

**C O N V E N T I O N**

**B E T W E E N**

**THE REPUBLIC OF AUSTRIA**

**AND THE UNITED MEXICAN STATES**

**FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION**

**WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL**

The Republic of Austria and the United Mexican States, desiring to conclude a Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income and on capital, hereafter referred to as the "Convention"

have agreed as follows:

## Article 1

**PERSONAL SCOPE**

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

## Article 2

**TAXES COVERED**

1. This Convention shall apply to taxes on income and on capital imposed by each of the Contracting States, irrespective of the manner in which they are levied.

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, as well as taxes on capital appreciation.

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

a) in Mexico :

(i) the income tax (el impuesto sobre la renta);

(ii) the assets tax (el impuesto al activo);

(hereinafter referred to as "Mexican tax");

(b) in Austria:

(i) the income tax (die Einkommensteuer);

(ii) the corporation tax (die Körperschaftsteuer);

(hereinafter referred to as "Austrian tax").

4. The Convention shall apply also to any identical or substantially similar taxes which 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 which have been made in their respective taxation laws.

## Article 3

**GENERAL DEFINITIONS**

1. For the purposes of this Convention, 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 as well as the integrated parts of the Federation; the islands, including the reefs and cays in the adjacent waters; the islands of Guadalupe and Revillagigedo; the continental shelf and the seabed and sub-soil of the islands, cays and reefs; the waters of the territorial seas and the inland waters and beyond them the areas over which, in accordance with the international law, Mexico may exercise its sovereign rights of exploration and exploitation of the natural resources of the seabed, sub-soil and the supra-jacent waters; and the air space of the national territory to the extent and conditions established by international law.
- b) the term "Austria" means the Republic of Austria;
- c) the terms "a Contracting State " and "the other Contracting State" mean Mexico or Austria, as the context requires;
- d) the term "person" includes an individual, a company and any other body of persons;
- e) the term "company" means any body corporate or any entity which is treated as a body corporate 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 by a ship or aircraft operated by an enterprise which is a resident of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- h) the term "national" means :
  - (i) any individual possessing the nationality of a Contracting State;
  - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
- i) the term "competent authority" means:
  - (i) in Mexico, the Ministry of Finance and Public Credit;
  - (ii) in Austria, the Federal Minister of Finance or his authorised representative;
- j) the term "enterprise" applies to the carrying on of any business;
- k) 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. However, this term 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 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 he is a national;
- d) in any other case, the competent authorities of the Contracting States shall endeavour to 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, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question and to determine the mode of application of the Convention to such person. In the absence of such agreement, such person shall be considered to be outside the scope of this Convention, except for the Article "Exchange of Information".

#### 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 of extraction of natural resources.

3. The term "permanent establishment" likewise encompasses:

- a) a building site or a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, construction, assembly, project or activities continue for a period of more than six months;
- b) the furnishing of services, including consultancy or managerial services, by an individual of a Contracting State or through his employees or other personnel, but only where activities of that nature continue in the territory of the other Contracting State for a period or periods exceeding in the aggregate six months within any twelve month period.

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 sub-paragraphs 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 7 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. Notwithstanding the foregoing provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or

insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business and that in their commercial or financial relations with the enterprise, conditions are not made or imposed that differ from those generally agreed to by independent agents.

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 constitute either company a permanent establishment of the other.

## Article 6

### **INCOME FROM IMMOVABLE PROPERTY**

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

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

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or 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 and to income from immovable property used for the performance of independent personal services.

## Article 7

### **BUSINESS PROFITS**

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries or has carried on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries or has 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 or has carried on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits

which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a bank, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a bank by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

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

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

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

8. The term "profits" as used in this Article includes the profits derived by any partner from his participation in a partnership and, in the case of Austria, from a participation in a sleeping partnership (Stille Gesellschaft) created under Austrian law.

## Article 8

### **SHIPPING AND AIR TRANSPORT**

1. Income or profits derived by a resident of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that Contracting State.

2. Profits referred to in paragraph 1 shall not include profits from the provision of accommodation or transportation other than from the operation of ships or aircraft 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**

#### 1. Where

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

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

2. Where 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 to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall, in accordance with paragraph 2 of Article 24, make an appropriate adjustment to the amount of the tax charged therein on those profits if it agrees with the adjustment made by the first-mentioned Contracting State. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

## 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) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which owns at least 10 per cent of the voting stock of the company paying the dividends;
- b) 10 per cent of the gross amount of the dividends in all other cases.



The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

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

3. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. A Contracting State may not impose any tax on the dividends paid by a company which is not a resident of that State, except insofar as the dividends are paid to a resident of that State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that 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 State.

## Article 11

### INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest referred to in paragraph 1 shall be taxable only in the Contracting State in which the beneficial owner is a resident if:

- a) the beneficial owner is a Contracting State, a political subdivision or a local authority;
- b) the interest is paid by any of the entities mentioned in subparagraph a);
- c) the beneficial owner is a recognised pension or retirement fund provided that its income is generally exempt from tax in that State;
- d) the interest arises in Austria and is paid in respect of a loan for a period of not less than three years granted, guaranteed or insured, or a credit for such period granted, guaranteed or insured, by Banco Nacional de Comercio Exterior, S.N.C., Nacional Financiera, S.N.C. or Banco Nacional de Obras y Servicios Públicos, S.N.C.; or

- e) the interest arises in Mexico and is paid in respect of a loan for a period of not less than three years granted, guaranteed or insured, or a credit for such period granted, guaranteed or insured by the Oesterreichische Kontrollbank Aktiengesellschaft.

4. 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 debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as all other income that is treated as income from money lent by the taxation law of the Contracting State in which the income arises. The term "interest" shall not include any item of income which is considered as a dividend under the provisions of paragraph 3 of Article 10. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment 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 shall apply.

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

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

8. The provisions of this Article shall not apply if the debt-claim in respect of which the interest is paid was created or assigned with the main purpose of taking advantage of this Article. In that case the provisions of the domestic law of the Contracting State in which the interest arises shall apply. When a Contracting State intends to apply this paragraph, its competent authority shall in advance consult with the competent authority of the other Contracting State.

## Article 12

### **ROYALTIES**

1. Royalties 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 royalties may also be taxed in the State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 10 per cent of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for:

- a) the use of, or the right to use any patent, trade mark, design or model, plan, secret formula or process, or
- b) the use of or the right to use, industrial, commercial, or scientific equipment, or
- c) the use of, or the right to use information concerning industrial, commercial or scientific experience;
- d) the use of or the right to use, any copyright of literary, artistic or scientific work including cinematograph films.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred and such royalties are borne by such permanent establishment, in connection with which the liability to pay the royalties was incurred, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.

6. Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

7. The provisions of this Article shall not apply if the rights in respect of which the royalties are paid were created or assigned with the main purpose of taking advantage of this Article. In that case the provisions of the domestic law of the Contracting State in which the royalties arise shall apply. When a Contracting State intends to apply this paragraph, its competent authority shall in advance consult with the competent authority of the other Contracting State.

## Article 13

### **CAPITAL GAINS**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of shares or other rights of a company which assets consist principally, directly or indirectly, of immovable property situated in a Contracting State or any other right pertaining to such immovable property, may be taxed in that State. For the purposes of this paragraph immovable property used by a company in its industrial, commercial or agricultural activities or in the conduct of independent personal services shall not be taken into account.

3. Gains from the alienation of shares of the capital of a company resident in one of the States may be taxed in that State. However, the tax so charged shall not exceed 20 % of the taxable gains.

4. 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 that other State.

5. Gains derived by a resident of a Contracting State 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 that State.

6. Gains from the alienation of any property other than that referred to in paragraph 2 of point 13 of the Protocol (With reference to paragraph 3 of Article 12) or in the preceding paragraphs of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

#### Article 14

### **INCOME FROM EMPLOYMENT**

1. Subject to the provisions of Articles 15, 17 and 18, 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 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 by a resident of a Contracting State in international traffic may be taxed in that Contracting State.

## Article 15

**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 and, in the case of Mexico, in his capacity as an "administrador" or a "comisario", or as a member of a supervisory board of a company which is a resident of the other Contracting State may be taxed in that other State.

## Article 16

**ARTISTES AND SPORTSMEN**

1. Notwithstanding the provisions of Articles 7 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 a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State. Income referred to in this paragraph shall include income derived from any personal activities performed in the other Contracting State by such resident relating to his reputation as an entertainer or sportsman.

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

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, income derived from personal activities exercised by a resident of a Contracting State in his capacity as an artiste or a sportsman shall be taxable only in that Contracting State if the activities have been performed in the other Contracting State within the scope of a cultural or sports exchange program approved by both Contracting States.

## Article 17

**PENSIONS**

Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

## Article 18

**GOVERNMENT SERVICE**

1. a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
  - b) However, such salaries wages and other remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
    - (i) is a national of that State; or
    - (ii) did not become a resident of that State solely for the purpose of rendering the 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 be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of paragraph 1 of this Article shall likewise apply in respect of remuneration paid to the Austrian Foreign Trade Commissioner for Mexico and to the members of the staff of the Austrian Foreign Trade Commissioner for Mexico.

4. The provisions of Articles 14, 15, 16 and 17 shall apply to salaries, wages and other similar remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

## Article 19

**STUDENTS**

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 20

### **OTHER INCOME**

1. Items of income derived by a resident of a Contracting State not expressly mentioned in the foregoing Articles shall only be taxable in that Contracting 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.

3. Notwithstanding the provisions of paragraph 1, income derived by a resident of a Contracting State not expressly mentioned in the foregoing Articles and arising in the other Contracting State, may also be taxable in that other Contracting State according to the domestic legislation of such Contracting State.

## Article 21

### **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 by a resident of a Contracting State in international traffic, and by movable property pertaining to the operation of such ships and aircraft, shall be taxable only in that Contracting State.

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

## Article 22

### **ELIMINATION OF DOUBLE TAXATION**

1. In accordance with the provisions and subject to the limitations of the laws of Mexico, as may be amended from time to time without changing the general principles hereof, Mexico shall allow its residents as a credit against the Mexican tax:

- a) the Austrian tax paid on income arising in Austria, in an amount not exceeding the tax payable in Mexico on such income; and

- b) in the case of a company owning at least 10 per cent of the capital of a company which is a resident of Austria and from which the first-mentioned company receives dividends, the Austrian tax paid by the distributing company with respect to the profits out of which the dividends are paid.

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

- a) Where a resident of Austria derives income which, in accordance with the provisions of this Convention may be taxed in Mexico, Austria shall, subject to the provisions of subparagraphs b) and c), exempt such income from tax.
- b) Where a resident of Austria derives items of income which, in accordance with the provisions of paragraphs 2 of Articles 10, 11 and 12, paragraphs 2 and 3 of Article 13 and paragraph 3 of Article 20 may be taxed in Mexico, Austria shall allow as a deduction from the tax on the income of that resident an amount equal to the Mexican tax. 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.
- c) Where in accordance with any provision of the Convention income derived by a resident of Austria is exempt from Austrian tax, Austria may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

3. For the purpose of this Convention the Mexican assets tax mentioned in paragraph 3 of Article 2 shall be considered as income tax.

4. Income derived by a resident of a Contracting State which is considered by that State to be taxable under this Convention in the other State may nevertheless be taxed in the first-mentioned State if, after the conduct of a mutual agreement procedure, the other Contracting State exempts that income from tax by virtue of this Convention.

## 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, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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



3. Except where the provisions of paragraph 1 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. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned 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.

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

#### Article 24

### **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 23, to that of the Contracting State of which he is a national.

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 the Convention, provided that the competent authority of the other Contracting State is notified of the case within four and a half years from the due date or the date of filing the return in that other State, whichever is later. In such case, any agreement reached shall be implemented within ten years from the due date or the date of filing of the return in that other State, whichever is later, or a longer period if permitted under the domestic law of that other State.

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.

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. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

## 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 of the domestic laws concerning taxes of every kind and description imposed on behalf of a Contracting State insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2. 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) involved in the assessment or collection of, the enforcement or prosecution in respect of or the determination of appeals in relation to, the taxes covered by the Convention. 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 to:

- a) carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) 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) 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 26

**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.

## Article 27

**ASSISTANCE ON TAX COLLECTION**

1. The Contracting States undertake to lend each other support and assistance in the collection of taxes to the extent necessary to ensure that relief granted by the present Convention from taxation imposed by a Contracting State does not inure to the benefit of persons not entitled thereto, provided that:

- a) the requesting State must produce a copy of a document certified by its competent authority specifying that sums referred to for the collection of which it is requesting the intervention of the other State, are finally due and enforceable;

- b) a document produced in accordance with the provisions of this Article shall be rendered enforceable in accordance with the laws of the requested State;
- c) the requested State shall effect recovery in accordance with the rules governing the recovery of similar tax debts of its own; however, tax debts to be recovered shall not be regarded as privileged debts in the requested State. In the Republic of Austria, judicial execution shall be requested by the Finanzprokuratur or by the finance office delegated to act on its behalf; and
- d) appeals concerning the existence or amount of the debt shall lie only to the competent tribunal of the requesting State.

