent establishment outside both Contracting States, and whether an enterprise, not being an enterprise of one of the Contracting States, has a permanent establishment in a Contracting State.

Article 6

Income From Immovable (Real) Property

1 Income from immovable (real) property may be taxed in the Contracting State in which the immovable (real) property is situated.

2 In this Article, the term "immovable (real) property":

(a) in the case of Mexico, means immovable property and has the meaning which it has under the law of Mexico, and shall also include:

(i) property accessory to immovable property;

(ii) livestock and equipment used in agriculture and forestry;

(iii) rights to which the provisions of general law respecting landed property apply;

(iv) usufruct of immovable property; and

(v) a right to receive variable or fixed payments either as consideration for or in respect of the exploitation of, or the right to explore for or exploit, mineral, oil or gas deposits, quarries or other places of extraction or exploitation of natural resources.

(b) in the case of Australia, means real property according to the law of Australia, and shall also include:

(i) a lease of land and any other interest in or over land, whether improved or not, including a right to explore for mineral, oil or gas deposits or other natural resources, and a right to mine those deposits or resources; and

(ii) a right to receive variable or fixed payments either as consideration for or in respect of the exploitation of, or the right to explore for or exploit, mineral, oil or gas deposits, quarries or other places of extraction or exploitation of natural resources.

3 Any interest or right referred to in paragraph 2 shall be regarded as situated where the land, mineral, oil or gas deposits, quarries or natural resources, as the case may be, are situated or where the exploration may take place.

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

5 The provisions of paragraphs 1, 3 and 4 shall also apply to income from immovable (real) property of an enterprise and to income from immovable (real) property used for the performailaushaushal) 9 ihe)f tormn

carries on business in that manner, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to:

(a) that permanent establishment; or

(b) sales in that other State of goods or merchandise of the same or similar kind as the goods or merc

4 For the purposes of this Article, profits derived from the carriage by ships or aircraft of passengers, livestock, mail, goods or merchandise which are shipped in a Contracting State and are discharged at a place in that State shall be treated as profits from ship or aircraft operations confined solely to places in that State.

Article 9

Associated Enterprises

1 Where:

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

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

and in either case conditions operate between the two enterprises in their commercial or financial relations which differ from those which would operate or which might be expected to operate between independent enterprises dealing wholly independently with one another, then any profits which, but for those conditions, have accrued or might have been expected to accrue 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.

2 Where, by virtue of the provisions of paragraph 1 of this Article or Item (4) of the Protocol, a Contracting State includes in the profits of an enterprise of that State, and taxes accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued or which might be expected to have accrued to the enterprise of the firstmentioned State if the conditions made between the two enterprises had been those which would have operated or which might be expected to have operated between independent enterprises dealing wholly independently with one another, then that other State the enterb

- (a) in Mexico, to the extent to which the dividends have been paid from the net profit account; and
- (b) in Australia, to the extent to which the dividends have been "franked" in accordance with its law

5 The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to the interest, being a resident of a Contracting State, carries on business in the other Contracting State, in which the interest arises, through a permanent establishment situated in that other State, or performs in that other State independent personal services from a fixed base situated in that other State, and the indebtedness in respect of which the interest is paid is effectively connected with that permanent establishment or fixed base. In that case 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 a resident of that State. Where, however, the person paying the interest, whether the person is a resident of a Contracting State or not, has in a Contracting State or outside both Contracting States a permanent establishment or fixed base in connection with which the indebtedness on which the interest is paid was incurred, and that interest is borne by that permanent establishment or fixed base, then the 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 person beneficially entitled to the interest, or between both of them and some other person, the amount of the interest paid exceeds, for whatever reason, the amount which would or might have been expected to have been agreed upon by the payer and the person so entitled in the absence of that relationship, the provisions of this Article shall apply only to the lastmentioned amount. In that case, the excess part of the amount of the interest paid shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

8 The provisions of this Article shall not apply if the indebtedness in respect of which the interest is paid was created or assigned with the main purpose of taking advantage of this Article and not for bona fide commercial reasons. In that case the provisions of the domestic law of the Contracting State in which the interest arises shall apply.

Article 12 Royalties

1 Royalties arising in a Contracting State, being royalties to which a resident of the other Contracting State is beneficially

(f) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

4 The term "royalties" also includes income, profits or gains derived from the sale, exchange or other disposition of any property or right described in this paragraph to the extent to which the amounts realised on such sale, exchange or other disposition are contingent on the productivity, use or further disposition of such property or right.

