

# NELSON SLOSBERGAS P.A.

1110 Brickell Avenue Suite 310  
Miami, Florida 33131  
E-Mail Address: nelson@miami-intl-law.com  
Web Page: Miami-intl-law.com

NELSON SLOSBERGAS  
Attorney & Civil Law Notary

(305) 374-0030  
(305) 374-2855

## MEMORANDUM

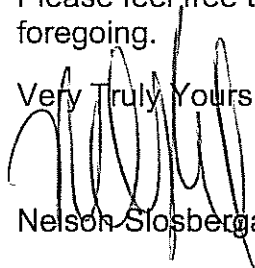
<b>TO:</b> Clients and Friends
<b>FROM:</b> Nelson Slosbergas, Esq.
<b>RE:</b> U.S.-Brazil Agreement for the Exchange of Information Relating to Taxes ("Agreement")
<b>Date:</b> May 14, 2007

1. Please find attached the above referenced Agreement and accompanying summary prepared by David Spencer, Esq., a specialized attorney located in New York. We would like to stress a few points regarding this Agreement to assist you in better understanding the repercussions if the Agreement is implemented.
2. The Agreement, when and if approved, is meant to cover civil as well as criminal tax matters. Thus, it is broader than other exchange of information agreements. It is meant to override the bank secrecy and confidentiality provisions of U.S. law. This point will be discussed in more detail below. It is meant to work on an exchange of information after formal request is made by the government authorities. Thus, there is no automatic exchange of information. The request must be detailed and only made after the requesting party has exhausted all remedies in its own country to acquire the information. It was Mr. Spencer's view that that the requirement of reciprocity in the Agreement may pose some challenges to the parties. If Brazil is to receive information from U.S. authorities, it must be able to provide like information in the event that the U.S. had made a similar request.
3. It is important to note that the U.S. can only exchange information that it possesses. While "know your customer" information will be requested by all

reputable financial institutions today, this KYC information is kept on file only at the financial institution and is not required to be filed with any governmental agency in most circumstances. For example, the W-8BEN form executed by the client is not reported to the U.S. tax authorities. The interest paid on bank accounts is not reported either. Despite the foregoing, we feel that anonymity for tax purposes generally is best achieved by the non-U.S. person investing through an offshore corporation such as a company formed in the British Virgin Islands, Panama, or other possibly the UK or Netherlands for certain situations. The U.S. does not require tax automatic disclosure of the ultimate beneficial owner of non U.S. entities.

Please feel free to contact me should you have any questions regarding the foregoing.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Nelson Slosbergas', written over the typed name below.

Nelson Slosbergas

# **U.S. – Brazil Agreement for the Exchange of Information Relating to Taxes.**

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF  
AMERICA AND THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF  
BRAZIL FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES

Whereas the Government of the United States of America and the Government of the  
Federative Republic of Brazil (“the parties”) wish to establish the terms and conditions  
governing the exchange of information relating to taxes;

Now, therefore, the parties have agreed as follows:

ARTICLE I  
SCOPE OF THE AGREEMENT

The parties shall provide assistance through exchange of information that may be relevant to the administration and enforcement of the domestic laws of the parties concerning the taxes covered by this Agreement, including information that may be relevant to the determination, assessment, enforcement or collection of tax with respect to persons subject to such taxes, or to the investigation or prosecution of criminal tax matters. The parties shall provide assistance through exchange of information on request pursuant to Article V and in such additional forms as may be agreed upon by the competent authorities pursuant to Article X, in accordance with the terms of this Agreement.

ARTICLE II  
JURISDICTION

Information shall be exchanged in accordance with this Agreement by the competent authority of the requested party without regard to whether the person to whom the information relates is, or whether the information is held by, a resident or national of a party.

ARTICLE III  
TAXES COVERED

1. This Agreement shall apply to the following taxes imposed by the parties:

(a) in the case of the United States of America:

- (i) federal income taxes;
- (ii) federal taxes on self-employment income;
- (iii) federal estate and gift taxes; and
- (iv) federal excise taxes;

(b) in the case of the Federative Republic of Brazil:

- (i) individual and corporate income tax (IRPF and IRPJ, respectively);
- (ii) industrialized products tax (IPI);
- (iii) financial transactions tax (IOF);
- (iv) rural property tax (ITR);
- (v) contribution for the program of social integration (PIS);
- (vi) social contribution for the financing of the social security (COFINS); and
- (vii) social contribution on net profits (CSLL).

