

## **2000 Income Tax Convention and Final Protocol (English Translation)**

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### **CONVENTION BETWEEN THE PORTUGUESE REPUBLIC AND THE REPUBLIC OF CUBA CONCERNING AVOIDANCE OF DOUBLE TAXATION AND PREVENTION OF FISCAL EVASION WITH RESPECT TO TAX ON INCOME**

[TRANSLATION]

The Government of the Portuguese Republic and the Government of the Republic of Cuba, desiring to conclude a Convention concerning avoidance of double taxation and prevention of fiscal evasion with regards to tax on income, have agreed as follows:

Chapter I.

Scope of Application of the Convention

#### **Article 1 Personal Scope**

This Convention shall apply to persons who are residents of one or both of the Contracting States.

#### **Article 2 Taxes Covered**

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political or administrative subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries as well as taxes on capital appreciation.
3. The existing taxes to which the Convention shall apply are in particular:
  - a) insofar as Portugal is concerned:
    - i) income tax (imposto sobre o rendimento das pessoas singulares - IRS);
    - ii) corporate income tax (imposto sobre o rendimento das pessoas colectivas - IRC)
    - iii) additional local tax on corporate income (Derrama);(which shall hereinafter be referred to by the term "Portuguese Tax").
  - b) insofar as Cuba is concerned:
    - i) the Tax on Profits (Impuesto sobre Utilidades);
    - ii) the Tax on Personal Income (Impuesto sobre Ingresos Personales);which shall be referred to hereinafter by the term "Cuban tax")
4. The Convention shall apply also to any identical or substantially similar taxes which 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 significant changes which have been made in their respective taxation laws.

Chapter II.

Definitions

#### **Article 3 General Definitions**

1. For the purposes of this Convention, unless the context requires a different interpretation:
  - a) the term "Portugal" means the territory of the Republic of Portugal located on the European continent, the archipelagos of the Azores and of Madeira, the respective territorial waters as well as other areas over which, in accordance with Portuguese laws and international law, the Portuguese Republic has sovereign rights to conduct research and exploration of the natural resources of the sea bed, its subsoil as well as the water column.
  - b) the term "Republic of Cuba" refers to the national territory formed by the island of Cuba, the Isla de Juventud, the other adjacent islands and cays, the domestic waters and the territorial waters in the extension set forth by Law and the air space extending over the same in which the Cuban state exercises its sovereignty or sovereign rights and over which it has jurisdiction, in conformity with its domestic legal regulations in accordance with International Law.
  - c) the term "a Contracting State" or "the other Contracting State" refers to Portugal or Cuba, according to the context herewith.

- d) the term "Person" refers to any individual or company or group of people.
  - e) the term "company" refers to 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" refer, respectively, to 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 operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
  - h) the term "competent authority" refers to:
    - i) insofar as Portugal is concerned, the Minister of Finance, the Executive Manager of the Tax Administration Service, or his authorized representatives;
    - ii) insofar as Cuba is concerned, the Minister of Finance and Prices or his authorized representative, and
  - i) the term "nationals" means:
    - i) insofar as Portugal is concerned, any individual having Portuguese citizenship; insofar as Cuba is concerned, any individual having Cuban citizenship in accordance with its laws and who is a permanent resident on the national territory;
    - ii) all bodies corporate, companies, and associations constituted in conformity with the laws in effect in a Contracting State.
2. As regards the application of the Convention by a Contracting State at a given point in time, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that Contracting State concerning the taxes to which the Convention applies. The meaning of such term under the tax legislation shall prevail over any meaning this term may have in accordance with other types of laws of that State.

#### **Article 4 Resident**

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature and also includes the State, its political or administrative subdivisions or its local authorities. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State 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 of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting 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 has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
  - c) if he has an habitual abode in both Contracting 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 Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by virtue of the provisions of Paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

#### **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. A construction or assembly site shall only be deemed to constitute a permanent establishment as long as their duration exceeds one year.
4. The term "permanent establishment" furthermore includes the provision of services by an enterprise, including consulting services, carried out through employees or other staff hired by the enterprise for that purpose, but only as long as such activities continue to be carried out (in conjunction with the same project or a related project) in the country for a period in excess of twelve months.
5. 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 merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
  - c) the maintenance of a stock of 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 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 of a preparatory or auxiliary character;
  - f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) through (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character overall.
6. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom Paragraph 7 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that Contracting 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 5 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment, in accordance with the provisions set forth in that Paragraph.
7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
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 be sufficient to make either company a permanent establishment of the other.

#### Chapter III.

#### Taxation of Income

### **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 the direct use, letting, or use in any other form of immovable property.
4. The provisions of Paragraphs 1 and 3 shall also apply to income arising out of immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.
5. The above provisions shall also apply to income derived from movable property or income from the provision of services in connection with the use, or the right to use, movable property which, in accordance with the tax laws of the Contracting State in which such goods are located, is similar to income derived from immovable goods.

## **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 business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is 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 pursued by the permanent establishment, including executive and general administrative expenses incurred for aforesaid goal, 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. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of merchandise on behalf of the enterprise.
6. 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.
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 Sea and Air Traffic**

1. Profits from the operation of ships and 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 or boat, then it shall be deemed to be situated in the Contracting State in which the home harbor of the ship or boat is situated, or, if there is no such home harbor, in the Contracting State of which the operator of the ship or boat 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.
4. Where companies of different countries have agreed on a joint air transport operation in the form of a consortium or a similar form of association, the provisions of Paragraph 1 shall apply to that part of the profits of the consortium or association corresponding to the share held in that consortium or association by a company which is a resident of a Contracting State.

## **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 taxes 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 the 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 State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and in accordance with 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) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (excluding partnerships) which holds directly at least 25 per cent of the capital of the company paying the dividends;

b) 10 per cent of the gross amount of the dividends, in all other cases.

The competent authorities of the Contracting States shall mutually agree on the method of application of these limits.

This Paragraph does not affect taxation of the company with respect to profits out of which such dividends are paid.

3. The provision of Paragraph 2 notwithstanding, dividends paid by a company which is a resident of a Contracting State to the Government of the other Contracting State shall be exempt from tax in the first-mentioned State.

4. For the purposes of the provisions of Paragraph 3, the term "Government" shall have the following meaning:

a) in Portugal, the Government of Portugal includes

i) Banco de Portugal (Bank of Portugal);

ii) IPE (Investimentos e Participações Empresariais - Corporate Investments and Holdings);

iii) PARTEST (Participações de State SGPS SA - SGPS State Holdings Corporation);

iv) a public body or any other institution held, whether entirely or by a majority, by the Government of Portugal in accordance with the agreement of the competent authorities of the Contracting States.

b) In Cuba, the Government of Cuba includes a public body or any other institution held, whether entirely or by a majority, by the Government of Cuba in accordance with the agreement of the competent authorities of the Contracting States.

5. 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 from other corporate rights 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. The term also includes income derived from or paid on the basis of a profit-sharing agreement (joint venture).

6. 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 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 that fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

7. 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 profits or income 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, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of such interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

3. Notwithstanding the provisions of Paragraph 2, the interest arising in a Contracting State shall not be subjected to tax in that Contracting State

a) in case the debtor of such interest is the Government of said Contracting State, one of its political or administrative subdivisions, or a local authority thereof, or

b) in case the interest is paid to the Government of the other Contracting State, one of its political or administrative subdivisions, or a local authority thereof, or

c) in case the interest is paid to an institution (including financial institutions) related with any financing agreement drafted within the scope of agreements entered into between the Governments of the Contracting States, or

d) in case the interest is obtained by a resident of the other Contracting State by virtue of credit operations, or

e) in case the interest is obtained by a financial institution of the other Contracting State as a result of loans with a term in excess of five years; or

f) in the case of the following loans:

i) in the case of Portugal, Caixa-Geral de Depósitos (CGD - General Deposit S & L), Banco Nacional Ultramarino (BNU), IAPMEI - Instituto de Apoio às Pequenas e Médias Empresas (Institute for Assistance of Small and Mid-Sized Companies) and to Investimento, Organismo Coordenador (Investment Coordination Body) of the POE and ICEP - Investimentos, Comércio e Turismo de Portugal (Portuguese Investments, Trade, and Tourism);

ii) in the case of Cuba, a public body or any other institution held, whether entirely or by a majority, by the Government of Cuba in accordance with the agreement of the competent authorities of the Contracting States.

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. Penalty charges for late payment shall not be regarded as interest for the purpose 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 an industrial or commercial activity 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 therewith. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State in case the payer is a resident of such Contracting State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a 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 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 shall be taxable in that other Contracting State.

2. These royalties, however, are also taxable in the Contracting State in which they arise and in accordance with the laws of this Contracting State; however, in case the beneficial owner is a resident of the other Contracting State, the tax established in such a manner can not exceed 5 percent of the gross amount of the royalties.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations

3. Notwithstanding the provisions of Paragraph 2, royalties paid for copyrights and other similar remuneration for the production of a literary, dramatic, musical or artistic work originating in a Contracting State and paid to a resident of the other Contracting State who is being taxed for the same, excluding royalties derived from films and recordings for radio and television or any other

commercial purpose, and also provided the recipient of such royalties is their beneficiary owner, can only be taxed in this other State.

4. 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 copyright of literary, artistic or scientific work, including cinematograph films and recordings for radio and television broadcasting, of any patent, trade mark, design or model, plan, secret formula or process as well as for the use of, or the right to use, any industrial, commercial, or scientific equipment or for information concerning experience acquired in the industrial, commercial, or scientific sector.

5. The provisions of Paragraph 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on an activity 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 therewith. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Royalties shall be deemed to arise in a Contracting State in case the payer is a resident of such Contracting State. However, in case the payer of the royalties, whether a resident of a Contracting State or not, has a permanent establishment or a fixed base in a State for which the contract giving rise to the payment of the royalties has been entered into and which as such incurs the charge thereof, these royalties are deemed to arise in the State in which the permanent establishment or 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 royalties, having regard to the use, right or information for which they are 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 14 [sic] Independent Personal Services**

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that Contracting State unless such resident habitually maintains, in the other Contracting State, a fixed base for the purpose of carrying out his activities. In this case, the income can be taxed in the other State, although only the part of the income that is attributable to that fixed base.

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 Dependent Personal Services**

1. Subject to the provisions of Articles 16, 18, 19, and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of paid 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 hereof, remuneration derived by a resident of a Contracting State in respect of a paid employment exercised in the other Contracting State shall be taxable only in the first-mentioned Contracting State if:

- a) the beneficiary owner is present in the other State for a period or periods not exceeding in the aggregate 183 days during any twelve-month period commencing or ending during the fiscal year in question; 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 in respect of paid employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

#### **Article 16 Directors' Fees**

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

### **Article 17 Artistes and Sportsmen**

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 sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Notwithstanding the provisions of Articles 7, 14 and 15, where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. The provisions of Paragraphs 1 and 2 shall not apply if the activities carried out in a Contracting State are financed mainly by public funds of the other Contracting State or one of its political or administrative subdivisions or local entities. In this case, the income derived from such activities can only be taxed in that other State.

### **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. Where a resident of a Contracting State moves his residence to the other Contracting State, any compensation and other sums obtained for such transfer or on the basis of such work relationship can only be taxed in the first-mentioned State.

### **Article 19 Government Service**

1) a) Salaries, fees, and other remuneration, other than retirement pay, paid by a Contracting State or one of its political or administrative subdivisions or local authorities to an individual in respect of services rendered to that State or subdivision or authority thereof shall be taxable only in that State.

b) However, such salaries, fees, and other remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State and

i) is a national of that State, or

ii) did not become a resident of that State solely for the purpose of rendering these services.

2) a) Any retirement pay paid by a Contracting State or one of its political or administrative subdivisions or local authorities, whether directly or by drawing on funds provided for that purpose, to an individual in respect of services rendered to that State or to that subdivision or local authority thereof shall be taxable only in that State.

b) However, such retirement pay shall only be taxable in the other Contracting State if the individual is a resident and a national of that State.

3) The provisions of Articles 15, 16, 17, and 18 shall apply to remuneration as well as retirement pay in respect of services rendered in connection with a business activity carried on by a Contracting State or one of its political or administrative subdivisions or local authorities.

### **Article 20 Professors and Researchers**

1. An individual who is or was a resident of a Contracting State immediately prior to traveling to the other Contracting State, for the sole purpose of teaching or conducting research at a university, faculty, school, or another similar teaching or research institution recognized as a not-for-profit organization by the Government of the other State or by virtue of an official cultural exchange program, for a period not exceeding two years from the date of his first arrival in that State shall be exempt from tax in respect to the remuneration received for such teaching or research.

2. The provisions of Paragraph 1 of this Article shall not apply to compensation received for research work if such research is not undertaken in the public interest, but mainly for the private benefit of a specific person or specific persons.

### **Article 21 Students and Interns**

Payments which a student or intern 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 such payments arise from sources outside that State.

### **Article 22 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, received by a resident of a Contracting State who carries on an activity 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 therewith. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

Chapter IV.

Methods for the Elimination of Double Taxation

### **Article 23 Elimination of Double Taxation**

1. Insofar as Portugal is concerned, double taxation shall be avoided as follows:

Where a resident of Portugal receives income which, in accordance with the provisions of this Convention, is taxable in Cuba, Portugal shall deduct, from the tax it charges on the income of such resident, an amount corresponding to the income tax paid in Cuba. In this case, however, this deduction may not exceed the fraction of income tax, calculated before making such deduction, which corresponds to such income which is taxable in Cuba.

2. Insofar as Cuba is concerned, double taxation shall be avoided as follows:

Where a resident of Cuba receives income which, in accordance with the provisions of this Convention, is taxable in Portugal, Cuba shall deduct, from the tax it charges on the income of such resident, an amount corresponding to the income tax paid in Portugal.

In this case, however, this deduction may not exceed the fraction of income tax, calculated before making such deduction, which corresponds to such income which is taxable in Portugal.

3. Where, in accordance with any provision of the Convention, the income which a resident of a Contracting State receives is exempt from tax in that State, such exempted income can nonetheless be included to calculate the tax on the rest of the income of such resident.

4. Where a resident of Portugal receives income which, in accordance with the provisions of this Convention, is taxable in Cuba, Portugal shall apply, to the tax it charges on such income, a tax credit in the amount which theoretically would have been paid in terms of a similar tax but which has not been paid as a result of exemptions, bonuses, deduction or other tax benefits granted in Cuba.

Chapter V.

Special Provisions

### **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 State in the same circumstances are or may be subjected, in particular in terms of residence.

2. 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 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.

3. Except where the provisions of Paragraph 1 of Article 9, Paragraph 7 of Article 11, or Paragraph 7 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 State.

4. 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 State are or may be subjected.

5. 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. Such 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 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 endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. In the event that personal contacts appear suitable to reach an agreement, such exchange of opinions may take place via a joint commission consisting of representatives of the competent authorities of the Contracting States.

### **Article 26 Exchange of Information**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is not contrary to this Convention. The exchange of information is not restricted by Article 1. Any information received 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 taxes covered by this Convention, or the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Convention. Such persons or authorities shall use the information obtained in such manner only for the specified purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

- a) to carry out administrative measures violating 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 administrative practice of that or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, or professional secrets or processes, or information, the disclosure of which would be contrary to public policy (ordre public).

### **Article 27 Members of Diplomatic Missions and Consular Posts**

The provisions of this Convention shall not 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.

Chapter VI.

Final Provisions

### **Article 28 Entry Into Force**

1. The Contracting States shall notify each other, through diplomatic channels and in writing, as soon as respective formalities for the Convention to enter into force have been accomplished in accordance with domestic laws.

2. This Convention shall come into effect thirty (30) days after the delivery of the last notification to which Paragraph 1 refers, and the provisions of the Convention shall apply:

In Portugal:

- i) to taxes levied at the source who are based on circumstances arising on or after January 1 of the year 2001;
- ii) to other taxes on income pertaining to tax periods commencing on or after January 1 of the year 2001.

In Cuba:

To taxes that can be levied on or after January 1 of the year 2001.

### **Article 29 Termination**

This Convention shall remain in force until terminated by one of the Contracting States. Each Contracting State can terminate this Convention by notifying the other Contracting State thereof in writing through diplomatic channels at least six months before the end of each calendar year, for the first time after five years from its entry into force.

In this case, the Convention shall no longer apply to the following:

In Portugal:

- i) to taxes levied at the source who are based on circumstances arising on or after January 1 of the calendar year following that during which the termination of the Convention was communicated;
- ii) to other taxes on income pertaining to tax periods commencing on or after January 1 of the calendar year following that during which the termination of the Convention was communicated.

In Cuba:

To taxes that can be levied on or after January 1 of the calendar year following that during which the termination of the Convention was communicated.

In witness whereof the undersigned, duly authorized to that effect by their respective Governments, have signed this Convention.

Done in the city of Havana on October 30, 2000 in two original copies, in Portuguese and Spanish, with both texts being equally valid.

**FOR THE GOVERNMENT OF THE PORTUGUESE REPUBLIC:**

**FOR THE GOVERNMENT OF THE REPUBLIC OF CUBA:**

### **PROTOCOL**

During the signing of the Convention between the Portuguese Republic and the Republic of Cuba concerning avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed to the following provisions, which shall be an integral part of this Convention:

1. With respect to the provisions

- a) With respect to No. 1 of Article 4, in the case of Cuba, it is understood that the term "residents" refers to any individual having Cuban citizenship in accordance with its laws and who is a permanent resident on its national territory.
- b) With respect to No 5 of Article 10<sup>o</sup>, it shall be understood that the term "dividends" includes profits from the liquidation of a company.
- c) With respect to No 2 of Article 18<sup>o</sup>, it shall be understood that pensions and compensation derived from the termination of a working relationship which a resident of a Contracting State has obtained through the same shall only be subject to taxation in that State provided they are paid in their entirety one single time.
- d) With respect to No 4 of Article 23<sup>o</sup>, it shall be understood that exemptions, bonuses, deductions and other types of tax reductions granted in Cuba referred to in said Paragraph shall be those granted pursuant to the following legal provisions:
  - Final Provision No. Five, Letter a), of the Law No 73 pertaining to the Tax System, dated August 4, 1994;
  - Articles 38, 39, and 43 as well as the Transitory Disposition No. One of the Law No 77(Foreign Investment Act), dated September 5, 1995;
  - Articles 35 (1-2), 36, and 37 (1-2) of the Decree-Law No 165 concerning Free Zones and Industrial Parks, dated June 3,1996.

In the event of changes to the above-mentioned legal provisions which imply more favorable benefits, the Contracting Parties shall be entitled to review the scope of the same for the purpose of determining whether to include them in this Convention.

In case Cuba enters into, at a later point in time, a Convention with a third-party State with a level of develop that is similar to or higher than that of Portugal and incorporating a clause similar to that set forth in No 4 of Article 23<sup>o</sup> which contains a time limit in terms of application or which contains less favorable conditions for Cuba (including the non-existence of said clause, Cuba shall notify the Portuguese Republic thereof in writing without delay through diplomatic channels and shall initiate negotiations with the same in order to grant the same procedure to the Portuguese Republic as that provided for such third country.

With respect to No 4 of Article 23<sup>o</sup>, nothing shall prevent, considering the development of the economic and social conditions in Portugal in Cuba, the benefit from also applying to Portugal.

e) The provisions of No 1 of Article 24<sup>o</sup> shall apply to the nationals of Portugal even if they do not reside in either of the Contracting States.

f) With respect to N° 1 of Article 26° the information obtained on the basis of this Convention may not be used for any other purposes without the express authorization of the Competent Authority of the Contracting State providing such information.

The information may only be used in the territories of the Contracting States. In the event that it become necessary to use such information in the course of public hearings, in courts or court decisions, the competent authorities of the Contracting State which has provided the information shall be advised thereof as long as the competent authority of the Contracting State which has requested such information is aware of such circumstance.

In witness whereof the undersigned, duly authorized to that effect by their respective Governments, have signed this Convention.

Done in the city of Havana on the thirtieth day of the month of October of two thousand, in two original copies in the Portuguese and Spanish languages; both versions are equally binding.

**FOR THE GOVERNMENT OF THE PORTUGUESE REPUBLIC:**

**FOR THE GOVERNMENT OF THE REPUBLIC OF CUBA:**

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