

AGREEMENT OF 20TH SEPTEMBER, 1999

Netherlands

CONVENTION BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE PORTUGUESE REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Kingdom of the Netherlands and the Portuguese Republic, desiring that a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital be concluded by both States, have agreed as follows:

Chapter I. Scope of the Convention

Article 1 Persons Covered

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 and on capital 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 and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are in particular:

a) in Portugal:

(i) Imposto sobre o Rendimento das Pessoas Singulares -- IRS (the personal income tax);

(ii) Imposto sobre o Rendimento das Pessoas Colectivas -- IRC (the corporate income tax); and

(iii) Derrama (the local surtax on corporate income tax);

(hereinafter referred to as "Portuguese tax");

b) in the Netherlands:

(i) de inkomstenbelasting (income tax);

(ii) de loonbelasting (wages tax);

- (iii) de vennootschapsbelasting (company tax), including the Government share in the net profits of the exploitation of natural resources levied pursuant to the Mijnwet 1810 (the Mining Act of 1810) with respect to concessions issued from 1967, or pursuant to the Mijnwet Continentaal Plat 1965 (the Netherlands Continental Shelf Mining Act of 1965);
 - (iv) de dividendbelasting (dividend tax); and
 - (v) de vermogensbelasting (capital tax);
- (hereinafter referred to as “Netherlands 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 any substantial 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 otherwise requires:

- a) the terms “a Contracting State” and “the other Contracting State” mean Portugal or the Netherlands as the context requires;
- b) the term “Portugal” means the territory of the Portuguese Republic situated in the European Continent, the archipelagoes of Azores and Madeira, the respective territorial sea and any other zone in which, in accordance with the laws of Portugal and international law, the Portuguese Republic has jurisdiction or sovereign rights with respect to the exploration and exploitation of the natural resources of the sea bed and subsoil, and of the superjacent waters;
- c) the term “the Netherlands” means the part of the Kingdom of the Netherlands that is situated in Europe, including its territorial sea, and any area beyond the territorial sea within which the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights with respect to the sea bed, its sub-soil and its superjacent waters, and their natural resources;
- d) the term “tax” means Portuguese tax or Netherlands tax as the context requires;
- e) the term “person” includes an individual, a company and any other body of persons;
- f) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
- g) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- h) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise that 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;

- i)* the term “competent authority” means:
 - (i)* in Portugal: the Minister of Finance, the Director General of Taxation (Director-Geral dos Impostos) or their authorised representative;
 - (ii)* in the Netherlands: the Minister of Finance or his duly authorised representative;
- j)* the term “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.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other 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 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 or capital 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 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.

3. 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.

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, including a fixed installation or fixed structure used for the exploration or exploitation of natural resources.

3. The term “permanent establishment” likewise encompasses:

- a) a building site or construction or assembly project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than 6 months;
- b) the furnishing of services including consultancy services, by an enterprise through employees or other personnel, but only where activities of that nature continue (for the same or a connected project) within the country for a period or periods aggregating more than 6 months within any twelve month period.

4. 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 goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- c) the maintenance of a stock of goods or 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 goods or 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 sub-paragraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person -- other than an agent of an independent status to whom paragraph 6 applies -- is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned State if the person:

- a) has and habitually exercises in that State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for that enterprise; or
- b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise and some additional activities conducted in that State on behalf of the enterprise have contributed to the sale of goods or merchandise.

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other 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. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph if it is shown that the transactions between the agent and the enterprise were not made under at arm's length conditions.

7. 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 constitute 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, boats 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 the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

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 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.

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 goods or merchandise for 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

Shipping and Air Transport

1. Profits from the operation of ships or 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, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship 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.

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 that 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 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.

3. The provisions of paragraph 2 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.

4. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of paragraphs 2 and 3.

5. The provisions of paragraphs 2 and 3 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

6. 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.

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

8. 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 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 the interest.

3. Notwithstanding the provisions of paragraph 2, 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 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.

4. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of paragraphs 2 and 3.

5. a) If an EC-Directive concerning the taxation of interest from private savings accounts enters into force, and if, according to this Directive, which may be changed from time to time, interest arising in a Contracting State and paid to a resident of the other Contracting State may also be taxed in the Contracting State in which the interest arises, then with respect to such interest the provisions of that Directive shall be applicable instead of the provisions of this Article.

- b) if an EC-Directive, which provides for a common tax treatment of interest and royalties paid between enterprises, enters into force and which may be changed from time to time, then with respect to such interest the provisions of that Directive shall be applicable instead of the provisions of this Article.

6. 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. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

7. 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 business 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 with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

9. 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 may be taxed in that other State.
2. 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 competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.
3. If an EC-Directive, which provides for a common tax treatment of interest and royalties paid between enterprises, enters into force and which may be changed from time to time, then with respect to such royalties the provisions of that Directive shall be applicable instead of the provisions of this Article.
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 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.
5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business 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 with such permanent establishment or fixed base. 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 when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by that permanent establishment or fixed base, then such royalties 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 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 13 Capital Gains

1. 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.
2. 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.
3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the

place of effective management of the enterprise is situated. For the purposes of this paragraph the provisions of paragraph 2 of Article 8 apply.

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

5. Notwithstanding the provisions of paragraph 4, a Contracting State may, in accordance with its own laws, including the interpretation of the term “alienation”, levy tax on gains derived by an individual who is a resident of the other Contracting State from the alienation of shares in, “jouissance” rights or debt claims on a company whose capital is divided into shares and which, under the laws of the first-mentioned Contracting State, is a resident of that State, and from the alienation of part of the rights attached to the said shares, “jouissance” shares or debt claims, if that individual -- either alone or with his or her spouse -- or one of their relations by blood or marriage in the direct line directly or indirectly holds at least 5 per cent of the issued capital of a particular class of shares in that company. This provision shall apply only if the individual who derives the gains has been a resident of the first-mentioned State in the course of the last ten years preceding the year in which the gains are derived and provided that, at the time he became a resident of the other Contracting State, the above-mentioned conditions regarding share ownership in the said company were satisfied.

In cases where, under the domestic laws of the first-mentioned Contracting State, an assessment has been issued to the individual in respect of the alienation of the aforesaid shares deemed to have taken place at the time of his emigration from the first-mentioned Contracting State, the above shall apply only in so far as part of the assessment is still outstanding.

Article 14 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 State except in the following circumstances, when such income may also 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 that case, only so much of the income as is attributable to that fixed base may be taxed in that other State; or
- b) if his stay in the other Contracting State is for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in the other State may be taxed in that other State.

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, 20 and 21, 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.

2. Notwithstanding the provisions of paragraph 1, 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 twelve 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 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 an 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 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 de administracao or conselho fiscal; in the Netherlands, bestuurder or commissaris) or of another similar organ of a company which is a resident of the other Contracting State may be taxed in that other State, provided that remuneration paid by that company to a member of its organs in respect of the exercise of a continuous activity shall be taxable according to the provisions of Article 15.

Article 17

Artistes and Sportspersons

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

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

3. Paragraphs 1 and 2 shall not apply to income derived by a resident of a Contracting State from activities exercised in the other Contracting State if the visit to that other State is supported wholly or mainly by public funds of the first-mentioned State, a political or administrative subdivision or a local authority thereof, or takes place under a cultural agreement or arrangement between the Governments of the Contracting States. In such a case, the income shall be taxable only in the Contracting State of which the entertainer or sportsperson is a resident.

Article 18

Pensions, Annuities and Social Security Payments

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, as well as annuities paid to a resident of a Contracting State, shall be taxable only in that State. Any pension and other payment paid out under the provisions of a social security system of a Contracting State to a resident of the other Contracting State shall be taxable only in that other State.

2. Notwithstanding the provisions of paragraph 1, a pension or other similar remuneration, annuity, or any pension and other payment paid out under the provisions of a social security system of a Contracting State, may also be taxed in the Contracting State from which it is derived, in accordance with the laws of that State:

- a) if and in so far as the entitlement to this pension or other similar remuneration or annuity in the Contracting State from which it is derived is exempt from tax, or the contributions associated with the pension or other similar remuneration or annuity made to the pension scheme or insurance company were deducted in the past when calculating taxable income in that State or qualified for other tax relief in that State; and
- b) if and in so far as this pension or other similar remuneration or annuity is in the Contracting State of which the recipient thereof is a resident not taxed at the generally applicable rate for income derived from dependent personal services, or less than 90 per cent of the gross amount of the pension or other similar remuneration or annuity is taxed; and
- c) if the total gross amount of the pensions and other similar remuneration and annuities and any pension and other payment paid out under the provisions of a social security system of a Contracting State, in any calendar year exceeds the sum of 10.000 Euro.

3. Notwithstanding the provisions of paragraphs 1 and 2, if this pension or other similar remuneration is not periodic in nature, is paid in respect of past employment in the other Contracting State and is paid out before the date on which the pension commences, or if a lump-sum payment is made in lieu of the right to an annuity before the date on which the annuity commences, the payment or this lump-sum may also be taxed in the Contracting State from which it is derived.

4. A pension or other similar remuneration or annuity is deemed to be derived from a Contracting State if and insofar as the contributions or payments associated with the pension or other similar remuneration or annuity, or the entitlements received from it qualified for tax relief in that State. The transfer of a pension from a pension fund or an insurance company in a Contracting State to a pension fund or an insurance company in another State will not restrict in any way the taxing rights of the first-mentioned State under this Article.

5. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of paragraph 2. They shall also decide what details the resident of a Contracting State must submit for the purpose of the proper application of the Convention in the other Contracting State, in particular so that it can be established whether the conditions referred in subparagraphs a), b) and c) of paragraph 2 have been met.

6. The term “annuity” means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

7. Whether and to what extent a pension or similar remuneration falls under this Article or under Article 19, is determined by the nature of the past employment, as private or governmental, during which the entitlement to that part of the pension or similar remuneration was built up.

Article 19

Government Service

- 1.
 - a) Salaries, wages and other similar remuneration, other than a pension, 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;
 - b) However, such salaries, wages and other similar 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 who:

- (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.
- 2.
 - a) Any pension paid by, or out of funds created 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;
 - b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
- 3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political or administrative subdivision or a local authority thereof.

Article 20

Professors and Teachers

- 1. Payments which a professor or teacher who is a resident of a Contracting State and who is present in the other Contracting State for the purpose of teaching or scientific research for a maximum period of two years in a non-profit university, college or other establishment for teaching or scientific research in that other State, receives for such teaching or research, shall be taxable only in the first-mentioned State.
- 2. This Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

Article 21

Students

A person who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is temporarily present in the first-mentioned State solely:

- a) as a student at a university, college or school, or
- b) as a commercial or technical apprentice for the purpose of training to be communicated by the competent authority of the Contracting State of which he is, or was, a resident, or
- c) as a recipient of a grant, allowance or award for the primary purpose of study or research from a religious, charitable, scientific or educational organisation;

shall not be taxed in that other State in respect of remittances received for the purpose of his maintenance, education or training or in respect of a scholarship grant. The same apply to any amount representing remuneration for services rendered in that other State, provided that such services are in connection with his studies or training or are necessary for the purpose of his maintenance, and the amount of this remuneration does not exceed 5.000 Euro.

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, if the recipient of such income, being a resident of a Contracting State, carries on business 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 with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

Chapter IV. Taxation of Capital

Article 23 Capital

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by 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 by 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, may be taxed in that other State.

3. Capital represented by ships and aircraft operated in international traffic and by movable property pertaining to the operation of such ships and aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated. For the purposes of this paragraph the provisions of paragraph 2 of Article 8 shall apply.

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Chapter V. Methods for Elimination of Double Taxation

Article 24 Elimination of Double Taxation

1. In the case of Portugal double taxation shall be eliminated as follows:

- a) where a resident of Portugal derives income which, in accordance with the provisions of this Convention, may be taxed in the Netherlands, Portugal shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in the Netherlands. 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 the Netherlands;
- b) where in accordance with any provision of this 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.

2. The Netherlands, when imposing tax on its residents, may include in the basis upon which such taxes are imposed the items of income or capital which, according to the provisions of this Convention, may be taxed in Portugal.

3. However, where a resident of the Netherlands derives items of income which according to Article 6, Article 7, paragraph 7 of Article 10, paragraph 7 of Article 11, paragraph 5 of Article 12, paragraphs 1 and 2 of Article 13, paragraph 1 (subparagraph a) of Article 14, paragraph 1 and 3 of Article 15, paragraph 2 of Article 18, paragraphs 1 (subparagraph a) and 2 (subparagraph a) of Article 19 and paragraph 2 of Article 22 of this Convention may be taxed in Portugal and are included in the basis referred to in paragraph 2, the Netherlands shall exempt such items of income by allowing a reduction of its tax. This reduction shall be computed in conformity with the provisions of Netherlands law for the avoidance of double taxation. For that purpose the said items of income shall be deemed to be included in the total amount of the items of income which are exempt from Netherlands tax under those provisions.

4. Further, the Netherlands shall allow a deduction from the Netherlands tax so computed for the items of income or capital which according to paragraph 2 of Article 10, paragraph 2 of Article 11, paragraph 2 of Article 12, paragraph 5 of Article 13, paragraph 1 (subparagraph b) of Article 14, Article 16, Article 17, paragraph 3 of Article 18 and paragraphs 1 and 2 of Article 23 of this Convention may be taxed in Portugal to the extent that these items are included in the basis referred to in paragraph 2. The amount of this deduction shall be equal to the tax paid in Portugal on these items of income or capital, but shall not exceed the amount of the reduction which would be allowed if the items of income or capital so included were the sole items of income or capital which are exempt from Netherlands tax under the provisions of Netherlands law for the avoidance of double taxation.

5. Notwithstanding the provisions of paragraph 3, the Netherlands shall allow a deduction from the Netherlands tax for the tax paid in Portugal on items of income which according to Article 7, paragraph 7 of Article 10, paragraph 7 of Article 11, paragraph 5 of Article 12, Article 14 and paragraph 2 of Article 22 of this Convention may be taxed in Portugal to the extent that these items are included in the basis referred to in paragraph 1, if and insofar as the Netherlands under the provisions of Netherlands law for the avoidance of double taxation allows a deduction from the Netherlands tax of the tax levied in another country on such items of income. For the computation of this deduction the provisions of paragraph 4 of this Article shall apply accordingly.

6. Where a resident of Portugal receives a payment or lump sum which may be taxed in the Netherlands in accordance with paragraph 3 of Article 18, the Netherlands shall allow a deduction from its tax on such payment or lump sum to an amount equal to the tax levied in Portugal on the said payment or lump sum.

Chapter VI. Special Provisions

Article 25 Offshore Activities

1. The provisions of this Article shall apply notwithstanding any other provisions of this Convention. However, this Article shall not apply where offshore activities of a person constitute for that person a permanent establishment under the provisions of Article 5 or a fixed base under the provisions of Article 14.

2. In this Article the term “offshore activities” means activities which are carried on offshore in connection with the exploration or exploitation of the sea bed and its sub-soil and their natural resources, situated in a Contracting State.

3. An enterprise of a Contracting State which carries on offshore activities in the other Contracting State shall, subject to paragraph 4 of this Article, be deemed to be carrying on, in respect of those activities, business in that other State through a permanent establishment situated therein, unless the offshore activities in question are carried on in the other State for a period or periods not exceeding in the aggregate 30 days in any period of 12 months.

For the purposes of this paragraph:

- a) where an enterprise carrying on offshore activities in the other Contracting State is associated with another enterprise and that other enterprise continues, as part of the same project, the same offshore activities that are or were being carried on by the

first-mentioned enterprise, and the afore-mentioned activities carried on by both enterprises -- when added together -- exceed a period of 30 days, then each enterprise shall be deemed to be carrying on its activities for a period exceeding 30 days in a 12 months-period;

- b) an enterprise shall be regarded as associated with another enterprise if one holds directly or indirectly at least one third of the capital of the other enterprise or if a person holds directly or indirectly at least one third of the capital of both enterprises.

4. However, for the purposes of paragraph 3 of this Article the term “offshore activities” shall be deemed not to include:

- a) one or any combination of the activities mentioned in paragraph 4 of Article 5;
- b) towing or anchor handling by ships primarily designed for that purpose and any other activities performed by such ships;
- c) the transport of supplies or personnel by ships or aircraft in international traffic.

5. A resident of a Contracting State who carries on offshore activities in the other Contracting State, which consist of professional services or other activities of an independent character, shall be deemed to be performing those activities from a fixed base in the other Contracting State if the offshore activities in question last for a continuous period of 30 days or more.

6. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment connected with offshore activities carried on through a permanent establishment in the other Contracting State may, to the extent that the employment is exercised offshore in that other State, be taxed in that other State.

7. Where documentary evidence is produced that tax has been paid in Portugal on the items of income which may be taxed in Portugal according to Article 7 and Article 14 in connection with respectively paragraph 3 and paragraph 5 of this Article, and to paragraph 6 of this Article, the Netherlands shall allow a reduction of its tax which shall be computed in conformity with the rules laid down in paragraph 3 of Article 24.

Article 26

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, 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.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably 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 9 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. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted 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 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. As soon as within the EC a common regulation for the tax treatment of contributions paid for a recognised pension plan, including a pension plan created under a public social security system, has been agreed upon, such regulation will also apply with respect to contributions paid by or on behalf of individuals who are residents of a Contracting State to a pension plan that is recognised for tax purposes in the other Contracting State.

6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 27

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 26, 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. The competent authority shall endeavour, 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 by the competent authorities notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour 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, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 28

Exchange of Information

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. 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 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 29

Assistance in Recovery

1. The Contracting States agree to provide mutual assistance and support for recovering, in accordance to the respective provisions and rules of their legislations or regulations, the taxes covered by this Convention, when these amounts are definitely due under the laws and regulations of the Contracting States seeking the assistance for such recovery.

2. At the request of the applicant State, the requested State shall, with a view to the recovery of an amount of tax, take measures of conservancy even if the claim is contested or is not yet the subject of an instrument permitting enforcement, in so far as such is permitted by the laws and administrative practice of the requested State.

3. The competent authorities of the Contracting States shall consult each other to decide the mode of application of this Article in case they consider the rendering of assistance in recovery of taxes feasible.

Article 30

Limitation of Articles 28 and 29

In no case shall the provisions of Articles 28 and 29 be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with 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 administration of that or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

Article 31

Members of Diplomatic Missions and Consular Posts

1. 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.

2. For the purposes of the Convention an individual, who is a member of a diplomatic mission or consular post of a Contracting State in the other Contracting State or in a third State and who is a national of the sending State, shall be deemed to be a resident of the sending State if he is submitted therein to the same obligations in respect of taxes on income and on capital as are residents of that State.

3. The Convention shall not apply to international organisations, organs and officials thereof and members of a diplomatic mission or consular post of a third State, being present in a Contracting State, if they are not subjected therein to the same obligations in respect of taxes on income or on capital as are residents of that State.

Article 32

Territorial Extension

1. This Convention may be extended, either in its entirety or with any necessary modifications to either or both of the countries of the Netherlands Antilles and Aruba, if the country concerned imposes taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be

specified and agreed between the Kingdom of the Netherlands and the Portuguese Republic in accordance with their respective internal legal procedures.

2. Unless otherwise agreed, the termination of the Convention shall not also terminate any extension of the Convention to any country to which it has been extended under this Article.

Chapter VII. Final Provisions

Article 33 Entry Into Force

1. This Convention shall enter into force on the thirtieth day after the date on which diplomatic notes indicating the completion of internal legal procedures necessary in each Contracting State for the entry into force of this Convention have been exchanged.

2. This Convention shall apply:

a) in Portugal:

- (i)* in respect of taxes withheld at source, the fact giving rise to them appearing on or after the first day of January of the year next following the year in which this Convention enters into force;
- (ii)* in respect of other taxes, as to income arising in the fiscal year beginning on or after the first day of January of the year next following the year in which this Convention enters into force;

b) in the Netherlands:

- (i)* in respect of taxes withheld at source, on income derived on or after the first day of January in the calendar year next following the year in which this Convention enters into force;
- (ii)* in respect of other taxes, to taxes chargeable for any taxable year or period beginning on or after the first day of January in the calendar year next following the year in which this Convention enters into force.

Article 34 Termination

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channel, by giving a notice specifying the year of termination at least six months before 31st December of the year so specified in the said notice. A notice may only be given after the expiration of a period of five years from the date on which the Convention enters into force. In such event, the Convention shall cease to have effect:

a) in Portugal:

- (i)* in respect of taxes withheld at source, the fact giving rise to them appearing on or after the first day of January of the year next following that specified in the said notice of termination;

(ii) in respect of other taxes, as to income arising in the fiscal year beginning on or after the first day of January of the year next following that specified in the said notice of termination;

b) in the Netherlands:

(i) in respect of taxes withheld at source, on income derived on or after the first day of January of the year next following that specified in the said notice of termination;

(ii) in respect of other taxes, to taxes chargeable for any taxable year or period beginning on or after the first day of January of the year next following that specified in the said notice of termination.