2. This Agreement shall apply also to any identical or substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the parties so agree. The competent authority of each party shall notify the other of changes in laws which may affect the obligations of that party pursuant to this Agreement.

3. This Agreement shall not apply to the extent that an action or proceeding concerning taxes covered by this Agreement is barred by the requesting party's statute of limitations.

4. This Agreement shall not apply to taxes imposed by states, municipalities or other political subdivisions, or possessions of a party.

ARTICLE IV  
DEFINITIONS

1. In this Agreement:

"competent authority" means, for the United States of America, the Secretary of the Treasury or his delegate, and for the Federative Republic of Brazil, the Minister of Finance, the Secretary of Federal Revenue, or their authorized representatives;

"criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting party;

"criminal laws" means all criminal laws designated as such under domestic law, irrespective of whether contained in the tax laws, the criminal code or other statutes;

"information" means any fact, statement, document or record in whatever form;

"information gathering measures" means judicial, regulatory, criminal or administrative procedures enabling a requested party to obtain and provide the information requested;

"information subject to legal privilege" means information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are produced for the purposes of seeking or providing legal advice or produced for the purposes of use in existing or contemplated legal proceedings;

"national" means:

(a) in the case of the United States of America, any individual who is a citizen or national of the United States of America, and a person other than an individual deriving its status as such from the laws in force in the United States of America or any political subdivision thereof;

(b) in the case of the Federative Republic of Brazil, any individual possessing the Brazilian nationality and any legal entity or any other collective entity deriving its status as such from the laws in force in the Federative Republic of Brazil;

"person" means a natural person, a company or any other body or group of persons;

"requested party" means the party to this Agreement which is requested to provide or has provided information in response to a request;

"requesting party" means the party to this Agreement submitting a request for or having received information from the requested party;

"tax" means any tax covered by this Agreement.

2. For purposes of determining the geographical area within which jurisdiction to compel production of information may be exercised, the term "United States of America" means the United States of America, including Puerto Rico, the Virgin Islands, Guam, and any other United States possession or territory.

3. Any term not defined in this Agreement, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article X, shall have the meaning which it has under the laws of the party applying this Agreement, any meaning under the applicable tax laws of that party prevailing over a meaning given to the term under other laws of that party.

ARTICLE V  
EXCHANGE OF INFORMATION UPON REQUEST

1. The competent authority of the requested party shall provide upon request by the requesting party information for the purposes referred to in Article I. Such information shall be exchanged without regard to whether the requested party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested party if it had occurred in the territory of the requested party. The competent authority of the requesting party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means, except where recourse to such means would give rise to disproportionate difficulty.
2. If the information in the possession of the competent authority of the requested party is not sufficient to enable it to comply with the request for information, the requested party shall take all relevant information gathering measures to provide the requesting party with the information requested, notwithstanding that the requested party may not, at that time, need such information for its own tax purposes. Privileges under the laws and practices of the requesting party shall not apply in the execution of a request by the requested party and such matters shall be reserved for resolution by the requesting party.
3. If specifically requested by the competent authority of the requesting party, the competent authority of the requested party shall, to the extent allowable under its domestic laws,
  - (a) specify the time and place for the taking of testimony or the production of books, papers, records, and other tangible property;
  - (b) place the individual giving testimony or producing books, papers, records and other tangible property under oath;
  - (c) permit representatives of the requesting party's competent authority (i.e., government officials) to be present in the offices of the requested party's tax administration during the pertinent part of a tax examination and to verify documents, registers and other relevant data with respect to such examination;
  - (d) provide officials permitted to be present with an opportunity to question, through the executing authority, the individual giving testimony or producing books, papers, records and other tangible property;
  - (e) obtain original and unedited books, papers, and records, and other tangible property, including, but not limited to, information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
  - (f) obtain or produce true and correct copies of original and unedited books, papers and records;
  - (g) determine the authenticity of books, papers, records and other tangible property produced, and provide authenticated copies of original records;
  - (h) examine the individual producing books, papers, records and other tangible property regarding the purpose for which and the manner in which the item produced is or was maintained;
  - (i) permit the competent authority of the requesting party to provide written questions to which the individual producing books, papers, records and other tangible property is to respond regarding the item produced;

(j) obtain information regarding the ownership of companies, partnerships, trusts, foundations and other persons, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this Agreement does not create an obligation on the parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes, unless such information can be obtained without giving rise to disproportionate difficulties;

(k) perform any other act not in violation of the laws or at variance with the administrative practice of the requested party;

(l) certify either that procedures requested by the competent authority of the requesting party were followed or that the procedures requested could not be followed, with an explanation of the deviation and the reason therefor.

