

**Protocol
between
the Slovak Republic
and
the Federative Republic of Brazil
amending the Convention between the Government of the Federative Republic of Brazil
and the Government of the Czechoslovak Socialist Republic for the avoidance of double
taxation and the prevention of fiscal evasion with respect to taxes on income**

The Slovak Republic and the Federative Republic of Brazil, desiring to conclude a Protocol amending the Convention between the Government of the Federative Republic of Brazil and the Government of the Czechoslovak Socialist Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed in Brasília on 26 August 1986 (hereinafter referred to as “the Convention”) have agreed as follows:

Article 1

The title to the Convention shall be deleted and replaced by the following:

“Convention

**between
the Slovak Republic
and
the Federative Republic of Brazil**

**for the elimination of double taxation with respect to taxes on income and the prevention of
fiscal evasion and avoidance”**

Article 2

The preamble to the Convention shall be deleted and replaced by the following:

“The Slovak Republic and the Federative Republic of Brazil,

Desiring to further develop their economic relationship and to enhance their cooperation in tax matters,

Intending to conclude a Convention for the elimination of double taxation with respect to taxes on income without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Convention for the indirect benefit of residents of third States),

Have agreed as follows:”

Article 3

Article 1 of the Convention shall be deleted and replaced by the following:

“Article 1 **Personal Scope**

1. This Convention shall apply to persons who are residents of one or both of the Contracting States.
2. For the purposes of this Convention, income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either Contracting State shall be considered to be income of a resident of a Contracting State but only to the extent that the income is treated, for purposes of taxation by that State, as the income of a resident of that State.
3. This Convention shall not affect the taxation, by a Contracting State, of its residents except with respect to the benefits granted under Articles 19, 20, 21, 23, 24, 25 and 27.”

Article 4

Paragraph 2 of Article 2 of the Convention shall be deleted and replaced by the following:

- “2. The taxes to which the Convention shall apply are:
- a) in the case of Brazil:

the federal income tax;

(hereinafter referred to as "Brazilian tax");
 - b) in the case of the Slovak Republic:
 - (i) the tax on income of individuals;
 - (ii) the tax on income of legal persons;

(hereinafter referred to as "Slovak tax").”

Article 5

The following new subparagraph k) shall be introduced into paragraph 1 of Article 3 of the Convention:

- “k) the term “recognised pension fund” of a State means an entity or arrangement established in that State that is treated as a separate person under the taxation laws of that State and:
- (i) that is established and operated exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits

to individuals and that is regulated as such by that State or one of its political subdivisions or local authorities; or

(ii) that is established and operated exclusively or almost exclusively to invest funds for the benefit of entities or arrangements referred to in subdivision (i).”

Article 6

1. Paragraph 1 of Article 4 of the Convention shall be deleted and replaced by the following:

“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 as well as a recognised pension fund of that State. 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.”

2. Paragraph 3 of Article 4 of the Convention shall be deleted and replaced by the following:

“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 endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Convention, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Convention except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States.”

Article 7

Paragraphs 3 to 6 of Article 5 of the Convention shall be deleted and replaced by the following:

“3. 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;
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e),

provided that such activity or, in the case of subparagraph f), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.

4. Paragraph 3 shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State and

- a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of this Article, or
- b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

5. Notwithstanding the provisions of paragraphs 1 and 2, but subject to the provisions of paragraph 6, where a person is acting in a Contracting State on behalf of an enterprise and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are:

- a) in the name of the enterprise, or
- b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or
- c) for the provision of services by that 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 (other than a fixed place of business to which paragraph 4 would apply), would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. Paragraph 5 shall not apply where the person acting in a Contracting State on behalf of an enterprise of the other Contracting State carries on business in the first-mentioned State as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.

7. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of the other Contracting State or it insures risks situated therein through a person, other than an agent of an independent status to whom paragraph 6 shall apply.

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.

9. For the purposes of this Article, a person or enterprise is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person or enterprise shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person or enterprise possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise or in the two enterprises."

Article 8

1. Paragraph 4 of Article 10 of the Convention shall be deleted and replaced by the following:

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

2. Paragraph 7 of Article 10 of the Convention shall be deleted.

Article 9

Paragraph 4 of Article 11 of the Convention shall be deleted and replaced by the following:

"4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as any other income which is also subject to the same taxation treatment as income from money lent by the tax law of the Contracting State in which the income arises."

Article 10

Article 23 of the Convention shall be deleted and replaced by the following:

“Article 23

Methods for the Elimination of Double Taxation

1. Where a resident of a Contracting State derives income which may be taxed in the other Contracting State in accordance with the provisions of this Convention (except to the extent that these provisions allow taxation by that other State solely because the income is also income derived by a resident of that State), the first-mentioned State shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in that other State.

Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in that other State.

2. Where in accordance with any provision of the Convention income derived by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.”

Article 11

Article 25 of the Convention shall be deleted and replaced by the following:

“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 the 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 for the purpose of reaching an agreement in the sense of the preceding paragraphs.”

Article 12

Article 26 of the Convention shall be deleted and replaced by the following:

“Article 26 Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. 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. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

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

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

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.”

Article 13

The following new Article 26-A shall be inserted immediately after Article 26 of the Convention:

“Article 26-A Entitlement to Benefits

1. Except as otherwise provided in this Article, a resident of a Contracting State shall not be entitled to a benefit that would otherwise be accorded by this Convention (other than a benefit under paragraph 3 of Article 4 or Article 25) unless such resident is a “qualified person”, as defined in paragraph 2, at the time that the benefit would be accorded.

2. A resident of a Contracting State shall be a qualified person at a time when a benefit would otherwise be accorded by the Convention if, at that time, the resident is:

- a) an individual;
- b) that Contracting State, or a political subdivision or local authority thereof, or an agency or instrumentality of that State, political subdivision or local authority;
- c) a company or other entity, if the principal class of its shares is regularly traded on one or more recognised stock exchanges;
- d) a person, other than an individual, that:
 - (i) is an entity or organisation that is established and is operated exclusively for charitable, religious, humanitarian, scientific, educational, cultural, social, environmental, public health or similar purposes (or for more than one of those purposes), provided that all or part of its income may be exempt from tax under the domestic law of that Contracting State; or
 - (ii) is a recognised pension fund;
- e) a person other than an individual if, at that time and on at least half of the days of a twelve-month period that includes that time, persons who are residents of that Contracting State and that are entitled to benefits of this Convention under subparagraphs a) to d) own, directly or indirectly, at least 50 per cent of the shares of the person.

3. a) A resident of a Contracting State shall be entitled to benefits under this Convention with respect to an item of income derived from the other Contracting State, regardless of whether the resident is a qualified person, if the resident is engaged in the active conduct of a business in the first-mentioned State, and the income derived from the other State emanates from, or is incidental to, that business. For purposes of this Article, the term “active conduct of a business” shall not include the following activities or any combination thereof:

- (i) operating as a holding company;

(ii) providing overall supervision or administration of a group of companies;

(iii) providing group financing (including cash pooling); or

(iv) making or managing investments, unless these activities are carried on by a bank, insurance enterprise or registered securities dealer in the ordinary course of its business as such.

b) If a resident of a Contracting State derives an item of income from a business activity conducted by that resident in the other Contracting State, or derives an item of income arising in the other State from a connected person, the conditions described in subparagraph a) shall be considered to be satisfied with respect to such item only if the business activity carried on by the resident in the first-mentioned State to which the item is related is substantial in relation to the same or complementary business activity carried on by the resident or such connected person in the other Contracting State. Whether a business activity is substantial for the purposes of this paragraph shall be determined based on all the facts and circumstances.

c) For purposes of applying this paragraph, activities conducted by connected persons with respect to a resident of a Contracting State shall be deemed to be conducted by such resident.

4. A resident of a Contracting State that is not a qualified person shall nevertheless be entitled to a benefit that would otherwise be accorded by this Convention with respect to an item of income if, at the time when the benefit otherwise would be accorded and on at least half of the days of any twelve-month period that includes that time, persons that are equivalent beneficiaries own, directly or indirectly, at least 75 per cent of the shares of the resident.

5. If a resident of a Contracting State is neither a qualified person pursuant to the provisions of paragraph 2 of this Article, nor entitled to benefits under paragraph 3 or 4 of this Article, the competent authority of the Contracting State in which benefits are denied under the previous provisions of this Article may, nevertheless, grant the benefits of this Convention, or benefits with respect to a specific item of income, taking into account the object and purpose of this Convention, but only if such resident demonstrates to the satisfaction of such competent authority that neither its establishment, acquisition or maintenance, nor the conduct of its operations, had as one of its principal purposes the obtaining of benefits under this Convention. The competent authority of the Contracting State to which a request has been made, under this paragraph, by a resident of the other State, shall consult with the competent authority of that other State before either granting or denying the request.

6. For the purposes of this and the previous paragraphs of this Article:

a) the term “recognised stock exchange” means:

(i) any stock exchange established and regulated as such under the laws of either Contracting State; and

(ii) any other stock exchange agreed upon by the competent authorities of the Contracting States;

b) with respect to entities that are not companies, the term “shares” means interests that are comparable to shares;

c) the term “principal class of shares” means the class or classes of shares of a company or entity which represents the majority of the aggregate vote and value of the company or entity;

d) two persons shall be “connected persons” if one owns, directly or indirectly, at least 50 per cent of the beneficial interest in the other (or, in the case of a company, at least 50 per cent of the aggregate vote and value of the company's shares) or another person owns, directly or indirectly, at least 50 per cent of the beneficial interest (or, in the case of a company, at least 50 per cent of the aggregate vote and value of the company's shares) in each person. In any case, a person shall be connected to another if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same person or persons;

e) the term “equivalent beneficiary” means any person who would be entitled to benefits with respect to an item of income accorded by a Contracting State under the domestic law of that Contracting State or this Convention which are equivalent to, or more favourable than, benefits to be accorded to that item of income under this Convention. For the purposes of determining whether a person is an equivalent beneficiary with respect to dividends received by a company, the person shall be deemed to be a company and to hold the same capital of the company paying the dividends as such capital the company claiming the benefit with respect to the dividends holds.