2 The provisions of this paragraph shall not impose upon either Contracting State the obligation to carry out administrative measures different from those used in the collection of its own tax, or which would be contrary to its sovereignty, security, public policy or its essential interests.

#### Article 28

### ENTRY INTO FORCE

1. The Contracting States shall notify each other in writing, through diplomatic channels that the procedures required by its national legislation for the entry into force of this Convention. The Convention shall enter into force on the first day of the third month next following the date of receipt of the last notification.

2. The Convention shall have effect, on or after the first day of the calendar year next following the date on which the Convention enters into force.

#### Article 29

### TERMINATION

1. This Convention shall remain in force indefinitely, unless one of the Contracting States notifies its intention to terminate it, in writing, through diplomatic channels, at least six months before the end of any calendar year beginning after the expiration of a period of five years from the date of its entry into force

2. The Convention shall cease to have effect on or after the first day of the calendar year next following the date on which the notice is given.

IN WITNESS WHEREOF the undersigned, duly authorised thereto by their respective Governments, have signed this Convention.

Signed at Mexico City on the 13th day of April, of the year two thousand and four in two original copies, in the German, Spanish and English languages, being all texts equally authentic. In case of divergence in the interpretation of this Protocol, the English text shall prevail.

For the  
Republic of Austria

Botschafter Dr. Rudolf Lennkh

For the  
United Mexican States

José Francisco Gil Díaz

## PROTOCOL

At the moment of signing the Convention between the Republic of Austria and the United Mexican States for the Avoidance of Double taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, the undersigned have agreed upon the following provisions which shall be an integral part of the Convention.

### 1. With reference to the interpretation of the Convention.

It is understood that provisions of the Convention which are drafted according to the corresponding provisions of the Model Tax Convention on Income and on Capital of the Organisation for Economic Co-operation and Development (OECD) shall generally be expected to have the same meaning as expressed in the OECD Commentary thereon. The understanding in the preceding sentence will not apply with respect to the following:

- a) any reservations or observations to the OECD-Model or its Commentary by either Contracting State;
- b) any contrary interpretations in this Protocol;
- c) any contrary interpretation in a published explanation by one of the Contracting States that has been provided to the competent authority of the other Contracting State prior to the entry into force of the Convention; and
- d) any contrary interpretation agreed upon by the competent authorities after the entry into force of the Convention.

The Commentary - as it may be revised from time to time - constitutes a means of interpretation in the sense of the Vienna Convention of 23 May 1969 on the Law of Treaties.

### 2. With reference to the anti-abuse concept of the Convention.

Special provisions of the Convention designed to curb abusive international transactions and to exclude them from treaty benefits are not to be understood as preventing a Contracting State from applying a substance over form evaluation of facts or its internal legislation designed to counteract tax avoidance and evasion in other cases not particularly covered by a specific anti-abuse clause of the treaty.

The Contracting States may deny the benefits of this Convention when transactions have been entered into with the purpose of abusing the provisions contained in it.

### 3. With reference to Article 2

It is understood that any net wealth tax imposed by any Contracting State after the date of signature of the Convention shall be covered by that Convention.

### 4. With reference to Article 4.

The term "resident" also includes a Contracting State or a political subdivision or local authority thereof.

5. With reference to paragraph 1 of Article 4

It is understood that in the case of income derived or paid by a partnership, estate, or trust, the term "resident of a Contracting State" applies only to the extent that the income derived by such partnership, estate, or trust is subject to tax in that State as the income of a resident, either in its hands or in the hands of its partners, beneficiaries or grantor.

6. With reference to paragraph 3 of Article 5

The time limits of this paragraph shall not be circumvented through artificial arrangements between associated enterprises. Where such a situation occurs the time periods of activities carried on by an enterprise associated with another enterprise within the meaning of Article 9 shall be aggregated with the period during which activities are carried on by the enterprise if the activities between the associated enterprises are connected. In this case when the time limit exceeds the six months period mentioned in paragraph 3 of Article 5, a permanent establishment shall be considered to exist for each associated enterprise.