4. Any request for information made by a party shall be framed with the greatest degree of specificity possible. In all cases, such requests shall specify in writing the following:

(a) the identity of the taxpayer whose tax or criminal liability is at issue;

(b) the period of time with respect to which the information is requested;

(c) the nature of the information requested and the form in which the requesting party would prefer to receive it;

(d) the reasons for believing that the information requested may be relevant to tax administration and enforcement of the requesting party, with respect to the person identified in subparagraph (a) of this paragraph;

(e) to the extent known, the name and address of any person believed to be in possession or control of the information requested;

(f) a statement as to whether the requesting party would be able to obtain and provide the requested information if a similar request were made by the requested party;

(g) a statement that the requesting party has pursued all reasonable means available in its own territory to obtain the information, except where that would give rise to disproportionate difficulty.

#### ARTICLE VI TAX INVESTIGATIONS ABROAD

1. By reasonable notice given in advance, a party may request that the other party allow officials of the requesting party to enter the territory of the requested party, to the extent permitted under its domestic laws, to interview individuals and examine records with the prior written consent of the individuals concerned. The competent authority of the requesting party shall notify the competent authority of the requested party of the time and place of the intended meeting with the individuals concerned.

2. At the request of the competent authority of the requesting party, the competent authority of the requested party may permit representatives of the competent authority of the requesting party to attend a tax examination in the territory of the requested party.

3. If the request referred to in paragraph 2 is granted, the competent authority of the requested party conducting the examination shall, as soon as possible, notify the competent authority of the requesting party of the time and place of the examination, the official in the

requested party responsible for carrying out the examination, and the procedures and conditions required by the requested party for the conduct of the examination. All decisions regarding the conduct of the examination shall be made by the requested party conducting the examination.

## ARTICLE VII POSSIBILITY OF DECLINING A REQUEST

1. The competent authority of the requested party may decline to assist:
  - (a) where the request is not made in conformity with this Agreement;
  - (b) where the requesting party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or
  - (c) where the disclosure of the information requested would be contrary to the public policy of the requested party.
2. This Agreement shall not impose upon a party any obligation:
  - (a) to provide information subject to legal privilege, nor any trade, business, industrial, commercial or professional secret or trade process, provided that information described in Article V (3)(e) shall not by reason of that fact alone be treated as such a secret or trade process;
  - (b) to carry out administrative measures at variance with its laws and administrative practices; or
  - (c) to supply information requested by the requesting party to administer or enforce a provision of the tax law of the requesting party, or any requirement connected therewith, that would discriminate against a national of the requested party. A provision of tax law, or a connected requirement, shall be considered to be discriminatory against a national of the requested party if it is different or more burdensome with respect to a national of the requested party than with respect to a national of the requesting party in the same circumstances. For purposes of the preceding sentence, a national of the requesting party who is subject to tax on worldwide income is not in the same circumstances as a national of the requested party who is not subject to such taxation. The provisions of this subparagraph shall not be construed to prevent the exchange of information with respect to taxes imposed by the Government of the United States of America or the Government of the Federative Republic of Brazil on branch profits or the excess interest of a branch or on the insurance premium income of foreigners.
3. A request for information shall not be refused on the ground that the tax liability giving rise to the request is disputed by the taxpayer.
4. The requested party shall not be required to obtain and provide information which the requesting party would be unable to obtain in similar circumstances under its own laws for the purpose of the administration/enforcement of its own tax laws or in response to a valid request from the requested party under this Agreement.

## ARTICLE VIII CONFIDENTIALITY

1. Any information received by the requesting party under this Agreement shall be treated as confidential and may be disclosed to persons or authorities (including courts and



administrative bodies) in the jurisdiction of the requesting party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement, or to supervisory bodies, and only to the extent necessary for those persons, authorities or supervisory bodies to perform their respective responsibilities. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information shall not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the requested party.