7. a) Where

(i) an enterprise of a Contracting State derives income from the other Contracting State and the first-mentioned State treats such income as attributable to a permanent establishment of the enterprise situated in a third jurisdiction, and

(ii) the profits attributable to that permanent establishment are exempt from tax in the first-mentioned State,

the benefits of this Convention shall not apply to any item of income on which the tax in the third jurisdiction is less than the lower of 15 per cent of the amount of that item of income and 70 per cent of the tax that would be imposed in the first-mentioned State on that item of income if that permanent establishment were situated in the first-mentioned State. In such a case, any income to which the provisions of this paragraph apply shall remain taxable according to the domestic law of the other State, notwithstanding any other provisions of this Convention.

b) The preceding provisions of this paragraph shall not apply if the income derived from the other State emanates from, or is incidental to, the active conduct of a business carried on through the permanent establishment (other than the

business of making, managing or simply holding investments for the enterprise's own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance enterprise or registered securities dealer, respectively).

c) If benefits under this Convention are denied pursuant to the preceding provisions of this paragraph with respect to an item of income derived by a resident of a Contracting State, the competent authority of the other Contracting State may, nevertheless, grant these benefits with respect to that item of income if, in response to a request by such resident, such competent authority determines that granting such benefits is justified in light of the reasons such resident did not satisfy the requirements of this paragraph (such as the existence of losses). The competent authority of the Contracting State to which a request has been made under the preceding sentence shall consult with the competent authority of the other Contracting State before either granting or denying the request.

8. Notwithstanding the other provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Convention.”

Article 14

The preamble to the Protocol to the Convention shall be deleted and replaced by the following:

“The Slovak Republic and the Federative Republic of Brazil have agreed upon the following provisions which constitute an integral part of the Convention:”

Article 15

Subparagraphs a) and b) of paragraph 2 of the Protocol to the Convention shall be deleted and replaced by the following:

“a) in the case of Slovakia:

- (i) the National Bank of Slovakia (Národná banka Slovenska);
- (ii) Export-Import Bank of the Slovak Republic (Eximbanka SR);
- (iii) Slovak Guarantee and Development Bank (Slovenská záručná a rozvojová banka, a. s.); and
- (iv) Debt and Liquidity Management Agency (Agentúra pre riadenie dlhu a likvidity);

b) in the case of Brazil:

- (i) the Central Bank of Brazil;
- (ii) the Brazilian Development Bank (Banco Nacional de Desenvolvimento Econômico e Social - BNDES); and
- (iii) a statutory body or any entity wholly or mainly owned by the Government of Brazil as may be agreed from time to time between the competent authorities of the Contracting States.”

Article 16

The following new paragraphs 7, 8, 9 and 10 shall be included in the Protocol to the Convention:

“7. With reference to Article 2

It is understood that in the case of Brazil the social contribution on net profits (Contribuição Social sobre o Lucro Líquido – CSLL) created by Law 7,689 of 15 December 1988 is included in the taxes referred to in subparagraph a) of paragraph 2 of Article 2.

8. With reference to Article 11

It is understood that interest paid as “interest on the company’s equity” (“*juros sobre o capital próprio*” in Portuguese) in accordance with the Brazilian law is also considered interest for the purposes of paragraph 3 of Article 11.

9. With reference to Article 25

It is understood that, irrespective of the participation of the Contracting States in the “General Agreement on Trade in Services (GATS)”, or in any other international agreements, the tax disputes with regard to the taxes covered by the Convention arising between the Contracting States shall be governed only by the provisions of the Convention.

10. With reference to the Convention

It is understood that the provisions of the Convention shall not prevent a Contracting State from applying its domestic legislation aimed at countering tax evasion and avoidance, including provisions of its tax law regarding “thin capitalization” or to avoid the deferral of payment of the income tax such as the “controlled foreign corporations (CFCs)” legislation or any similar legislation.”

Article 17

Each of the Contracting States shall notify in writing through diplomatic channels to the other the completion of the procedures required by its law for the bringing into force of this Protocol. The Protocol shall enter into force on first day of the third month following date of receipt of the later of these notifications. Provisions of this Protocol shall have effect in both Contracting States:

- a) in respect of taxes withheld at source, to amounts of income paid or credited on or after the first day of January of the calendar year following the year in which this Protocol enters into force,
- b) in respect of other taxes, to such taxes as will be imposed for any tax periods beginning on or after the first day of January of the calendar year following the year in which this Protocol enters into force.

Article 18

This Protocol shall cease to have effect at such time as the Convention ceases to have effect in accordance with Article 29 of the Convention.

In witness whereof the undersigned, duly authorised thereto, have signed this Protocol.

Done in duplicate at, this day of 202..., in the Slovak, Portuguese and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

**For
the Slovak Republic**

**For
the Federative Republic of Brazil**