

## **1980 Income and Capital Tax Convention and Final Protocol**

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**Effective date:** January 1, 1983. See Article 30.

**Status:** In Force

### **CONVENTION BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE PORTUGUESE REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL**

The Federal Republic of Germany and the Portuguese Republic, desiring to promote their bilateral economic relations by avoiding double taxation with respect to taxes on income and capital, have agreed as follows:

#### Chapter I

Scope 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. The existing taxes to which the Convention shall apply are:

(a) In the case of Portugal:

- 1--the property tax (contribuicao predial);
- 2--the agricultural tax (imposto sobre a industria agricola);
- 3--the industrial tax (contribuicao industrial);
- 4--the tax on income from movable capital (imposto de capitais);
- 5--the professional tax (imposto profissional);
- 6--the complementary tax (imposto complementar);
- 7--the tax on capital gains (imposto de maisvalias);
- 8--the tax on income from oil (imposto sobre o rendimento do petroleo);
- 9--any surcharges on the preceding taxes;

10--other taxes charged by reference to the preceding taxes for the benefit of local authorities and the corresponding surcharges

(hereinafter referred to as "Portuguese tax");

(b) In the case of the Federal Republic of Germany:

- 1--the income tax (Einkommensteuer);
- 2--the corporation tax (Körperschaftsteuer);
- 3--the capital tax (Vermogensteuer);
- 4--the real property tax (Grundsteuer);
- 5--the trade tax (Gewerbesteuer);
- 6--any surcharges on the preceding taxes,

(hereinafter referred to as "German tax").

2. 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. At the beginning of each year, the competent authorities of the Contracting States shall notify each other of substantial changes which have been made in their respective taxation laws during the preceding year.

#### 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 the Federal Republic of Germany or the Portuguese Republic as the context requires;
- (b) the term "Portugal" used in a geographical sense means the territory of the Portuguese Republic situated in the European continent and the archipelagoes of Azores and Madeira and includes any area outside the territorial sea of Portugal which, in accordance with international law, has been or may hereafter be designated, under the laws of Portugal concerning the continental shelf, as an area,

within which the rights of Portugal with respect to the sea-bed and sub-soil and their natural resources may be exercised;

(c) the term "Federal Republic of Germany", when used in a geographical sense, means the territory in which the Basic Law for the Federal Republic of Germany is in force, as well as any area adjacent to the territorial waters of the Federal Republic of Germany designated, in accordance with international law, as related to the rights which the Federal Republic of Germany may exercise with respect to the sea-bed and sub-soil and their natural resources, as domestic area for tax purposes;

(d) the term "person" includes an individual and a company;

(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 "national" means:

(i) in the case of Portugal

aa. any individual possessing the Portuguese nationality;

bb. any legal person, partnership and association deriving its status as such from the laws in force in Portugal;

(ii) In the case of the Federal Republic of Germany any German in the meaning of paragraph (1) of Article 116 of the Basic Law for the Federal Republic of Germany and any legal person, partnership and association deriving its status as such from the law in force in the Federal Republic of Germany;

(i) the term "competent authority" means:

(i) in the case of Portugal: the Minister of Finance, the Director-General of Taxation (Director-Geral das Contribuicoes e Impostos) or their authorized representative;

(ii) in the case of the Federal Republic of Germany the Federal Minister of Finance.

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.

#### **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 taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State 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 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 (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 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 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 of the State in which its place of effective management is situated.

4. As regards the application of Articles 5 to 23, a partner of a partnership shall, for the purposes of the taxation of his income derived from this partnership or of the capital which he holds through this partnership--excluding its distributions--be deemed to be a resident of the Contracting State in which the place of effective management of the partnership is situated. If such income or capital is not subject to tax in this State, it shall be taxable in the other State.

#### **Article 5 Permanent Establishment**

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially:
  - (a) a place of management;
  - (b) a branch;
  - (c) an office;
  - (d) a factory;
  - (e) a workshop; and
  - (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than six months.
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 subparagraphs (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 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 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.

5. The foregoing provisions shall also apply to income from movable property which, under the taxation law of the Contracting State in which the property in question is situated, is assimilated to income from immovable property.

### **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 taxed 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**

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.

### **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 recipient is the beneficial owner of the dividends the tax so charged shall not exceed 15 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 this limitation.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. 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 and distributions on certificates of an investment-trust.

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 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, dividends may be taxed in that other State and according to its taxation law.

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 the recipient is the beneficial owner of the interest the tax so charged shall not exceed

(a) 10 per cent of the gross amount of such interest if it is paid on any loan of whatever kind granted by a bank. In the case of interest arising in Portugal, the provision of this subparagraph shall only apply if the operation for which the loan is given is considered to be of an economic or social interest for the country by the Portuguese Government, which condition is always considered to be fulfilled if it is comprised in development plans approved by this Government.

(b) 15 per cent of the gross amount of such interest in all other cases.

The competent authorities of the Contracting State shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, interest arising in the Federal Republic of Germany and paid to the Banco de Portugal shall be exempt from German tax and interest arising in Portugal and paid to the Deutsche Bundesbank shall be exempt from Portuguese tax.

The competent authorities may by mutual agreement extend the provisions of this paragraph to interest paid to other similar institutions.

4. The term "interest" as used in this article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and other debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises.

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 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, interest may be taxed in that other State and according to its taxation law.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or 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.

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 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 recipient is the beneficial owner of the royalties 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. 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.

4. 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, royalties may be taxed in that other State, and according to its taxation law.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or 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 a fixed base in connection with which the obligation to pay these royalties was incurred, and such royalties are borne by such 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.

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 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 that 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, in the following circumstances such income may be taxed in the other Contracting State, that is to say:
  - (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 Contracting State; or
  - (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the calendar year.
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 the calendar 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 similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or supervisory board (in Portugal, conselho fiscal) or of another similar organ of a company which is a resident of the other Contracting State may be taxed in that other State, 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 Artists and Athletes**

1. Notwithstanding the provisions of Article 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artist, or a musician, or as an athlete, 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 an athlete in his capacity as such accrues not to the entertainer or athlete 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 athlete are exercised.

### **Article 18 Pensions**

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.

### **Article 19 Government Service**

1. Subject to the provisions of Article 18, remuneration paid by, or out of funds created by a Contracting State, a Land, a political subdivision or a local authority thereof to any individual in respect of an employment shall be taxable only in that State. If, however, the employment is exercised in the other Contracting State by a national of that State not being a national of the first-mentioned State, the remuneration shall be taxable only in that other State.
2. The provisions of Articles 15, 16 and 17 shall apply to remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a Land or a political subdivision or a local authority thereof.

### **Article 20 Professors**

Subject to the provisions of Article 19, a professor or teacher who is or was immediately before a resident of a Contracting State and who, at the invitation of the Government of the other Contracting State or of a non-profit-making university or other approved other Contracting State, or under an official programme of cultural exchange, visits that other State for a period not exceeding two years solely for the purpose of teaching, carrying out research or giving lectures undertaken in the public interest at such a university or educational institution shall be exempt from tax in that other State on his remuneration from such activity, provided that such remuneration is derived from outside that other State.

### **Article 21 Students**

1. An individual who is or was a resident of a Contracting State immediately before visiting the other Contracting State and is temporarily present in that other State solely as a student at a university, college, school or other similar educational institution in that other State or as business, agricultural, forestry or technical apprentice (including in the case of the Federal Republic of Germany a Volontär or a Praktikant) shall, from the date of his first arrival in that other State in connection with that visit, be exempt from tax in that other State on:

- (a) all remittances from abroad for purposes of his maintenance, education or training, and
- (b) for a period not exceeding in the aggregate three years, on any remuneration not exceeding 7200 DM or the equivalent in Portuguese currency for the calendar year, for personal services rendered in that other State with a view to supplement the resources available to him for his maintenance, education or training.

2. An individual who is or was a resident of a Contracting State immediately before visiting the other Contracting State and is temporarily present in that other Contracting State solely for the purpose of study, research or training as a recipient of a grant, allowance or award from a scientific, educational, religious or charitable organization or under a cooperation program entered into by the Government of a Contracting State shall from the date of his first arrival in that other State be exempt from tax in that State:

- (a) on the amount of such grant, allowance or award;
- (b) on all remittances from abroad for the purposes of his maintenance, education or training; and
- (c) for a period not exceeding in the aggregate three years, on any remuneration not exceeding 7200 DM or the equivalent in Portuguese currency for the calendar year, for personal services rendered in that other State with a view to supplement the resources available to him for his maintenance, education or training.

3. A resident of one of the contracting States who is an employee of, or under a contract with, an enterprise of such State or an organization described in paragraph (2) of this Article, and who is temporarily present in the other Contracting State for a period not exceeding one year solely to acquire technical, professional or business experience from any person other than such enterprise or organization, shall be exempt from tax by such other State on compensation for services wherever performed unless the amount thereof exceeds 15,000 DM or equivalent in Portuguese currency.

