

**CONVENTION BETWEEN**

**THE REPUBLIC OF**

**AUSTRIA**

**AND**

**THE**

**ARGENTINE REPUBLIC**

**FOR THE ELIMINATION OF DOUBLE TAXATION**

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

**AND THE PREVENTION OF TAX EVASION AND**

**AVOIDANCE**

The Republic of Austria and the Argentine Republic,

Desiring to further develop their economic relationship and to enhance their co-operation in tax matters, and

Intending to conclude a Convention for the elimination of double taxation with respect to taxes on income and on capital 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 1 - PERSONS COVERED**

1. This Convention shall apply to persons who are residents of one or both of the Contracting States.
2. This Convention shall not affect the taxation, by a Contracting State, of its residents except with respect to the benefits granted under paragraph 2 of Article 9, paragraph 2 of Article 18 and Articles 19, 20, 23, 24, 25 and 28.

#### **Article 2 – TAXES COVERED**

1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State 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 Argentina:
    - i. the income tax (Impuesto a las Ganancias); and
    - ii. the personal assets tax (Impuesto sobre los Bienes Personales)(hereinafter referred to as “Argentine tax”);
  - b) In Austria:
    - i. the income tax (die Einkommensteuer);
    - ii. the corporation tax (die Körperschaftsteuer);
    - iii. the land tax (die Grundsteuer);
    - iv. the tax on agricultural and forestry enterprises (die Abgabe von land und forstwirtschaftlichen Betrieben);
    - v. the tax on the value of vacant plots (die Abgabe von Bodenwert bei unbebauten Grundstücken)(hereinafter referred to as “Austrian tax”).
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.

### **Article 3 – GENERAL DEFINITIONS**

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

- a) the term “Argentina” means the Argentine Republic;
- b) the term “Austria” means the Republic of Austria;
- c) the terms “a Contracting State” and “the other Contracting State” mean Argentina 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 except when the ship or aircraft is operated solely between places in a Contracting State in which the enterprise that operates the ship or aircraft does not have its place of effective management;
- h) the term “tax” means Argentine tax or Austrian tax, as the context requires;
- i) the term "competent authority" means:
  - i) in the case of Argentina, the Minister of Treasury or his authorised representative; and
  - ii) in the case of Austria, the Federal Minister of Finance or his authorised representative;
- j) the term “national”, in relation to a Contracting State, means:
  - i) any individual possessing the nationality 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.

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 or the competent authorities agree to a different meaning pursuant to the provisions of Article 25, 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 - RESIDENCE**

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, place of incorporation 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 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 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 5 – PERMANENT ESTABLISHMENT**

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

a) a place of management;

b) a branch;

c) an office;

d) a factory;

e) a workshop; and

f) a mine, an oil or gas well, a quarry or any other place related to the exploitation or extraction of natural resources, including fishing activities.

3. The "permanent establishment" also includes:

a) a building site, a construction, an installation or assembly project or any supervisory activity in connection therewith constitutes a permanent establishment but only if such site, construction, project or activity lasts more than six months.

b) the furnishing of services, including consultancy services, by an enterprise of a Contracting State through employees or other personnel engaged by the enterprise for such purposes, but only where activities of that nature continue (for the same or connected project) within the territory of the other Contracting State for a period or periods aggregating more than 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;
- 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.

5. Paragraph 4 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.

6. Notwithstanding the provisions of paragraphs 1 and 2 but subject to the provisions of paragraph 7, 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 4 which, if exercised through a fixed place of business (other than a fixed place of business to which paragraph 5 would apply), would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

7. Paragraph 6 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.

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 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 and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from 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 on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on 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 are attributable to that permanent establishment.

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

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

4. 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. 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.

6. Notwithstanding the provisions of paragraph 1, profits of an enterprise of a Contracting State derived from insurance and re-insurance activities by insuring property situated in the other Contracting State or persons who are residents thereof at the moment of signature of the insurance contract, may be taxable in that other State, whether the enterprise has a permanent establishment therein or elsewhere. However, in such case, the tax charged in that other State shall not exceed 2.5 per cent of the gross amount of the premium.

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.

#### **Article 8 – SHIPPING AND AIR TRANSPORT**

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, and if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

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 taxed 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 make an appropriate adjustment to the amount of the tax charged therein on those profits. 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 Contracting State.

2. However, dividends paid by a company which is a resident of a Contracting State may also be taxed in that State 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) 10 per cent of the gross amount of the dividends if the beneficial owner is a company that holds directly at least 25 per cent of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganization, such as a merger or divisive reorganization, of the company that holds the shares or that pays the dividend);

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

The provisions of 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 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, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14 shall apply.

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 connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of income or profits arising in such other State.

## **Article 11 – INTEREST**

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

2. However, interest arising in a Contracting State may also be taxed in that State 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 12 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State if:

a) the payer of the interest is that State itself, a political subdivision, a local authority or statutory body thereof; or

b) it is paid in respect of a loan made, guaranteed or insured, or any other debt-claim or credit created, guaranteed or insured by the other Contracting State, a political subdivision, a local authority or statutory body thereof; or

c) it is beneficially owned by a resident of the other Contracting State and is paid in respect of a loan granted by a bank to an unrelated party at preferential rates and which is repayable over a period of not less than five years; or

d) it is beneficially owned by a resident of the other Contracting State and is paid with respect to indebtedness arising as a consequence of the sale on credit by a resident of that other State of industrial, commercial or scientific equipment, including the purchase of such equipment through a financial leasing contract, provided that neither the sale nor the indebtedness was between related persons.

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. Penalty charges for late payment shall not be regarded as interest for the purposes of this Article.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14 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 he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or the fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, 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 Convention.

## **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 Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed:
  - a) 3 per cent of the gross amount paid for the use of, or the right to use, news;
  - b) 5 per cent of the gross amount paid for the use of, or the right to use, copyright of literary, artistic or scientific work (but not including royalties in respect of cinematographic films, videotapes or other means of reproduction for use in connection with television);
  - c) 10 per cent of the gross amount paid for the use of, or the right to use, industrial, commercial or scientific equipment or any patent, trade mark, design or model, plan, secret formula or process or for information concerning industrial, commercial or scientific experience, including payments for the rendering of technical assistance; and
  - d) 15 per cent of the gross amount of the royalties in all other cases.
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any news, any copyright of literary, artistic or scientific work (including cinematograph films, videotapes or other means of reproduction for use in connection with television), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience, including payments for the rendering of technical assistance.
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, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14 shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that Contracting 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 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.
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 the amount that 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 a 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.

## **Article 13 – CAPITAL GAINS**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in paragraph 2 of Article 6 and 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, or of movable property pertaining to a fixed base through which a resident of a Contracting State performs independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), or such fixed base, may be taxed in that other State.
3. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic and 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.
4. Gains derived by a resident of a Contracting State from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the other Contracting State if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property, as defined in Article 6, situated in that other State.
5. Unless the provisions of paragraph 4 are applicable, gains derived by a resident of a Contracting State from the alienation of shares representing the capital of a company that is a resident of the other Contracting State may be taxed in that other State, but the tax so charged shall not exceed:
  - a) 5 per cent of the gain if it is realized on a participation detained by a Contracting State;
  - b) 10 per cent of the gain if it is realized on a participation detaining directly at least 25 per cent of the capital of the company throughout a 365 day period preceding the alienation (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganization, such as a merger or divisive reorganization, of the company);
  - c) 15 per cent of the gain in all other cases.
6. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

## **Article 14 –INDEPENDENT PERSONAL SERVICES**

1. Income derived by an individual who is resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:
  - 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 – INCOME FROM EMPLOYMENT**

1. With the exception of cases set out in Articles 16, 18 and 19 of this Convention, 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 within any twelve month period beginning or ending in a fiscal year; 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 by a resident of a Contracting State in respect of an employment, as a member of the regular complement of a ship or aircraft, that is exercised aboard a ship or aircraft operated in international traffic, other than aboard a ship or aircraft operated solely within the other Contracting State, shall be taxable only in the first-mentioned State.

### **Article 16 – DIRECTORS' FEES**

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

### **Article 17 – ENTERTAINERS AND SPORTSPERSONS**

1. Notwithstanding the provisions of Articles 14 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 sportsperson, from that resident's 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 sportsperson acting as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to income derived by an entertainer or a sportsperson, who is a resident of a Contracting State, from activities performed in the context of a visit in the other Contracting State, if the visit is substantially supported by public funds of the first-mentioned State, a political subdivision or a local authority thereof or by an institution which is recognised as a non-profit institution. In such a case the income shall be taxable only in the Contracting State of which the entertainer or sportsperson is a resident.

## **Article 18 – PENSIONS**

1. Subject to the provisions of paragraph 2 of Article 19, 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.
2. Notwithstanding the provisions of paragraph 1, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political subdivision or a local authority thereof shall be taxable only in that State.

## **Article 19 – GOVERNMENT SERVICE**

1. a) Wages, salaries, and other similar remunerations, other than pensions, paid by a Contracting State, a political subdivision, a local authority or a statutory body thereof, to an individual in respect of services rendered to that State, political subdivision, local authority or body, shall be taxable only in that State.
  - b) However, such wages, salaries, and other similar remunerations shall be taxable only in the other Contracting State if the services are rendered in that other 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, a political subdivision, a local authority or a statutory body thereof, to an individual in respect of services rendered to that Contracting State, political subdivision, a local authority or body thereof, shall be taxable only in that Contracting 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 other State.
3. The provisions of Articles 15, 16, 17 and 18 shall apply to wages, salaries and other similar remuneration, and pensions, in respect of services rendered in connection with a business carried on by a Contracting State, a political subdivision, a local authority or a statutory body thereof.

## **Article 20 – 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 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 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 article 14, as the case may be, shall apply.

3. Items of income of a resident of a Contracting State, not dealt with in the foregoing Articles of this Convention, and arising in the other Contracting State, may be taxed in that other State.
4. Income derived by a resident of a Contracting State from the other Contracting State under a legal claim to maintenance may not be taxed in the first-mentioned State if such income would be exempt from tax according to the laws of the other Contracting State.

## **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 or by movable property pertaining to a fixed base available to a resident of a Contracting State for the purpose of performing independent personal services, may be taxed in that other State.
3. Capital represented by ships and aircraft operated in international traffic and by 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.
4. Capital represented by shares in companies or comparable interest, such as interest in a partnership or trust, that is resident in a Contracting State, owned by a resident of the other Contracting State may be taxed in the first mentioned State.
5. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

## **Article 23 – ELIMINATION OF DOUBLE TAXATION**

In Argentina:

1. Where a resident of Argentina derives income or owns capital which may be taxed in Austria in accordance with the provisions of this Convention (except to the extent that these provisions allow taxation by Austria solely because the income is also income derived by a resident of Austria or because the capital is also capital owned by a resident of Austria), Argentina shall allow:

- a) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Austria;
- b) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in Austria.

Such deduction in either case shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in Austria.

Where in accordance with any provision of this Convention income derived or capital owned by a resident of Argentina is exempt from tax therein, Argentina may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

2. In Austria:

a) Where a resident of Austria derives income or owns capital which may be taxed in Argentina in accordance with the provisions of this Convention (except to the extent that these provisions allow taxation by Argentina solely because the income is also income derived by a resident of

Argentina or because the capital is also capital owned by a resident of Argentina), Austria shall, subject to the provisions of subparagraphs b) to d), exempt such income or capital from tax.

b) Where a resident of Austria derives items of income which may be taxed in Argentina in accordance with the provisions of Articles 10, 11, 12, paragraphs 4 and 5 of Article 13 and paragraph 3 of Article 21 (except to the extent that these provisions allow taxation by Argentina solely because the income is also income derived by a resident of Argentina), Austria shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Argentina. 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 Argentina.

c) Dividends in the sense of subparagraph a) of paragraph 2 of Article 10 paid by a company which is a resident of Argentina to a company which is a resident of Austria shall be exempt from tax in Austria, subject to the relevant provisions of the domestic law of Austria but irrespective of any deviating minimum holding requirements provided for by that law.

d) Where in accordance with any provision of the Convention income derived or capital owned by a resident of Austria is exempt from tax in Austria, Austria may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

e) The provisions of subparagraph a) shall not apply to income derived or capital owned by a resident of Austria where Argentina applies the provisions of this Convention to exempt such income or capital from tax or applies the provisions of paragraph 2 of Article 10, 11 or 12 to such income.

#### **Article 24 – NON-DISCRIMINATION**

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other Contracting State in the same circumstances, in particular with respect to residence, are or may be subjected. The provisions of this paragraph shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. Stateless persons who are residents of a Contracting State shall not be subjected in either 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 the State concerned in the same circumstances, in particular with respect to residence, are or may be subjected.

3. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other Contracting 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.

4. 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 Contracting 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.

5. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned Contracting 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 endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the provisions of 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.

#### **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, or of their political subdivisions or local authorities, 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 27 – ASSISTANCE IN THE COLLECTION OF TAXES**

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term “revenue claim” as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State 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, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting 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 first-mentioned 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 Contracting State;

b) to carry out measures which would be contrary to public policy (ordre public);

c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;

d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

## **Article 28 – 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 29 - ENTITLEMENT TO BENEFITS**

1. 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 60 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 the 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.

2. Notwithstanding the other provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income or capital 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 30 – ENTRY INTO FORCE**

1. The Governments of the Contracting States shall notify each other, through diplomatic channels, the compliance with the procedures required by its law for the entry into force of this Convention.

2. The present Convention shall enter into force after the later of the notifications referred to in paragraph 1 and its provisions shall have effect in both Contracting States:

a) in respect of taxes withheld at source, on amounts paid on or after the first day of January, in the calendar year next following that in which the Convention enters into force;

b) in respect of other taxes on income and on capital, for taxation years beginning on or after the first day of January, in the calendar year next following that in which the Convention enters into force.

### **Article 31 – TERMINATION**

1. This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention by giving notice of termination, 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. In such cases, the Convention shall cease to have effect:

- a) in respect of taxes withheld at the source on amounts paid on or after the first day of January in the calendar year next following that in which the notice of termination is given;
- b) in respect of other taxes on income and on capital, for taxation years beginning on or after the first day of January in the calendar year next following that in which the notice of termination is given.

IN WITNESS WHEREOF the Plenipotentiaries of the two Contracting States, duly authorised thereto, have signed this Convention.

DONE at \*\*\*, this \*\*\* day of \*\*\*, 2019, in two originals, both in the English language.

For the Republic of Austria:

For the Argentine Republic:

## PROTOCOL

The Republic of Austria and the Argentine Republic have agreed at the signing at \*\*\* on the \*\*\* of \*\*\* 2019, the Convention for the Elimination of Double Taxation with respect to Taxes on Income and on Capital and the Prevention of Tax Evasion and Avoidance, upon the following provisions which shall form an integral part of the said Convention:

### 1. With reference to Article 5:

a) It is understood that fishing activities shall only constitute a permanent establishment if they last at least 90 days within any 12 month period.

b) In the event that pursuant to an agreement concluded with another State after the date of signature of this Convention, Argentina agrees to a period longer than the one provided for in subparagraph a) of paragraph 3, such longer period shall automatically apply as established in the agreement concluded with that other State, for the purpose of this Convention, when the provision of the agreement concluded with that other State becomes applicable. In such case, the competent authority of Argentina shall inform the competent authority of Austria that the conditions for the application of this provision have been met.

c) In the event that pursuant to an agreement concluded with another State after the date of signature of this Convention, Argentina agrees not to include a provision similar to that provided for in subparagraph b) of paragraph 3, the referred provision shall automatically have no effect for the purpose of this Convention, when the provision of the agreement concluded with that other State becomes applicable. In such case, the competent authority of Argentina shall inform the competent authority of Austria that the conditions for the application of this provision have been met.

d) In the event that pursuant to a revision of a current double tax agreement of Argentina a similar provision as that provided for in subparagraph b) of paragraph 3 of this Convention is not included in such agreement, the referred provision shall automatically have no effect for the purpose of this Convention, when the revision of the current double tax agreement becomes applicable. In such case, the competent authority of Argentina shall inform the competent authority of Austria that the conditions for the application of this provision have been met.

### 2. With reference to Article 7:

a) It is understood that the deductions referred to in paragraph 3 shall apply insofar and under the conditions provided under the internal laws of that State.

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.

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, not through a permanent establishment but in connection with a permanent establishment situated in the other Contracting State, shall not be attributed to that permanent establishment.

d) In the case of taxation in Austria, it is understood that the term “profits” as used in this Article includes the profits derived by any partner from his participation in a partnership, including a participation in a sleeping partnership (Stille Gesellschaft) created under Austrian law.

### 3. With regard to the limitation of paragraph 2 of Article 10:

It is understood that a withholding tax applicable according to the domestic law of the Contracting States, where a company pays dividends or distributes profits that were not previously subject to tax in the hands of the company, is also covered by the last sentence of paragraph 2 as a tax on the profits of the company.

The provision of this paragraph shall not apply to distributions of accumulated profits generated in taxable years commencing after 31<sup>st</sup> December 2017.

4. With reference to Article 11:

It is understood that subparagraph b) of paragraph 3 applies to:

- i) in the case of Austria, Oesterreichische Nationalbank (OeNB), Oesterreichische Kontrollbank AG (OeKB) and Oesterreichische Entwicklungsbank AG (OeEB);
- ii) in the case of Argentina, Banco Central de la República Argentina, Banco de la Nación Argentina and Banco de Inversión y Comercio Exterior;
- iii) to any other institution as may be agreed from time to time between the competent authorities of the Contracting States.

