

No. 43445

**Venezuela
and
United States of America**

Convention between the Government of the Republic of Venezuela and the Government of the United States of America for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital (with protocol). Caracas, 25 January 1999

Entry into force: *30 December 1999 by notification, in accordance with article 29*

Authentic texts: *English and Spanish*

Registration with the Secretariat of the United Nations: *Venezuela, 2 January 2007*

**Venezuela
et
États-Unis d'Amérique**

Convention entre le Gouvernement de la République du Venezuela et le Gouvernement des États-Unis d'Amérique tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu et sur la fortune (avec protocole). Caracas, 25 janvier 1999

Entrée en vigueur : *30 décembre 1999 par notification, conformément à l'article 29*

Textes authentiques : *anglais et espagnol*

Enregistrement auprès du Secrétariat des Nations Unies : *Venezuela, 2 janvier 2007*

[ENGLISH TEXT – TEXTE ANGLAIS]

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF
VENEZUELA AND THE GOVERNMENT OF THE UNITED STATES OF
AMERICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE
PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON
INCOME AND CAPITAL

The Government of the Republic of Venezuela and the Government of the United States of America,

Desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital,

Have agreed as follows:

Article 1. General scope

1. This Convention shall apply to persons who are residents of one or both of the Contracting States, except as otherwise provided in the Convention.
2. This Convention shall not restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded:
 - a) By the laws of either Contracting State; or
 - b) By any other agreement between the Contracting States.
3. Notwithstanding the provisions of subparagraph 2 b):
 - a) The provisions of Article 26 (Mutual Agreement Procedure) of this Convention exclusively shall apply to any dispute concerning whether a measure is within the scope of this Convention, and the procedures under this Convention exclusively shall apply to that dispute; and
 - b) Unless the competent authorities determine that a taxation measure is not within the scope of this Convention, the non-discrimination obligations of this Convention exclusively shall apply with respect to that measure, except for such national treatment or most favored nation obligations as may apply to trade in goods under the General Agreement on Tariffs and Trade. No national treatment or most favored nation obligation under any other agreement shall apply with respect to that measure.
 - c) For the purpose of this paragraph, a "measure" is a law, regulation, rule, procedure, decision, administrative action, or any similar provision or action.
4. Notwithstanding any provision of the Convention except paragraph 5 of this Article, a Contracting State may tax its residents (as determined under Article 4 (Residence)), and by reason of citizenship may tax its citizens, as if the Convention had not come into effect.

5. The provisions of paragraph 4 shall not affect:
 - a) The benefits conferred by a Contracting State under paragraph 2 of Article 9 (Associated Enterprises), and under Articles 24 (Relief from Double Taxation), 25 (Non-discrimination), and 26 (Mutual Agreement procedure); and
 - b) The benefits conferred by a Contracting State under Articles 20 (Government Service), 21 (Students, Trainees, Teachers and Researchers), and 28 (Diplomatic Agents and Consular Officers), upon individuals who are neither citizens of, nor have immigrant status in, that State.

Article 2. Taxes covered

1. The existing taxes to which this Convention shall apply are:
 - a) In Venezuela: the tax on income and business assets tax;
 - b) In the United States: the Federal income taxes imposed by the Internal Revenue Code (but excluding social security contributions).
2. 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 State shall notify each other of any significant changes that have been made in their respective taxation laws and of any official published material concerning the application of the Convention.

Article 3. General definitions

1. For the purposes of this Convention, unless the context otherwise requires:
 - a) The term "Venezuela" means the Republic of Venezuela;
 - b) The term "United States" means the United States of America but does not include Puerto Rico, the Virgin Islands, Guam, or any other United States possession or territory;
 - c) The terms "a Contracting State" and "the other Contracting State" mean Venezuela or the United States as the context requires;
 - d) The term "person" includes an individual, an estate, a trust, a partnership, 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; the terms also include an enterprise carried on by a resident of a Contracting State through an entity that is treated as fiscally transparent in that Contracting State;
 - g) The term "national" means:
 - i) Any individual possessing the nationality of a Contracting State; and

- ii) Any legal person, association, or other entity (including an "entidad" or "colectividad") deriving its status as such from the law in force in a Contracting State;
- h) The term "international operation of ships or aircraft" means any transport by a ship or aircraft, except when such transport is solely between places within a Contracting State;
- i) The term "competent authority" means:
 - i) In the case of the United States: the Secretary of the Treasury or his delegate; and
 - ii) In the case of Venezuela: the Integrated National Service of Tax Administration (Servicio Nacional Integrado de Administración Tributaria (SENIAT), its authorized representative or the authority which is designated by the Ministry of Finance as a competent authority for the purposes of this Convention.

2. As regards the application of the Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 26 (Mutual Agreement Procedure), have the meaning which it has under the laws of that State concerning the taxes to which the Convention applies.

Article 4. Residence

1. For the purposes of this Convention, the term "resident of a Contracting State" means:

- a) In the case of the United States, any person who, under the laws of the United States, is liable to tax therein by reason of his domicile, residence, citizenship, place of incorporation, or any other criterion of a similar nature. The term includes an individual who is a United States citizen or an alien lawfully admitted to the United States for permanent residence (a "green card" holder) and who is not a resident of Venezuela under paragraph 1 b) only if the individual has a permanent home or habitual abode in the United States.
- b) In the case of Venezuela, any resident individual ("domiciliado"), any legal person that is created or organized under the laws of Venezuela, and any entity or collectivity ("entidad o colectividad") formed under the laws of Venezuela which is not a legal person but is subject to the taxation applicable to corporations in Venezuela.

2. An item of income, profit or gain derived through an entity that is fiscally transparent under the laws of either Contracting State shall be considered to be derived by a resident of a State to the extent that the item is treated for purposes of the taxation law of such Contracting State as the income, profit or gain of a resident.

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

- a) He shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (center of vital interests);
- b) If the State in which he has his center of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- c) If he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- d) If he is a national of both States or of neither of them, the competent authorities of the Contracting States shall endeavor to settle the question by mutual agreement.

4. 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 endeavor to settle the question by mutual agreement and determine the mode of application of the Convention to such person. If they are unable to make such a determination, such person shall not be considered a resident of either Contracting State for purposes of enjoying benefits under this Convention.

Article 5. Permanent establishment

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

2. The term "permanent establishment" includes especially:

- a) A place of management;
- b) A branch;
- c) An office;
- d) A factory;
- e) A workshop; and
- f) A mine, an oil or gas well, a quarry, or any other place of extraction of natural resources.

3. The term "permanent establishment" likewise encompasses:

- a) A building site or construction or installation project, or an installation or drilling rig or ship used for the exploration of natural resources, but only where such site, project or activities continue for a period or periods aggregating more than 183 days within any twelve-month period commencing or ending in the taxable year concerned; and
- b) The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the country for a period or periods aggregating