### **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. However, if those items of income are not subject to tax in that State they may be taxed in the other Contracting State.

2. The provisions of the first part 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 items of income may be taxed in that other State in accordance with its taxation law.

### **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.

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

#### Chapter V

#### Relief From Double Taxation

### **Article 24 Methods**

1.

(a) Where a resident of Portugal derives income which, in accordance with the provisions of this Convention, may be taxed in the Federal Republic of Germany, 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 Federal Republic of Germany.

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 Federal Republic of Germany.

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

2. Tax shall be determined in the case of a resident of the Federal Republic of Germany as follows:

(a) Unless the provisions of subparagraph (b) apply, there shall be excluded from the basis upon which German tax is imposed, any item of income arising in Portugal and any item of capital situated within Portugal which, according to this Agreement, may be taxed in Portugal. The Federal Republic of Germany, however, retains the right to take into account in the determination of its rate of tax the items of income and capital so excluded. In respect to dividends the foregoing provisions shall only apply to such dividends as are paid to a company being a resident of the Federal Republic of Germany by a company being a resident of Portugal and at least 25 per cent of the capital of the Portuguese company is owned directly by the German company.

For the purposes of taxes on capital there shall also be excluded from the basis upon which German tax is imposed any participation, the dividends of which are excluded or, if paid, would be excluded, according to the immediately foregoing sentence from the basis upon which German tax is imposed.

(b) There shall be allowed as a credit against German income and corporation tax, payable in respect of the following items of income arising in Portugal and against German capital tax payable in respect of capital situated in Portugal the appropriate Portuguese tax paid under the laws of Portugal and in accordance with this Convention on:

(aa) dividends, not dealt with in subparagraph (a), to which paragraph (2) of Article 10 applies;

(bb) interest to which paragraph (2) of Article 11 applies;

(cc) royalties to which paragraph (2) of Article 12 applies;

(dd) remuneration to which Article 16 applies;

(ee) income to which Article 17 applies;

The credit shall not, however, exceed that part of the German tax, as computed before the credit is given, which is appropriate to such income or capital.

(c) For the purposes of credit referred to in subparagraph (b), Portuguese tax to be credited under the provisions of respective heads (aa), (bb) and (cc) shall in any case be deemed to be 15 per cent of the gross amount of such dividends, interest and royalties.

#### Chapter VI

#### Special Provisions

### **Article 25 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. 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 Article 9, of 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. 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.

### **Article 26 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 25, 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. The 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 endeavour 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 for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

### **Article 27 Exchange of Information**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention and of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is in accordance with this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities (including courts) other than those concerned with the assessment or collection of the taxes which are the subject of the Convention.

2. In no case shall the provision of paragraph 1 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 process or information, the disclosure of which would be contrary to public policy (ordre public).

### **Article 28 Diplomatic Agents and Consular Officers**

1. Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

2. Notwithstanding the Provisions of Article 4 an individual who is a member of a diplomatic mission, consular post or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed for the purposes of this Convention to be a resident of the sending State if:

- (a) in accordance with international law he is not liable to tax in the receiving State in respect of income from sources outside that State or on capital situated outside that State and
- (b) he is liable in the sending State to the same obligations in relation to tax on his total income or on capital as are residents of that State.

### **Article 29 Land Berlin**

This Convention shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Government of the Portuguese Republic within three months of the date of entry into force of this Convention.

### Chapter VII

#### Final Provisions

### **Article 30 Entry Into Force**

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Bonn as soon as possible.
2. The Convention shall enter into force one month after the exchange of instruments of ratification and its provisions shall have effect for the first time:
  - (a) in respect of taxes withheld at source, the fact giving rise to them appearing after December 31 of the year in which the exchange of instruments of ratification takes place;
  - (b) in respect of other taxes as to income arising or to capital owned in the calendar year next following that in which the exchange of instruments of ratification takes place.

### **Article 31 Termination**

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year as from the second year following that in which the exchange of instruments of ratification takes place. In such event, the Convention shall cease to have effect:

- (a) in respect of taxes withheld at source, the fact giving rise to them appearing after December 31 of the year of termination;
- (b) in respect of other taxes as to income arising or to capital owned after December 31 of the year of termination.

DONE at Lisbon, this 15th day of July 1980, in duplicate in the German, Portuguese and English languages, all three texts being authentic. In case of divergent interpretation of the German and Portuguese texts the English text shall prevail.