2. Any liability under the domestic law of the requesting party arising from the requesting party's use of information provided under this Agreement shall be solely the responsibility of the requesting party.

#### ARTICLE IX COSTS

Unless the competent authorities of the parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested party and extraordinary costs incurred in providing assistance shall be borne by the requesting party.

#### Article X MUTUAL AGREEMENT PROCEDURE

1. The competent authorities shall adopt and implement procedures that are necessary to facilitate the implementation of this Agreement, including such additional forms for the exchange of information as shall promote the most effective use of the information.

2. Where difficulties or doubts arise between the parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.

#### Article XI MUTUAL ASSISTANCE PROCEDURE

If both competent authorities of the parties consider it appropriate to do so they may agree to exchange technical know-how, develop new audit techniques, identify new areas of non-compliance, and jointly study non-compliance areas.

#### Article XII ENTRY INTO FORCE

This Agreement shall enter into force when each party has notified the other in writing of the completion of its internal procedures necessary for entry into force. Upon entry into force, it shall have effect for requests made on or after the date of entry into force, without regard to the taxable period to which the matter relates.

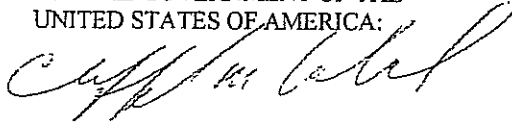
Article XIII  
TERMINATION

1. This Agreement shall remain in force until terminated by either party.
2. Either party may terminate this Agreement by giving notice of termination in writing. Such termination shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of notice of termination by the other party.
3. If a party terminates this Agreement, notwithstanding such termination, both parties shall remain bound by the provision of Article VIII with respect to any information obtained under this Agreement.

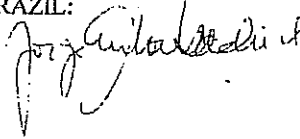
IN WITNESS WHEREOF, the undersigned being duly authorized in that behalf by the respective parties, have signed the Agreement.

DONE at Brasilia, in duplicate, in the English and Portuguese languages, each text being equally authentic, this 20<sup>th</sup> day of March, 2007.

FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA:



FOR THE GOVERNMENT OF THE  
FEDERATIVE REPUBLIC OF  
BRAZIL:



May 3, 2007

Summary of U.S.-Brazil Agreement  
for the Exchange of Information  
Relating to Taxes (March 20, 2007)  
Prepared by David Spencer

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(1) Scope of Information Covered by the Agreement.

The scope of the Agreement governing the exchange of information relating to taxes, is broad and covers information related to both civil tax matters and criminal tax matters. The Agreement (Article I) requires each government (the United States and Brazil) to provide:

assistance through exchange of information that may be relevant to the administration and enforcement of the domestic laws of the parties [Brazil and the United States] concerning the taxes covered by this Agreement, including information that may be relevant to the determination, assessment, enforcement or collection of tax with respect to persons subject to such taxes, or to the investigation or prosecution of criminal tax matters.

The term “information” is broadly defined as “any fact, statement, document or record in whatever form”.

The wording “may be relevant” is intended to be broad. See the Commentary about Article 26(1) of the 2006 U.S. Model Income Tax Treaty.

The term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Requesting State, whether such criminal laws are in the tax laws, the criminal code or other statutes (Article IV (1)).

(2) Persons Subject to the Agreement — Including Information about Persons (Natural or Juridical) in Third Jurisdictions.

The Agreement applies (a) whether or not the person about whom the information is requested is a national or resident of the Requesting State, and (b) whether or not the information is held by a national or resident of the Requested State. See Article II, Jurisdiction, which states:

Information shall be exchanged in accordance with this Agreement by the competent authority of the Requested State without regard to whether the person to whom the information relates is, or whether the information is held by, a resident or national of [either the United States or Brazil].

Therefore, the Agreement covers information requested about residents and nationals of third countries: for example, information in the Requested State (the United States) about an offshore company, such as a Cayman company or a British Virgin Island company, in which a person (natural or juridical) of the Requesting State (Brazil) is a shareholder.

(3) Taxes Covered by the Agreement. The Agreement (Article III (1)(b)) covers a broad range of Brazilian taxes:

- (i) individual and corporate income tax (IRPF and IRPJ, respectively);
- (ii) industrialized products tax (IPI);
- (iii) financial transactions tax (IOF);
- (iv) rural property tax (ITR);
- (v) contribution for the program of social integration (PIS);
- (vi) social contribution for the financial of the social security (COFINS); and
- (vii) social contribution on net profits (CSLL).

The Agreement (Article III (1)(a)) covers the following U.S. federal taxes: (i) income taxes, (ii) taxes on self-employment income, (iii) estate and gift taxes, and (iv) excise taxes.

The Agreement (Article III (2)) also applies to “any identical or substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if [the United States and Brazil] so agree”.

The Agreement (Articles III (4)) does not apply to taxes imposed by states, municipalities or other political subdivisions, or possessions of the United States and Brazil.

(4) Exhaustion of Remedies by the Requested State

The Requesting State can request information of the Requested State only if the Requesting State is unable to obtain the requested information by other means (“except where recourse to such means would give rise to disproportionate difficulty”). (Article V (1)). In each request for information, the Requesting State must submit a “statement that the Requesting State has pursued all reasonable means available in its own territory to obtain the information, except where that would give rise to disproportionate difficulty”. (Article V(4)(g)).

(5) No “Fishing Expeditions”

The Agreement (Article V (4)) requires that each request by the Requesting State for information shall have “the greatest degree of specificity possible”. Article V(4) details the specific type of information that must be included in each request by the Requesting State for information, including “the identity of the taxpayer whose tax liability or criminal liability is at issue” (Article V (4) (a)); the nature of the information

requested (Article (V) (4)(c), and the reasons for believing that the information requested “may be relevant” to tax administration and enforcement of the Requesting State (Article V (4)(d)).

(6) Exchange of Information on Request (Not Automatic Nor Spontaneous Exchange of Information). The Agreement applies to “exchange of information on request pursuant to Article V.” (Article I and Article V(1)).

However, the Agreement does not refer to automatic exchange of information, nor spontaneous exchange of information.

Article I refers to exchange of information in such additional forms as may be agreed upon by the United States and Brazil pursuant to Article X, Mutual Agreement Procedure. Article X refers to “additional forms for the exchange of information as shall promote the most effective use of the information.” But Article X does not refer specifically to automatic exchange of information nor spontaneous exchange of information.

Article XI, Mutual Assistance Procedure, states that the United States and Brazil “may agree to exchange technical know-how, develop new audit techniques, identify new areas of non-compliance and jointly study non-compliance areas”.

(7) Obligations of Requested State. If the Requested State does not have in its possession sufficient information in order to comply with a request by the Requesting State for information, the Requested State is required to “take all relevant information gathering measures to provide the Requesting State with the information requested” (Article V(2)). The term “information gathering measures” means “juridical, regulatory, criminal or administrative procedures enabling the Requested State to obtain and provide the information requested. (Article IV (1)). However, see paragraph (12) below.

Article V(3) (a) through (l) details the obligations of the Requested State, to the extent allowable under its domestic laws, in exchanging information.

The Requested State must exchange information even if the tax liability giving rise to the request for information is disputed by the taxpayer. (Article VII (3)).

(8) No Domestic Tax Interest Requirement. The Agreement provides that there is no “domestic tax interest requirement”. That is, the Requested State has to exchange information upon request by the Requesting State, “without regard to whether the Requested State needs such information for its own tax purposes”. (Article V(1) and (2)).

(9) No Double Criminality Requirement. Also, the Agreement (Article V(1)). provides that there is no “double criminality requirement.” That is, the Requested State has to exchange information whether or not “the conduct being investigated would



constitute a crime under the laws of the Requested State if it had occurred in the territory of the Requested State.”

(10) Information about Companies and Trusts. The Requesting State can request “information regarding the ownership of companies, partnerships, trusts, foundations and other persons (individuals and companies), ownership information on all such persons in an ownership chain; in the case of trusts, information on settlers, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries”. (Article IV(1) and Article V(3)(j)). However, the Requested State does not have to have available such information. That is, the Requested State does not have to require the automatic reporting of such information.

(11) Information about Publicly Traded Companies. The Agreement does not require the Requested State to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes, unless such information can be obtained without giving rise to disproportionate difficulties. (Article V(3)(j)).

(12) Issue of Bank Secrecy and Other Confidentiality Laws. The Agreement (Article V(3)(e)) provides that the Requested State, but only “to the extent allowable under its domestic laws”, shall

obtain original and unedited books, papers, and records, and other tangible property, including, but not limited to, information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity”.

(13) Obligations of Requested Party to Provide Information are Subject to its Domestic Laws.

The Agreement specifies that the obligations of the Requested State in the Agreement are subject to the domestic laws in the Requested State. Article V(3) specifies the obligations of the Requested State, but states that the Requested State shall carry out such obligations “to the extent allowable under its domestic laws”. This means that the Agreement does not supercede domestic law in the Requested State.

The Agreement (Article VII (2)(b)) provides that the Agreement does not impose on the Requested State any obligation “to carry out administrative measures at variance with its laws and administrative practices.” See also Article V(3) (k). Also, the Agreement does not require the exchange of information by the Requested State when the disclosure of the information requested would be contrary to the public policy of the Requested State. (Article VII (1) (c)).

These limitations in the Agreement on the exchange of information are different than the exchange of information provisions in the following agreements, each of which requires that the override of bank secrecy/confidentiality laws supercedes domestic law:

- (a) The OECD Model Agreement for the Exchange of Information in Tax Matters (Article 5(4)).
- (b) The OECD Model Income Tax Treaty (Article 26).
- (c) The 2006 U.S. Model Income Tax Treaty (Article 26).

Article VII (4) also provides that “The Requested State shall not be required to obtain and provide information (a) which the Requesting State would be unable to obtain in similar circumstances under its own laws for the purpose of the administration/enforcement of its own tax laws or (b) in response to a valid request from the Requested State under the Agreement.

(14) Information Subject to Legal Privilege. The Agreement (Article VII (2)(a)) does not require exchange of “information subject to legal privilege” . The term “Information subject to legal privilege” means “information which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are produced for the purposes of seeking or providing legal advice or produced for the purposes of use in existing or contemplated legal proceedings”. (Article IV (1)).

However, when the Requested State executes a request by the Requested State, the Requested State does not apply privileges which are provided to the taxpayer under the laws and practices of the Requesting State. (Article V(I)).

(15) Information about Any Trade, Business, Industrial, Commercial or Professional Secret or Trade Process.

The Agreement (Article VII(2)(a)) also does not require the exchange of information about any trade, business, industrial, commercial or professional secret or trade process. However, information held by banks, and other financial institutions and any information held by any person including nominees and trustees, acting in an agency or fiduciary capacity (information described in Article V(3)(e)) shall not by reason of that fact alone be treated as such a secret or trade process. (Article VII (2)(a)).

(16) Reciprocity Requirement

The Requested State is not required to obtain and provide to the Requesting State information which the Requesting State would be unable to obtain in similar circumstances under its own laws:

- (a) for the purpose of the administration/enforcement of its own tax laws, or
  - (b) in response to a request from the Requested State.
- (Article VII (4)).

Each request by the Requesting State for information must state whether the Requesting State would be able to obtain and provide to the Requested State the

information if a similar request were made to the Requesting State by the Requested State (Article V(4)(f)).

(17) Tax Investigations Abroad

Article VI specifies the rules for tax investigations abroad, that is, tax investigations by officials of the Requesting State in the territory of the Requested State. Such investigations are “to the extent permitted under [the] domestic laws” of the Requested State.

(18) Again, The Obligations of Requesting State Subject to its Domestic Laws.

The Agreement states that the obligations of the Requesting State under the Agreement are subject to the domestic laws and administrative practices of the Requesting State:

- (a) Article V(3)
- (b) Article V(3) (b)
- (c) Article VI (1)
- (d) Article VII (2)(b)

(19) The Statute of Limitations Issue (Prescription).

The Agreement does not apply if an action or proceeding with regard to a tax covered by the Agreement is barred by the statute of limitations in the Requesting State (Article I(3)).

(20) Confidentiality.

The Agreement specifies the confidentiality requirements regarding any information received by the Requesting State. (Article VIII).

(21) Entry into Force (Article XII).

I believe that the Agreement requires the approval by the National Congress and the President of Brazil. Under U.S. law, the Agreement is considered an “executive agreement” rather than a treaty and therefore does not require (ratification) approval by the U.S. Senate.

Note: This memorandum is not intended to constitute legal advice. The specific facts of each particular situation should be reviewed.