7. With reference to subparagraph e) of paragraph 4 of Article 5

It is understood that this subparagraph includes the maintenance of a fixed place of business solely for the purpose of advertising, supplying information, scientific research or for preparatory work in relation to the placement of loans, or for similar activities which have a preparatory or auxiliary character, for the enterprise.

8. With reference to Article 7.

- a) With reference to paragraph 1 of Article 7, profits derived from the alienation of goods or merchandise of the same or similar kind as those sold by the permanent establishment may be regarded as attributable to that permanent establishment, if it is proved that the permanent establishment has been involved in any manner in that operation.
- b) In the determination of the profits of a building site or construction, assembly or installation project there shall be attributed to that permanent establishment in the Contracting State in which the permanent establishment is situated only the profits resulting from the activities of the permanent establishment as such. If machinery or equipment is delivered from the head office or another permanent establishment of the enterprise or a third person in connection with those activities or independently therefrom there shall not be attributed to the profits of the building site or construction, assembly or installation project the value of such deliveries.
- c) Income derived by a resident of a Contracting State from planning, project, construction or research activities, as well as income from technical services exercised in that State in connection with a permanent establishment situated in the other Contracting State, shall not be attributed to that permanent establishment.

9. With reference to Article 8

Residents of Austria, whose profits derived from Mexico may not be taxed by Mexico in accordance with the provisions of Article 8 of the Convention, may not be subject to the Mexican assets tax on the assets used to produce such profits.

10. With reference to Article 11

In the case of abusive transactions, interest paid on back to back loans and thin capitalization will be taxed in accordance with the domestic law of the Contracting State in which the interest arises.

11. With reference to paragraphs 6 of Article 11 and 5 of Article 12

It is understood that where a loan has been contracted by the head office of an enterprise of one of the States and only a part of such loans is attributed to a permanent establishment of that enterprise in the other Contracting State, or where a contract under which royalties are paid has been concluded by such head office and only a part of such contract is attributed to such permanent establishment, then such loan or such contract is for that part to be considered as an indebtedness or a contract connected with that permanent establishment.

12. With reference to Article 12.

It is understood that the assets tax imposed by Mexico may be applied notwithstanding any other provisions of the Convention also in the case of rentals of machinery and similar equipment used by any person liable to the assets tax in Mexico. In such a case Mexico shall grant a credit against the assets tax on such assets by an amount equal to the income tax that would have been imposed on the royalties paid for the furnishing of those assets, applying the rate of tax provided in its national legislation as if this Convention is not applicable.

13. With reference to paragraph 3 of Article 12.

1. It is agreed that payments received as a consideration for
  - a) the reception of, or the right to receive, visual images or sounds, or both, for the purpose of transmission by:
    - (i) satellite; or
    - (ii) cable, optic fibre or similar technology; or
  - b) the use of, or the right to use, in connection with television or radio broadcasting, visual images or sounds, or both, for the purpose of transmission to the public by:
    - (i) satellite; or
    - (ii) cable, optic fibre or similar technology

may be taxed in the State in which they arise according to the rules laid down in Articles 12 and 22.

2. The term "royalties" also includes gains derived from the alienation of rights or property referred to in this paragraph which are contingent on the productivity, use, or disposition thereof.

14. With reference to Article 22

It is understood that the assets tax levied in accordance with the provisions of point 12 of the Protocol is considered to be comprised by the term "Mexican tax" in the sense of subparagraph b) of paragraph 2 of Article 22.

15. With respect to Article 24

Notwithstanding any other treaty, agreement or convention to which the Contracting States are parties, any tax issue between the Contracting States, including a dispute whether this Convention applies, shall be settled only under this Article unless the competent authorities agree otherwise.

16. With respect to Article 25

The carrying out of provisions of the domestic laws of the Contracting States concerning taxes includes penal investigations with regard to fiscal offences relating to taxes covered by this Article. It is understood that the term "penal investigations" applies to proceedings carried out by either judicial or administrative bodies.

IN WITNESS WHEREOF the undersigned, duly authorised thereto by their respective governments, have signed this Protocol.

Signed at Mexico City on the 13th day of April, of the year two thousand and four in two original copies, in the German, Spanish and English languages, being all texts equally authentic. In case of divergence in the interpretation of this Protocol, the English text shall prevail.

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