

DOUBLE TAXATION: SHIPPING PROFITS

Exchange of notes at Rio de Janeiro March 5, May 31, and September 17, 1929, and March 11, August 21, and September 1, 1930

Entered into force September 1, 1930; operative from January 1, 1929

47 Stat. 2620; Executive Agreement Series 16

The American Ambassador to the Minister of Foreign Affairs

AMERICAN EMBASSY

RIO DE JANEIRO, *March 5, 1929*

No. 1419

MR. MINISTER:

The representative of the United States Shipping Board has called my attention to Article 6 of Executive Decree No. 5,623, of December 29, 1928, by which His Excellency the President of the Republic sanctioned a law of Congress which "Reduces the duties on rolling and traction material for railroad and city transportation; alters the tax on paper for wrapping fruits; exempts from duties the importation of gold in bars and coined; regulates the payment by 'exercicio findo' and adopts other measures."

Article 6 of said Law states:

"Foreign navigation companies are hereby exempted from income tax, provided that the country in which their head office is located, grants exemption to Brazilian companies of the same character."

According to the dispositions of Section 213(b)(8) of the Revenue Laws of the United States of 1924 and 1926 which were also included in the Revenue Law of the United States of 1928 in Section 212(b) and 231(b):

"(8) The income of a foreigner non-resident or of a foreign corporation which consists exclusively of profit derived from a ship or ships operating under the laws of a foreign country which grants equal exemption to citizens of the United States and to corporations organized in the United States. . . ."

It would appear that the above mentioned Revenue Laws of the United States contain a provision which would meet the terms of Article 6, of Executive Decree No. 5,623 of December 29, 1928, and that therefore I am

justified in requesting Your Excellency's Government to exempt the United States Shipping Board from payment of the Brazilian income tax.

Accept, Excellency [etc.]

EDWIN MORGAN

His Excellency

DR. OCTAVIO MANGABEIRA

Minister for Foreign Affairs

The Minister of Foreign Affairs to the American Ambassador

[TRANSLATION]

MINISTRY OF FOREIGN AFFAIRS

RIO DE JANEIRO, *May 31, 1929*

NC/56

MR. AMBASSADOR:

In continuation of my Note NC/29 of last April, regarding the request of this Embassy for an exemption of income tax for American navigation companies, I have the honor to send Your Excellency herewith a copy of the reply from the Ministry of Finance giving an answer to the said request.

Furthermore, I beg to inform Your Excellency that, upon this date, I have again sent to the said Ministry the provisions of the law mentioned in Note No. 1,419 of March 5th last, which, in your country assures reciprocity to foreign navigation companies of the exemption from the tax referred to.

I renew the occasion to reiterate to Your Excellency the assurance of my highest consideration.

OCTAVIO MANGABEIRA

His Excellency

MR. EDWIN VERNON MORGAN

Ambassador of the United States of America

Rio de Janeiro

ENCLOSURE

The Brazilian Minister of Finance to the Brazilian Minister of Foreign Affairs

MINISTRY OF FINANCE

May 29, 1929

No. 33

Subject: Exemption from income tax on foreign navigation companies.

MR. MINISTER:

. . . Your Excellency transmitted me requests from the Embassies of . . . , North America, . . . , and from the Legations of . . . for exemption from

income tax, in accordance with Art. 6 of decree No. 5,623, of December 29, 1928, for the navigation companies of those countries engaged in traffic with Brazil.

In reply I have the honor to state to Your Excellency that in view of the provisions of the above cited law in order that navigation companies domiciled in foreign countries may be exempted from the taxation referred to it will be sufficient that Your Excellency's Ministry shall state to the Ministry of Finance that such a law exists in the interested State granting similar favors to Brazilian navigation companies . . .

I have to inform Your Excellency that the Income Tax Office has suspended the collection of said tax from the navigation companies domiciled in foreign countries pending information of the non-existence of the conditions mentioned in our law in relation to any country.

I beg to renew to Your Excellency the assurance of my high consideration.

F. C. DE OLIVEIRA BOTELHO

His Excellency

DR. OCTAVIO MANGABEIRA

Minister for Foreign Affairs

The American Chargé d'Affaires to the Minister of Foreign Affairs

AMERICAN EMBASSY

RIO DE JANEIRO, *Sept. 17, 1929*

No. 1467

MR. MINISTER:

Referring to Your Excellency's note No. NC/56 under date of May 31 of the current year, regarding exemption from income tax for foreign navigation companies, I have the honor to inform Your Excellency that I have just received the following request for information from the Department of State at Washington regarding the following points:

a) Whether the exemption provided in Decree No. 5623 applies to corporations organized in the United States which maintain a principal office or place of business, agency or branch office in Brazil;

b) Whether under the Brazilian income tax law citizens of the United States are taxable or exempt with respect to the income derived by them from the operation of a ship or ships documented under the laws of the United States;

c) Whether, if exempt, such exemption applies if the citizens of the United States maintain a principal office or place of business, agency or branch office in Brazil, and

d) Whether it can be said that since December 29, 1928, the Brazilian Government has collected any income, war-profits or excess profits taxes from the income of a citizen of the United States or a corporation organized in the

United States which consists exclusively of earnings derived from the operation of a ship or ships documented under the laws of the United States.

I shall be grateful to Your Excellency for the above information.

Accept, Excellency [etc.]

RUDOLPH SCHOENFELD
Chargé d'Affaires, ad interim

His Excellency

DR. OCTAVIO MANGABEIRA
Minister for Foreign Affairs

The Minister of Foreign Affairs to the American Ambassador

[TRANSLATION]

MINISTRY OF FOREIGN AFFAIRS
RIO DE JANEIRO, *March 11, 1930*

NC/15

MR. AMBASSADOR:

In continuation of the subject of my note No. NC/99, of September 28 last, and in accordance with information received from the Ministry of Finance, I have the honor to hand Your Excellency the following explanations:

The exemption mentioned in Article 6 of Law No. 5,623, of December 29, 1928, shall be applied to all companies or associations established in North America, which conduct the industry of navigation and have agencies or branch offices in Brazil or exercise activities here, under conditions of reciprocity for Brazilian navigation companies.

Under the express terms of the law, this privilege is restricted to these companies and therefore does not include the income of North American citizens, derived from the operation of one or more ships, registered under the laws of their country.

Finally, I can inform Your Excellency that from December 29, 1928 onward, no taxes were collected on income derived by navigation companies operated by North American citizens or companies established in that country.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

OCTAVIO MANGABEIRA

His Excellency

MR. EDWIN VERNON MORGAN
Ambassador of the United States of America

The American Ambassador to the Minister of Foreign Affairs

AMERICAN EMBASSY

RIO DE JANEIRO, August 21, 1930

No. 1526

MR. MINISTER:

I take pleasure in informing Your Excellency that after a lengthy correspondence between this Embassy, the Department of State and the United States Treasury Department, regarding a reciprocal exemption from taxes by the Government of the United States on income derived from the operation of ships registered under Brazilian laws and in accordance with the provisions for reciprocal exemption contained in the United States Revenue Act of 1928, the income of Brazilian citizens arising exclusively from profit derived from the operation of ships registered under Brazilian laws will be exempt from taxation by the Government of the United States. This exemption became effective on January 1, 1929.

Accept, Excellency [etc.]

EDWIN V. MORGAN

His Excellency

DR. OCTAVIO MANGABEIRA

Minister for Foreign Affairs

The Director of Commercial and Consular Affairs in the Ministry of Foreign Affairs to the American Ambassador

[TRANSLATION]

MINISTRY OF FOREIGN AFFAIRS

RIO DE JANEIRO, September 1, 1930

NC/72

MR. AMBASSADOR:

Acknowledging the receipt of your Note No. 1526, of August 21 of the present year, I have the honor to thank Your Excellency for your courtesy in communicating to this Department the decision of the United States of America, regarding the exemption from income tax of Brazilian citizens who derive profit exclusively from the operation of ships registered in Brazil with which decision this Ministry has just acquainted the Ministry of Finance.

Accept, Excellency [etc.]

JM. EULALIO

His Excellency

MR. EDWIN VERNON MORGAN

Ambassador of the United States of America