#### **FOR THE FEDERAL REPUBLIC OF GERMANY**

*Hans-Dietrich Genscher*

#### **FOR THE PORTUGUESE REPUBLIC**

*Diogo F. Do Amaral*

#### **Final Protocol**

The Federal Republic of Germany and the Portuguese Republic have agreed at the signing at Lisbon on the 15th of July 1980 of the Convention between the two States for the avoidance of double taxation with respect to taxes on income and capital upon the following provisions which shall form an integral part of the said Convention.

##### 1. With reference to Article 2

Should Portugal introduce a tax comparable to the German capital tax, the Contracting States shall consult each other to reach an agreement on whether or not to extend the scope of the Convention to include this tax. If Portugal declares itself unable to include this tax in the scope of the Convention, the Federal Republic may, without delay and by way of communication to be sent through diplomatic channels, terminate subparagraph (b) of paragraph 1 of Article 2, stipulating that with effect from the date of introduction of the new Portuguese tax, the Convention shall cease to have effect in respect of the German capital tax and trade tax, levied on capital bases (Gewerbekapitalsteuer).

##### 2. With reference to Article 3

The term "archipelagoes" used in subparagraph (b) of paragraph 1 of Article 3 is used in a purely geographical sense. It is not the intention of the contracting parties to attribute, with respect to islands or groups of islands, any rights going further than those rights existing under international law.

##### 3. With reference to Article 10

The term "dividends" used in paragraph 3 of Article 10 includes also, with regard to the Federal Republic of Germany, income derived by a sleeping partner from his participation as such and, with regard to Portugal, profits attributed under an arrangement for participation in profits (conta em participacao).

4. With reference to Article 10 paragraph 2 and Article 11 paragraph 2

Notwithstanding these provisions the income may be taxed in the Contracting State in which it arises according to the laws of that State if it is derived from rights or debt-claims participating in the profits (including in the Federal Republic of Germany income of a sleeping partner from his participation as such or from "partiarischen Darlehen" and "Gewinnobligationen"), provided that such income is deductible in determining the profits of the debtor.

5. With reference to Articles 10, 11 and 12

As regards the application of Articles 10, 11 and 12 in Portugal, it shall be immaterial whether the dividends, interest on royalties arising in that country were actually paid or are attributable under Portuguese law.

6. With reference to Article 13

The provisions of Article 13 shall not be construed as restricting the right of Portugal to tax the gains derived from capital increase of companies having their head office or their effective management in Portugal by the incorporation of reserves or by the issue of shares.

7. With reference to Article 14

In the case of paragraph 1(b) of Article 14, only so much of the income as is attributable to the activity mentioned therein may be taxed in that other Contracting State.

8. With reference to Article 24

(a) Only the provisions of subparagraph (b) of paragraph 2 of Article 24, with the exclusion of subparagraph (c) of paragraph 2 of that Article, shall apply to the profits of, and to the capital represented by property forming part of the business property of, a permanent establishment; to dividends paid by, and to the shareholding in, a company; or to gains referred to in paragraphs 1 and 2 of Article 13 of the Agreement; unless the resident of the Federal Republic of Germany concerned proves that the receipts of the permanent establishment or company are exclusively or almost exclusively derived from producing, selling or letting goods and merchandise (including cases where such goods or merchandise are sold or let to customers outside Portugal), the exploration for or exploitation or treatment of minerals, quarrying, primary production, giving technical advice or rendering engineering or commercial services, or doing banking or insurance business, within Portugal, or from interest or royalties arising in Portugal and connected with the above-mentioned activities, or from interest paid by the Government of Portugal or a political subdivision thereof or from interest and dividends paid by a company being a resident of Portugal if such company derives its receipts exclusively or almost exclusively from the above-mentioned activities.

(b) Where a company being a resident of the Federal Republic of Germany distributes income derived from sources within Portugal paragraph (2) of Article 23 of the Convention shall not preclude the compensatory imposition of corporation tax on such distributions in accordance with the provision of German tax law.

9. With reference to Article 30

Notwithstanding the provisions of Article 30, Article 8, paragraph 3 of Article 13 and paragraph 3 of Article 23 shall have effect in both Contracting States with respect to the assessment periods beginning on or after January 1972.

**FOR THE FEDERAL REPUBLIC OF GERMANY**

*Hans-Dietrich Genscher*

**FOR THE PORTUGUESE REPUBLIC**

*Diogo F. Do Amaral*