5. With regard to Article 12:

a) The tax limitation established in subparagraph b) of paragraph 2 referred to royalties derived from the use or the right to use any copyright of literary, theatrical, musical or any other artistic work, shall apply solely if the beneficial owner is the author or his heirs.

b) Regarding contracts on transfer of technology, in the case of Argentina, the tax limitation established in paragraph 2 shall apply provided that such contracts were duly registered and authorized in accordance with the requirements provided by its domestic laws.

c) It is understood that paragraph 3 does not include payments for financial leasing that are covered by subparagraph d) of paragraph 3 of Article 11.

d) The term “technical assistance” referred to in paragraph 3 is understood as the rendering of customized services involving the application by the provider of any non-patentable specialized knowledge, ability or experience, and not necessarily requiring the transmission of such knowledge to the client. It is understood that the rendering of standardized services is not covered by the term “technical assistance”.

6. With reference to Articles 10, 11, 12 and 13:

a) The Competent Authorities of the Contracting States shall by mutual agreement settle the mode of application of the limitation provided for in paragraph 2 of Article 10, paragraph 2 of Article 11, paragraph 2 of Article 12 and paragraph 5 of Article 13.

b) In the event that pursuant to an agreement concluded with another State after 1 January 2019, or in the event that pursuant to a revision of a current double taxation agreement of Argentina, Argentina agrees to a lower rate or a more favorable treatment than those provided for in paragraph 2 of Article 10, paragraph 2 of Article 11, paragraphs 2 and 3 of Article 12 (including a more limited definition of the term royalties), and paragraph 5 of Article 13 of the Convention, such lower rate or more favorable treatment shall automatically apply under the same conditions as established in the Convention concluded with that other State, for the purpose of the Convention, when the provision of the Convention concluded with another State becomes applicable. In such case, the competent authority of Argentina shall inform the competent authority of Austria within a period of 6 months that the conditions for the application of this provision have been met.

7. With reference to Article 14:

It is understood that this Article does not include technical assistance referred to in Article 12.

8. With reference to Article 17:

It is understood that paragraph 3 shall also apply to legal entities which carry on orchestras, theatres, ballet groups as well as to members of such cultural entities if such legal entities are substantially non-profit in the long term and if this is certified by the competent authority of the State of residence.

9. With reference to paragraph 4 of Article 21:

- a) For the purposes of paragraph 4 such remuneration shall also include remuneration for damage resulting from crimes, vaccinations or similar reasons.
- b) The income mentioned in this paragraph shall not be taken into consideration when applying the exemption with progression method.

10. With reference to Article 26:

i. The competent authority of the applicant State shall provide the following information to the competent authority of the requested State when making a request for information under the Convention to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
  - (b) a statement of the information sought including its nature and the form in which the applicant State wishes to receive the information from the requested State;
  - (c) the tax purpose for which the information is sought;
  - (d) grounds for believing that the information requested is held in the requested State or is in the possession or control of a person within the jurisdiction of the requested State;
  - (e) to the extent known, the name and address of any person believed to be in possession of the requested information;
  - (f) a statement that the applicant State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.
- ii. It is understood that the exchange of information provided in Article 26 does not include measures which constitute “fishing expeditions”.
- iii. It is understood that paragraph 5 of Article 26 does not obligate the Contracting States to exchange information on a spontaneous or automatic basis.

11. With respect to Article 27:

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

12. Interpretation of the Convention

The OECD Commentary - as it may be revised from time to time - constitutes a means of interpretation in the sense of Article 32 of the Vienna Convention of 23 May 1969 on the Law of Treaties.

13. It is understood that nothing in the Convention shall prejudice the right of each Contracting State to apply its domestic laws and measures concerning abuse, including thin capitalization rules, whether or not described as such.

14. In the event that the Argentine Republic changes its policy with respect to arbitration as a solution for unresolved mutual agreement procedures, the competent authorities shall consult each other in order to consider the negotiation of an agreement on the modification of the Convention.

IN WITNESS WHEREOF the Plenipotentiaries of the two Contracting States, duly authorised thereto, have signed this Protocol.

DONE at \*\*\*, this \*\*\* day of \*\*\*, 2019, in two originals, both in the English language.

For the Republic of Austria:

For the Argentine Republic: