

1999 Income Tax Convention and Final Protocol (English Translation)

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CONVENTION BETWEEN THE PORTUGUESE REPUBLIC AND THE REPUBLIC OF CAPE VERDE CONCERNING AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO INCOME AND THE PREVENTION OF TAX EVASION

[TRANSLATION]

Chapter I

Scope of Application of the Convention

Article 1 Personal Scope

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

Article 2 Taxes Covered

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political and administrative subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries as well as taxes on capital appreciation.

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

(a) in Portugal:

(1) tax on income of natural persons (IRS)

(2) tax on income of legal persons (IRC)

(3) distribution tax (derrama)

(which shall be referred to hereinafter as "Portuguese Taxes").

(b) in Cape Verde

(1) income tax (IUR)

(2) fire tax (taxa de incêndio)

(3) capital tax regarding gains from the alienation of movable and immovable as well as capital appreciation. (which shall be referred to hereinafter as "Cape Verdean Taxes").

4. The Convention shall apply also to any identical or substantially similar taxes which come into effect after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of significant changes which have been made in their respective taxation laws.

Chapter II

Definitions

Article 3 General Definitions

1. For the purposes of this Convention, unless the context requires a different interpretation:

(a) the term "Contracting State" or "the other Contracting State" refers to the Republic of Portugal or the Republic of Cape Verde according to the context herewith.

(b) the term "Portugal" means the territory of the Republic of Portugal located on the European continent, the archipelagos of the Azores and of Madeira, the respective territorial waters as well as other areas where, in accordance with Portuguese laws and international law, the Portuguese Republic has sovereign rights to conduct research and exploration of the natural resources of the sea bed, its subsoil as well as the waters located on top thereof.

(c) the term "Republic of Cape Verde" means the territory of the Republic of Cape Verde located on the coast of Western Africa, the respective territorial waters as well as other areas where, in accordance with Cape Verdean laws and international law, the Republic of Cape Verde has sovereign rights to conduct research and explore the natural resources of the sea bed, its subsoil as well as the waters located on top thereof.

(d) the term "Person" refers to any individual or company or group of people.

(e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" 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;

(g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(h) the term "nationals" means:

(1) all individuals possessing the nationality of a Contracting State.

(2) all bodies corporate, societies of persons and associations constituted in conformity with the laws in effect in a Contracting State.

(i) the term "competent authority" refers to:

(1) in Portugal, the Minister of Finance, the Executive Manager of the Tax Administration, or his authorized representatives.

(2) in the Republic of Cape Verde, that member of the Government in charge of finance, the Executive Manager of the Administration of Taxes and Duties, or his authorized representatives.

2. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies; the interpretation based on the tax laws of this State shall have priority over other laws of this State.

Article 4 The Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" shall have the following meaning:

(a) in the case of Portugal, 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 such term also applies to such State as well as its political or administrative subdivisions or local authorities. 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 situated therein; and

(b) in the case of Cape Verde, 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, any resident person or company subject to the territorial taxation system of Cape Verde as well as that State, its political or administrative subdivisions or local authorities.

2. Where by reason of the provisions of Paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

(a) he shall be deemed to be a resident of the 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 of the State with which his personal and economic relations are closer (center of vital interests);

(b) if the State in which he has his center of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident 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 of the Contracting State of which he is a national;

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

3. Where by virtue of the provisions of Paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

Article 5 Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop, and

(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. The term "permanent establishment" also comprises the following:

(a) a construction or assembly site or yard as well as the supervisory activities associated therewith, provided that their duration exceeds 183 days;

(b) the provision of services, including consulting services, by a company of a Contracting State that are provided through employees or other staff in the other Contracting State during a period or periods which in the aggregate exceed 183 days during any 12-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 merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of a stock of merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing merchandise or of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) through (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character overall.

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 on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in Paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that Paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

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 make either company a permanent establishment of the other.

Chapter III

Taxation of Income

Article 6 Income From Immovable Property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

3. The provisions of Paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to income arising out of immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

5. The above provisions shall also apply to income derived from movable property and income derived from the provision of services in connection with the use of, or right to use, immovable property which, in accordance with the tax laws of the Contracting State in which such goods are located, are similar to income derived from immovable goods.

Article 7 Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of Paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses incurred for aforesaid purposes, whether in the State in which the permanent establishment is situated or elsewhere.
4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of merchandise for the enterprise.
5. 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.
6. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8 Sea and Air Traffic

1. Profits from the operation of ships and aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. If the place of effective management of a shipping enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbor of the ship or boat is situated, or, if there is no such home harbor, in the Contracting State of which the operator of the ship or boat is a resident.
3. The provisions of Paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.
4. In case companies of different countries agree to engage in air transportation activities in the form of a consortium, the provisions of Paragraph 1 shall apply to that part of the profits of the consortium which corresponds to the share held in such consortium by a company residing in a Contracting State.

Article 9 Associated Enterprises

1. Where
 - (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
 - (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.
2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then the other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits, as long as such 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.

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

This Paragraph does not affect the taxation of companies for profits out of which dividends are distributed.

3. The term "dividends" as used in this Article means income from shares, "jouissance" shares or rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

The term "dividends" also includes income derived from joint ventures.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein or independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or that fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. 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 person receiving such interest is the beneficial owner of the interest, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

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

3. Notwithstanding the provisions of Paragraph 2, interest originating in one of the Contracting States shall be exempt from tax in that State if

(a) such interest is owed by the Government of said Contracting State or a political or administrative subdivision thereof or one of its local authorities, or

(b) such interest is paid to the Government of the other Contracting State or to a political or administrative subdivision thereof or one of its local authorities or to an institution or entity (including financial institutions) by virtue of financing granted by them within the scope of agreements between the Governments of the Contracting States.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits and other debt-claims of any kind, as well as any other similar income from sums loaned under the tax legislation of the State where such income originates.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on an industrial or commercial activity in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected therewith.

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

6. 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.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to

the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 12 Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable in that other State.
2. These royalties, however, are also taxable in the Contracting State in which they arise in case the laws of this State establish this; however, in case the person receiving the royalties is their beneficial owner, the tax established in such a manner can not exceed 10 percent of the gross amount of the royalties.

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

3. 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 recording tapes, of any patent, trade mark, design or model, plan, secret formula or process as well as for the use of, or the right to use, any industrial, commercial, or scientific equipment or for information concerning experience acquired in the industrial, commercial, or scientific sector.

4. The provisions of Paragraph 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on an activity in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected therewith.

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

5. The royalties are deemed to arise in a Contracting State in case the payer is a resident of that State.

However, in case the payer of the royalties, whether a resident of a Contracting State or not, has a permanent establishment or a fixed base in a Contracting State for which the contract giving rise to the payment of the royalties has been entered and which as such incurs the charge thereof, these royalties are deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

6. 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 service 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.
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.

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. However, such income can be taxed in the other Contracting State in the following cases:

(a) if the individual habitually maintains a fixed base in the other Contracting State in order to carry out his activities; in this case, only the part of the income attributable to that fixed base is taxable in the other Contracting State; or

(b) the remuneration for his activities in the other Contracting State was paid by or on behalf of a resident of the other Contracting State or borne by a permanent establishment or fixed base situated in that Contracting State and exceeds, for the tax year, a gross amount equivalent to 18,000 Euros.

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 beneficiary owner is present in the other State for a period or periods not exceeding in the aggregate 183 days during any twelve-month period commencing or ending during the fiscal year concerned;

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

Article 17 Artistes and Sportsmen

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

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

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, where in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such who is a resident of a Contracting State, such income can only be taxed in that State when these activities are exercised in the other Contracting State within the scope of a cultural or athletic exchange program entered into by both Contracting States.

Article 18 Pensions

1. Pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

2. Notwithstanding the provisions of Paragraph 1, social security benefits and other pensions paid by a resident of a Contracting State to a resident of the other Contracting State can be taxed in the first-mentioned State.

Article 19 Government Service

1. (a) 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 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. The provisions of Articles 15, 16, 17 and 18 shall apply to remuneration and pensions paid in respect of services rendered in connection with a commercial or industrial activity carried on by a Contracting State or a political or administrative subdivision or a local authority thereof.

Article 20 Professors

A person who is or was immediately prior thereto a resident of a Contracting State and who transfers to the other Contracting State upon invitation of such other State or by a university or another non-profit teaching or scientific research institution of that State solely for the purpose of lecturing or conducting scientific research in said institutions or within the scope of an official cultural exchange program for a period not exceeding two years shall be exempt from taxes in both Contracting States for remuneration received as a result of such lectures or research.

Article 21 Students

1. A person who is or was immediately prior thereto a resident of a Contracting State and who transfers to the other Contracting State and temporarily stays in that other State solely as a student of a university, college, school or another similar teaching institution of that other State or as a commercial, industrial, agricultural, forestry, or technical trainee shall be exempt from tax in that other Contracting State from the date of his first arrival in that other Contracting State in connection with such transfer:

(a) for all payments originating outside of that other State and received for his maintenance, studies or training;

(b) for a period which in the aggregate does not exceed five years, any remuneration not exceeding 4,750 Euros in consideration of professional services rendered in that other State to complete the funds available to him for his maintenance, education or training.

2. A person who is or was immediately prior thereto a resident of a Contracting State and who transfers to the other Contracting State and temporarily stays in that other State solely for the purpose of pursuing studies, research, or training as the beneficiary of financial aid, a pension, or a award granted by a scientific, educational or charitable organization or within the scope of a cooperation agreement implemented by the Government of a Contracting State shall be exempt from tax in that other Contracting State from the date of his first arrival in that other Contracting State:

(a) for the full amount of such financial aid, pension, or award;

(b) for all payments originating outside of that other State and received for his maintenance, studies or training;

(c) for a period which in the aggregate does not exceed five years, any remuneration not exceeding 4,750 Euros in consideration of professional services rendered in that other State to complete the funds available to him for his maintenance, education or training.

3. A resident of a Contracting State who is employed by a company of that State or by an organization mentioned in Paragraph 2 of this Article or who enters into an agreement with them and who temporarily stays in the other Contracting State for a period not exceeding one year solely for the purpose of acquiring technical, professional, commercial or industrial experience from any person other than that company or organization is exempt from taxation by that other State in terms of compensation for services, regardless of where they are rendered, as long as such compensation does not exceed 4,750 Euros.

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 an activity in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected therewith. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

Chapter IV

Elimination of Double Taxation

Article 23 Methods

1. (a) Where a resident of a Contracting State receives income which, in accordance with the provisions of this Convention, can be taxed in the other Contracting State, the first State shall deduct

from the income tax of such resident an amount equivalent to the income tax paid in that other State. The amount deducted, however, can not exceed that part of income tax, calculated prior to the deduction, which corresponds to the income which can be taxed in that other State.

(b) Where in accordance with the provisions of this Convention, the income received by a resident of a Contracting State is exempt from tax in this State, this State may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

2. Insofar as Portuguese residents are concerned, the term "income tax paid in that other State" used in the preceding paragraph includes any amount that would have to be paid in terms of Cape Verdean tax which was actually not paid due to the temporary tax exemption or reduction granted by law in order to promote the economic development of Cape Verde, in particular for the purpose of promoting foreign investment. The tax payable in Cape Verde shall be deducted up to the amount of the tax which would have to be paid in accordance with the provisions of this present Convention. This paragraph shall apply during the first seven years in which this present Convention is in effect. Afterwards, the authorities of the two Contracting States shall meet to determine whether to extend its application.

Chapter V

Special Provisions

Article 24 Non-Discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. 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. Resident refugees of a Contracting State shall not be subjected in a Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

3. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. Except where the provisions of Paragraph 1 of Article 9, Paragraph 7 of Article 11, or Paragraph 6 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.

5. 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.

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

Article 25 Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under Paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. That competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission created by said authorities or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 26 Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is not contrary to this Convention. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of the taxes covered by this Convention, or the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Convention. Such persons or authorities shall use the information obtained in such manner only for the specified purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

- a) to carry out administrative measures violating the laws and administrative practice of that or of the other Contracting State;
- b) to supply information which is not obtainable under the laws or in the normal course of the administrative practice of that or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, or professional secret or process, or information, the disclosure of which would be contrary to public policy (ordre public).

Article 27 Cooperation in Tax Matters

With a view to cooperation in tax matters, the competent authorities of the Contracting States may enter into agreements regarding training and programs for the exchange of qualified personnel, information and technical studies as well as experience in the field of organization and operation of tax administration.

Article 28 Members of Diplomatic Missions and Consular Posts

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 29 Miscellaneous Provisions

The provisions of this present Convention can not be construed to limit in any manner whatsoever the exemptions, allowances, deductions, credits or other relief granted:

- (a) by the laws of a Contracting State for the purpose of determining the tax collected by this State; or
- (b) under any other specific agreement entered into by a Contracting State.

Chapter VI

Final Provisions

Article 30 Entry into Force

1. This present Convention shall be ratified and the instruments of ratification shall be exchanged in Lisbon as soon as possible.

2. The Convention shall come into effect after the exchange of the instruments of ratification, and its provisions shall become applicable for the first time

- a) to taxes levied at the source who arise after December 31 of the year in which the instruments of ratification are exchanged;
- b) insofar as other taxes are concerned, for income generated during the tax period commencing after December 31 of the year in which the instruments of ratification are exchanged.

3. The provisions contained in Articles 8, 13 (3) and 15 (3) shall apply as of 1992.

Article 31 Termination

This Convention shall remain in force unless terminated by a Contracting State. This Convention can be terminated, by giving a minimum notice, through diplomatic channels, of six months and shall specify the year in which this Convention shall cease to be in effect prior to December 31 of the year specified in the corresponding notice. This notice of termination, however, can only be submitted after

a period of five years has elapsed from the date of entry into force of aforesaid Convention. In this case, its provisions shall no longer apply to the following:

a) to taxes levied at the source who arise after December 31 of the year in which the Convention is terminated;

b) insofar as other taxes are concerned, to income generated during the tax periods commencing after December 31 of the year in which the Convention is terminated.

In witness whereof the undersigned, duly authorized to that effect by the corresponding Government, have signed this present Convention.

Done in Lisbon on March 22, 1999 in two copies in the Portuguese language, with both texts being equally valid.

**FOR THE GOVERNMENT OF THE PORTUGUESE REPUBLIC:
FOR THE GOVERNMENT OF THE REPUBLIC OF CAPE VERDE:
PROTOCOL**

During the signature of the Convention between the Portuguese Republic and the Republic of Cape Verde concerning Avoidance of Double Taxation with Respect to Income and the Prevention of Tax Evasion, the Contracting States agreed on the following provisions, which shall be an integral part of the Convention.

With respect to letter (b) of Paragraph 1 of Article 4, it is specified that for the purposes of this Convention, persons or companies which, assuming they are not taxed in Cape Verde on the basis of their residence, shall be considered residents of Cape Verde and taxed there in accordance with the laws of Cape Verde and shall reside in Cape Verde.

With respect to Paragraph 5 of Article 10, it is specified that the same prevents a Contracting State from taxing the dividends distributed by a company which does not reside in such Contracting State simply based on the fact that those dividends are derived from profits obtained in the corresponding territory, in particular those obtained through a branch.

With respect to Article 24, the provisions of the Convention shall not be deemed to prevent the application by a Contracting State of the corresponding domestic regulations pertaining to excessive undercapitalization or indebtedness.

In witness whereof the undersigned, duly authorized to that effect by the corresponding Government, have signed this present Protocol.

Done in two copies in Lisbon on March 22, 1999 in the Portuguese language, with both texts being equally valid.

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