5 The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to the royalties, being a resident of a Contracting State, carries on business in the other Contracting State, in which the royalties arise, through a

5 Nothing in this Agreement affects the application of a law of a Contracting State relating to the taxation of gains of a capital nature derived from the alienation of any property (including shares or other rights of a company) other than that to which any of the preceding paragraphs of this Article apply.

6 In this Article, the term "immovable (real) property" has the same meaning as it has in paragraph 2 of Article 6.

7 The situation of immovable (real) property shall be determined for the purposes of this Article in accordance with paragraph 3 of Article 6.

8 An individual who elects, under the taxation law of a Contracting State, to defer taxation on income or gains relating to

Article 16
Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in that persons capacity as a member of the board of directors and, in the case of Mexico, in that persons capacity as an "administrador" or a

Article 24

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

Article 26

Members of Diplomatic Missions and Consular Posts

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

Article 27

Entry Into Force

Both Contracting States shall notify each other in writing through the diplomatic channel of the completion of their respective statutory and constitutional procedures

(10) With reference to Article 14,

Article 14 shall also apply to income derived by a company which is a resident of Australia from the furnishing of personal services through a fixed base in Mexico in accordance with subparagraph (a) of paragraph 1. In that case, the company may compute the tax on the income from such services on a net basis as if that income were attributable to a permanent establishment in Mexico.

(11) In general,

(a) It is understood that the asset tax imposed by Mexico shall not be applied to residents of Australia that are not subject to tax under Articles 5 and 7 of the Agreement, except for assets referred to in paragraphs 3 and 4 of Article 12 that are furnished by such residents to a resident of Mexico. In the case of assets referred to in paragraphs 3 and 4 of Article 12, Mexico shall grant a credit against the tax on such assets in an amount equal to the income tax that would have been imposed under the Mhe 6907(c)]TJ356603(o)-.5012(s)2.71284(h)5.07055(603(s)2.71431()u)5.06907(a)-2.64358(l()8.57027

(b) a branch;

(c) an office;

4. The provisions of paragraphs 1 and 2 shall also apply to the share of the profits from the operation of ships or aircraft derived by an enterprise of a Contracting State through participation in a pool service, in a joint business or operating organisation or in an international operating agency.

3. The term "dividends" as used in this Article means income from shares and other income treated as income from shares by the laws, relating to tax, of the Contracting State of which the company making the payment is a resident for the purposes of its tax.

Article 12
Royalties

1. Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State, may be taxed in that other State.

2. However, such royalties may also be taxed in the

Article 17
Pensions and Annuities

1. Subject to paragraph 2 of Article 18, pensions and annuities paid to a resident of a Contracting State shall be taxable only in that State.
2. The term "annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or moneys worth.

Article 18
Government Service

1. Salaries, wages and other similar remuneration (other than pensions) paid by the Government of a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Government or a political subdivision or a local authority thereof shall be exempt from tax in the other Contracting State if the individual is not resident in that other State for the purposes of that other States tax or is resident in that other State for the purposes of that other States tax solely for the purpose of rendering those services.
2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such pension shall also be taxable in the other Contracting State if the individual is a resident of that State.
3. The provisions of Articles 14, 15 and 17 shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered

State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting Sta

(i) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of the second month next following the date on which the Agreement enters into force; and

(ii) with regard to other taxes, in respect of years of assessment beginning on or after the first day of January next following the date upon which the Agreement enters into force.

Article 27

Termination

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through the diplomatic channel, by giving notice of termination on or before 30 June in any calendar year beginning after the expiration of 5 years from the date of its entry into force. In such event the Agreement shall cease to have effect:

(a) in New Zealand:

(i) in respect of withholding tax on income, profits or gains derived by a non-resident, for amounts paid or credited on or after the first day of the second month next following that in which the notice of termination is given;

(ii) in respect of other New Zealand tax, for any income year beginning on or after 1 April in the calendar year next following that in which the notice of termination is given;

(b) in South Africa:

(i) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of the second month next following that in which the notice of termination is given; and

(ii) with regard re (t)0.356603(h)5.06981()-3.5013(c)-2.64653(e)-e356603(h4358[03(d)-7.00239(e)-2.6i(r)-5.0012 (t)0.356603(h)5.069

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Protocol.

Done in duplicate at Pretoria this 6th day of February 2002 in the English language.

FOR THE GOVERNMENT OF NEW ZEALAND:

FOR THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA: