

Analysis: Denmark – Portugal Income Treaty

[See treaty text](#)

Type of treaty: Income

Based on the OECD Model Treaty

Signed: December 14, 2000

Entry into force: May 24, 2002

Effective date: January 1, 2003. See Article 29.

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Article 1 Personal Scope

[See treaty text](#)

Persons who are residents of one or both of the Contracting States.

According to article 3 of the present Convention, "Person" comprises an individual, a company and any other body of persons;

Article 2 Taxes Covered

[See treaty text](#)

Income tax

Denmark

- i) The income tax to the State (indkomstskatten til staten);
- ii) The income tax to the municipalities (den kommunale indkomstskat);
- iii) The income tax to the county municipaliti (den amtskommunale indkomstskat);

Portugal

- 1) Personal income tax (imposto sobre o rendimento das pessoas singulares - IRS);
- 2) Corporate income tax (imposto sobre o rendimento das pessoas colectivas - IRC);
- 3) Local surtax on corporate income tax (derrama);

Expert Analysis:

According to the Protocol signed Portugal and Denmark have agreed upon the following provisions which shall form an integral part of the Convention: i) It is agreed that the Convention also shall apply to: a) In the, case of Portugal: local immovable property tax (contribui o autarquia). Please note that the Imposto municipal sobre im veis, know only as IMI, formerly known as Contribu o Autarquia is a municipal tax that is levied on the TPV (Taxable Patrimonial Value) of urban and non-urban property located in Portugal. b) In the case of Denmark: the tax on assessed value of immovable property (ejendomsv'r-diskatten).

The Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes.

The article is intended to make the terminology and nomenclature relating to the taxes covered by the Convention more acceptable and precise to ensure identification of the Contracting States' taxes. IRC applies to: (i) companies with their head office or effective management in Portugal that carry out commercial, industrial or agricultural activities, (ii) unincorporated entities with their head office or effective management in Portugal, and (iii) corporate or unincorporated entities without their head office or effective management in Portugal.

The actual IRC tax rate is 25 percent, which is applied to resident companies and non-resident companies with a permanent establishment in Portugal. The rate in Madeira is also 25 percent and the rate in Azores is 17,5 percent. A 3 percent tax rate applicable to taxable profits between EUR1,500,000 and EUR7,500,000 and a 5 percent rate applies to taxable profits over EUR7,500,000. Taxpayers are also subject to a local municipal tax - derrama. Each municipality sets its own level of tax, but this must not be more than 1.5 percent.

IRS is levied on the yearly amount of incomes in six different categories, after the appropriate deductions. The six categories of income are the following: Category A - Dependent employment income; Category B - Business activities and supply services; Category E - Investment income/capital income; Category F - Property income; Category G - "Patrimonial increment", including capital and other gains and Category H.

The Personal Income Tax is a progressive tax, with a top band of 48 percent (plus an additional rate). In 2012 and 2013, an additional rate of 2.5 percent will be applied to taxpayers with taxable income above EUR80,000 and an additional income tax rate of 5 percent will be payable on any part of such taxable income that exceeds EUR250,000. An additional surtax of 3.5 percent will be payable on any part of taxable income that exceeds, for each taxpayer, the annual amount of the monthly minimum salary.

Article 3 General Definitions

[See treaty text](#)

"A Contracting State" and "the other Contracting State" mean Denmark or Portugal, as the context requires;

"Denmark" means the Kingdom of Denmark including any area outside the territorial sea of Denmark which in accordance with international law has been or may hereafter be designated under Danish laws as an area within which Denmark may exercise sovereign rights with respect to the exploration and exploitation of the natural resources of the sea bed or its subsoil and the superjacent waters and with respect to other activities for the exploration and economic exploitation of the area; the term does not comprise the Faroe Islands and Greenland;

"Portugal" means the territory of the Portuguese Republic situated in the European Continent, the Archipelagos of the Azores and Madeira, the respective territorial sea and any other zone in which, according to Portuguese and international law, the Portuguese Republic has sovereign rights or jurisdiction for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea-bed and of the sea bed and its subsoil;

"Person" includes an individual, a company and any other body of persons;

"Company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

"Enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

"International traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

"Competent authority" means: i) In Denmark: the Minister for Taxation or his authorized representative; ii) In Portugal: the Minister of Finance, the Director General of Taxation (director-geral dos Impostos) or their authorized representative;

"National" means: i) Any individual possessing the nationality of a Contracting State; ii) Any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.

Article 4 Resident

[See treaty text](#)

Expert Analysis:

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 that State and any political or administrative subdivision or local authority thereof.

This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

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

a) He shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);

b) If the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;

c) If he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;

d) If he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

Where by reason 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 only of the State in which its place of effective management is situated.

According to the Portuguese rules, the corporate tax residence is based in its head office (legal seat) or the place of effective management.

Also according to the Portuguese rules, an individual is a tax resident if his physical permanence in Portuguese territory exceeds 183 days in a calendar year; or visits Portugal for a shorter period but has a permanent or habitual residence or dwelling place on December 31 of that year; or is a crew member of a ship or aircraft operated by a resident legal entity on December 31; or is exercising a public function or commission abroad in the service of the Portuguese government. Those persons who are members of a family unit will always be considered as resident in Portugal, provided that any of those persons to whom the address belongs is a resident therein.

Article 5 Permanent Establishment

[See treaty text](#)

Expert Analysis:

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. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than six months.

An enterprise of a Contracting State which is furnishing services including consultancy services through employees or other personnel in the other Contracting State shall be deemed to have a permanent establishment in that other State but only where such activity lasts for more than 6 months within any 12 month period.

The concept of "permanent establishment" (PE) is one of the cornerstone concepts in domestic and international tax law. The term "permanent establishment" is used to refer to a non-resident's business presence in a different country from that of the "country of residence", which is of a sufficient level to justify the taxation of the attributable profits in that country. The fundamental idea of the concept of PE is to allow a particular state to tax a company carrying on business on its territory only when it has a sufficient nexus, participates in and considerably influences the economic life of that state.

The existence of the "permanent establishment" concept under domestic law and under OECD law would generally oblige the state of the resident to grant relief - foreign tax credit or exemption - for the tax paid by its resident taxpayer in the state of the source.

The term PE means a fixed installation through which an activity is carried on. This general definition brings out the main question of the PE concept: "a distinct "situs", a "fixed place of business" (Commentary 2 to Article 5 of the OECD Model Tax Convention).

The essential characteristics of a permanent establishment are:

- i. fixed place of business - includes premises, facilities, installations or sometimes machinery or equipment and any physical object that may be used to carry on the business activities of the company, through which
- ii. the business of an enterprise is wholly or partly carried on;

It is necessary to comment on (i) and (ii) together - the fixed place of business must be functional to the carrying on of the activity of the non-resident taxpayer. The carrying on of a business involves the carrying on of an activity in a country related to the business of the enterprise. Productivity and profitability are not essential characteristics of a "permanent establishment", they are the consequences of business activity developed by the enterprise. According to Paragraph 1 of Article 5 of the Portuguese Corporate Tax Code (IRC Code), "permanent establishment" means a "fixed place of business through which the company carries out commercial, industrial or agricultural activities".

The term "permanent establishment" includes, in particular, a place of management, a branch, an office, a factory, a workshop and a mine, an oil gas well, a quarry or any place of extraction of natural resources. (Paragraph 2 of the previously mentioned Article 5). In these examples it is important that the "place" is fixed and that the enterprise carries on the activity through this fixed place of business. A building site or construction or installation project constitutes a "Permanent Establishment" only if it lasts more than six months (paragraph 3 of the previously mentioned Article 5). If it lasts for less than six months, it is not a "Permanent Establishment", even if there was an office associated with the construction activity.

It is also considered as a "permanent establishment" when a person - other than an agent of independent status - is acting in Portuguese territory on behalf of an enterprise and has, and habitually exercises powers to negotiate and conclude contracts which bind the enterprise, within the scope of its activities (Paragraph 6 of the previously mentioned Article 5).

A company is not regarded as having a permanent establishment in Portuguese territory by the mere exercise of its business through a commission agent or other independent agent, provided that such persons act within the normal scope of their activity, carrying the same business risk as an agent. (Paragraph 7 of the previously mentioned Article 5).

According to Paragraph 8 of Article 5 of the IRC Code "Permanent Establishment" does not include: (i) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandising belonging to the enterprise; (ii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery; (iii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise; (iv) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise; or collecting information for the enterprise; (v) the maintenance of a fixed place of business solely for the purpose of carrying on any other activity of a preparatory or auxiliary character for the enterprise; (vi) the maintenance of a fixed place of business solely for the purpose of any combination of activities mentioned above, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

The taxation of business profits of activities carried out in Portugal is determined by applying the IRC Code. Nevertheless it is quite necessary to consider the provisions of Double Tax Treaties because their rules could be more favourable to the contracting states than the IRC Code, not only in the concept and rates (for example building site, construction or installation project term or withholding taxes), but also at the double taxation relief (application of the methods of relief from juridical double taxation).

Article 6 Income from Immovable Property

[See treaty text](#)

Expert Analysis:

The general rule is that the income derived by a resident of a Contracting State from real property in the other State may be taxed in that other State.

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, boats and aircraft shall not be regarded as immovable property.

The provisions of paragraph I shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

Unlike the OECD Model, the provisions of paragraphs 1 and 3 of this article 6 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

Article 7 Business Profits

[See treaty text](#)

Expert Analysis:

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.

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.

In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on money lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its offices, by way of royalties, fees or other similar payments in return for the use

of patents or other rights, or by way of commission for specific services performed or for management, or except in the case of a banking enterprise or by way of interest on money lent to the head office of the enterprise or any of its other offices. Nothing in this paragraph shall, however, authorize a deduction for expenses which could not be deductible if the permanent establishment were a separate enterprise.

No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

According to paragraph 1 of Article 50 of the IRC Code, the income attributable to a "Permanent Establishment" is determined by applying, subject to any appropriate adjustment, the rules for the determination of the taxable profits of resident companies, i.e. the taxable base is constituted by the taxable profits, this being calculated in reference to accounting and representing the algebraic sum of the net income of the period (difference between profits and costs), as well as positive and negative changes in net equity.

To determine the profits attributable to a "Permanent Establishment", beyond all general deductions, it is possible to deduct as cost the general management expenses which are attributable to the "Permanent Establishment".

A "Permanent Establishment" is taxed on its effective real profit as estimated on the basis of its accounting.

Article 8 Profits From International Traffic

[See treaty text](#)

Expert Analysis:

Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

Profits derived by an enterprise of a Contracting State from the use, maintenance or rental of containers used for the transport of goods or merchandise in international traffic shall when such use, maintenance or rental is incidental to the operation of ships or aircraft in international traffic be taxable only in that State.

Article 9 Associated Enterprises

[See treaty text](#)

Usual OECD provisions regarding transfer pricing

Expert Analysis:

Where (i) 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 (ii) 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.

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 that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits, if the other Contracting State considers the adjustment justified. 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.

Transfer pricing legislation was introduced in the Portuguese Corporate Income Tax Code in 2001. Portugal has established detailed regulations to ensure that transfer pricing on domestic transactions between related entities is acceptable. The arm's length principle requires that the price of goods and services exchanged by related parties should be the same as if the parties were acting independently in the same or similar circumstances.

Corrections or adjustments to taxable profits are based on (i) the potential special relationship between the taxpayers, (ii) the establishment of different conditions from those usually agreed upon between independent entities; and (iii) ascertainment of accounting records, namely, profits and losses (P&L).

Portuguese transfer pricing rules allow the use of the most appropriate method for the operation from the following options: (i) comparable uncontrolled price method, (ii) resale price method, (iii) cost plus method, (iv) transactional net margin method, (v) profit split methods, including residual profit split. It is possible to have Advanced Pricing Agreements (APA) between taxpayers and the Portuguese Tax Administration.

Article 10 Dividends

[See treaty text](#)

Treaty rate: 15%

Domestic rates:

Denmark

0%/15%/27%

Portugal

Withholding tax at a rate of 25%

Expert Analysis:

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 debtclaims, 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 "dividends" as used in this article also comprises profits paid under an arrangement for participation in profits (associacao em participacao).

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, however, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

The provisions of the previous sentence shall not apply with respect to dividends paid by a company which is a resident of a Contracting State to a company which is a resident of the other Contracting State with respect to which the provisions of the directive on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (90/435/EEC) as it may be changed from time to time, are applicable.

The general rate of withholding tax on dividends in Portugal is currently 25% (Corporate Income Tax) and 28% (Personal Income Tax).

In order to be eligible for the benefits of the Tax Treaty, the non-resident must present the RFI-21 form. The purpose of this form is to claim total or partial exemption from Portuguese withholding tax, in cases where the beneficial owner of the dividends is resident in a country with which Portugal has concluded a Convention for the Avoidance of Double Taxation.

Article 11 Interest

[See treaty text](#)

Treaty rates: 10%

Domestic rates:

Denmark

25%

Portugal

WHT of 25%

Expert Analysis:

The term "interest" as used in this article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures.

Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State, however, such interest may also be taxed in the Contracting in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of interest. The competent authorities of the Contracting State shall by mutual agreement settle the mode of application of this limitation.

Interest arising in a Contracting State shall be exempt from tax in that State: a) If the debtor of such interest is that State, a political or administrative subdivision or a local authority thereof, the central

bank or institutions performing public services; or b) If the interest is paid to the other Contracting State, a political or administrative subdivision or a local authority thereof, the central bank or any other institution (including a financial institution) agreed upon between the competent authorities of both Contracting States.

The general rate of withholding tax on interest in Portugal is currently 25% (Corporate Income Tax) and 28% (Personal Income Tax).

In order to apply the reduced treaty rate, the Portuguese company must have confirmation that the beneficial owner of the income is eligible for the benefits of the Tax Treaty. In order to be eligible for the benefits of the Tax Treaty, the non-resident must present the RFI-21 form. The purpose of this form is to claim total or partial exemption from Portuguese withholding tax, in cases where the beneficial owner of the interests is resident in a country with which Portugal has concluded a Convention for the Avoidance of Double Taxation.

Article 12 Royalties

[See treaty text](#)

Treaty rate: 10%

Domestic rates:

Denmark

25%

Portugal

WHT of 16.5%

Expert Analysis:

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 films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.

The term "royalties" also includes payments in consideration for technical assistance in connection with the use of, or the right to use any copyright, goods, or information as referred to under this paragraph.

Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State, however, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

The general rate of withholding tax on royalties in Portugal is currently 25% (Corporate Income Tax) and 16.5% (Personal Income Tax).

In order to be eligible for the benefits of the Tax Treaty, the non-resident must present the RFI-21 form. The purpose of this form is to claim total or partial exemption from Portuguese withholding tax, in cases where the beneficial owner of the royalties is resident in a country with which Portugal has concluded a Convention for the Avoidance of Double Taxation.

Article 13 Capital Gains

[See treaty text](#)

Expert Analysis:

Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in article 6 and situated in the other Contracting State may be taxed in that other State.

Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

Gains derived by an enterprise of a Contracting State from the alienation of ships aircraft operated in international traffic or movable property pertaining to the operation of such ships, aircraft or shall be taxable only in that State.

Gains derived by an enterprise of a Contracting State from the alienation of containers used for the transport of goods and merchandise in international traffic within the meaning of paragraph 2 of article 8 shall be taxable only in that State.

Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14 Independent Personal Services

[See treaty text](#)

Expert Analysis:

The article on the "independent personal services" was deleted from the OECD Model Tax Convention in 2000. According to the Commentary to Article 14 of the OECD Model Tax Convention, "that decision reflected the fact that there were no intended differences between the concept of PE, as used in Article 7, and fixed base, as used in Article 14. The effect of the deletion of Article 14 is that the income derived from professional services or other activities of an independent character is now dealt under Article 7, as "business profits".

This was confirmed by the addition of a definition of the term "business" (Paragraph h, No. 1, Article 3 of the OECD Model Tax Convention), which expressly provides that this term includes professional services or other activities of an independent character.

Notwithstanding the above, most double tax treaties concluded and signed by Portugal have an "Independent Personal Service" clause.

According to the Convention between Portugal and Denmark 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 State. However, in the following circumstances such income may be taxed in the other Contracting State:

- a) If he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in such case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or
- b) If his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any period of 12 months; in such case, only so much of the income as is attributable to services performed in that other Contracting State may be taxed in that other State.

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.

From the Portuguese perspective, the "Independent Personal Service" concept will be applied to activities of an independent character instead of "Service PE" concept. In determining whether a foreign independent contractor is subject to taxation in Portugal certain factors are of a particular relevance. It is important to highlight: (i) the concept/definition of professional services or other activities of an independent character; (ii) the "residence" concept; (iii) the domestic rules and the existence or not of a tax treaty; (iv) the base for the purpose of performing activities; and (v) the profits attributable to the fixed base.

A foreign independent contractor may be taxed in Portugal if he has a fixed base regularly available to him in Portugal for the purpose of performing his activities.

The main idea of "fixed base" is "anything" that is regularly available to the person for the purpose of performing his activities. If a base of a fixed or permanent character is present in Portugal, it should be entitled to tax the foreign independent contractor on profits arising from such activity. Income may be taxed in Portugal but only so much of it as is attributable to the fixed base.

Article 15 Dependent Personal Services

[See treaty text](#)

Expert Analysis:

Salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State, unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

Remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- a) The recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any 12-month period commencing or ending in the fiscal year concerned; and,
- b) The remuneration is paid by, or on behalf of, an employer who is a resident of the first-mentioned State; and
- c) The remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

Remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise, of a Contracting State, may be taxed in that State.

Article 16 Directors' Fees

[See treaty text](#)

Expert Analysis:

Director's 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 (in Portugal, conselho fiscal) or of another similar organ of a company which is a resident of the other Contracting State may be taxed in that other State. However, article 15 shall apply in relation to the exercise of a permanent or regular activity.

Article 17 Artistes and Sportsmen

[See treaty text](#)

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.

Article 18 Pensions, Social Security Payments and Similar Payments

[See treaty text](#)

Expert Analysis:

Payments received by an individual, being a resident of a Contracting State, under the social security legislation of the other Contracting State, or under any other scheme out of funds created by that other State or a political or administrative subdivision or a local authority thereof, may be taxed in that other State.

Pensions and other similar remuneration arising in a Contracting State and paid to a resident of the other Contracting State, whether in consideration of past employment or not, shall be taxable only in the other Contracting State, unless:

- 1) Contributions paid by the beneficiary to the pension scheme were deducted from the beneficiary's taxable income in the first-mentioned Contracting State under the law of that State; or
- 2) Contributions paid by an employer were not taxable income for the beneficiary in the first-mentioned Contracting State under the law of that State. In such case, the pensions may be taxed in the first-mentioned Contracting State.

Pensions shall be deemed to arise in a Contracting State if paid by a pension fund or other similar institution providing pension schemes in which individuals may participate in order to secure retirement benefits, when such institution is established, recognized for tax purposes and controlled in accordance with the laws of that State.

Article 19 Government Service

[See treaty text](#)

Expert Analysis:

Salaries, wages and other similar remuneration including pensions paid by a Contracting State or a political or administrative subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

Article 20 Students

[See treaty text](#)

Expert Analysis:

A student or business apprentice who is or was a resident of a Contracting State immediately before visiting the other Contracting State and who is present in that other State solely for the purpose of his education or training, shall be exempt from tax in that other State on:

- 1) Payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and
- 2) Remuneration from employment in that other State not exceeding 3000 during any fiscal year of that other State provided that such employment is directly related to his studies or is necessary for the purposes of his maintenance.

The benefits of this article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this article, for more than five consecutive years from the date of his first arrival in that other Contracting State.

Article 21 Activities in Connection With Preliminary Surveys Exploration or Extraction of Hydrocarbons

[See treaty text](#)

Expert Analysis:

A resident of a Contracting State who carries on activities in connection with preliminary surveys, exploration or extraction of hydrocarbons situated in the other Contracting State shall be deemed to be carrying on in respect of such activities a business in that other State through a permanent establishment or to be performing independent personal services from a fixed base situated therein. The provisions of paragraph 1 shall not apply where the activities are carried on for a period or periods not exceeding 30 days in the aggregate in any 12 month period. However, for the purpose of this paragraph, activities carried on by an enterprise associated with another enterprise within the meaning of article 9 shall be deemed to be carried on by the enterprise with which it is associated if the activities in question are substantially the same as those carried on by the last-mentioned enterprise.

Profits derived by an enterprise of a Contracting State from the transport by ships or aircraft of supplies or personnel to a location where offshore activities in connection with preliminary surveys, exploration or extraction of hydrocarbons are being carried on in the other Contracting State, or from the operation of tug-boats and similar vessels in connection with such activities, shall be taxable only in the first-mentioned State.

Salaries, wages and other similar remuneration derived by an individual who is a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft, tugboat or vessel covered by paragraph 3 shall be taxed in accordance with the provisions of paragraph 3 of article 15.

Article 22 Other Income

[See treaty text](#)

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.

Article 23 Methods for the Elimination of Double Taxation

[See treaty text](#)

Denmark

Credit method

Portugal:

Credit method

Expert Analysis:

Double taxation shall be avoided as follows:

In **Denmark**: Where a resident of Denmark derives income which, in accordance with the provisions of this Convention, may be taxed in Portugal, Denmark shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Portugal. Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Portugal;

Where a resident of Denmark derives income which, in accordance with the provisions of this Convention shall be taxable only in Portugal, Denmark may include this income in the tax base, but shall allow as a deduction from the income tax that part of the income tax, which is attributable to the income derived from Portugal;

Where a resident of Portugal derives income which in accordance with article 18 may be taxed in Denmark, Denmark shall allow as a deduction from the tax on that income an amount equal to the tax on the income paid in Portugal. Such deduction shall not, however, exceed that part of the tax on such income, as computed before the deduction is given, which is attributable to the income that may be taxed in Portugal under the provisions of article 18;

In **Portugal**: Where a resident of Portugal derives income which, in accordance with the provisions of this Convention, may be taxed in Denmark, Portugal shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in Denmark. Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Denmark;

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

Article 24 Non-Discrimination

[See treaty text](#)

Expert Analysis:

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, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of article 1, also apply to persons who are not residents of one or both of the Contracting States.

Article 25 Mutual Agreement Procedure

[See treaty text](#)

Expert Analysis:

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.

Article 26 Exchange of Information

[See treaty text](#)

Expert Analysis:

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 the Convention insofar as the taxation thereunder is not contrary to the Convention. 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 enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

Article 27 Members of Diplomatic Missions and Consular Posts

[See treaty text](#)

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

Article 30 Termination

[See treaty text](#)

This Convention shall remain in force until terminated by a Contracting State.