

1998 Income Tax Convention and Final Protocol

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Status: In Force

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

The Government of the Republic of India and the Government of the Portuguese Republic, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income 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. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political or administrative sub-divisions 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 and taxes on the amounts of wages or salaries paid by enterprises.

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

(a) In the case of the Portuguese Republic:

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

(ii) Corporate Income-tax (Imposto sobre o Rendimento das pessoas Colectivas - IRC);

(iii) Local surtax on corporate income-tax (Derrama); (hereinafter referred to as 'Portuguese tax');

(b) In the case of the Republic of India: The income-tax including any surcharge thereon; (hereinafter referred to as 'Indian tax').

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

Chapter II

Definitions

Article 3 General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:

(a) the term 'Portugal' means the territory of the Portuguese Republic situated in the European Continent, the archipelagoes of Azores and Madeira, the respective territorial sea and any other zone in which, in accordance with the laws of Portugal and international law, the Portuguese Republic has its jurisdiction or sovereign rights with respect to the exploration and exploitation of the natural resources of the sea bed and sub-soil, and of the superjacent waters;

(b) the term 'India' means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdictions, according to the Indian law and in accordance with International law, including the U.N. Convention on the Law of the Sea, 1982;

(c) the terms 'a Contracting State' and 'the other Contracting State' mean Portugal or India as the context requires;

(d) the term 'tax' means Portuguese tax or Indian tax, as the context requires;

(e) the term 'person' includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in a Contracting State;

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

(g) the terms 'enterprise of a Contracting State' and 'enterprise of the other Contracting State' mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

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

(i) the term 'competent authority' means:

(i) in Portugal: the Minister of Finance or the Director General of Taxation (Director-General dos Impostos) or their authorised representative;

(ii) in India: the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative;

(j) the term 'national' means:

(i) any individual possessing the nationality of a Contracting State;

(ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.

(k) The term 'fiscal year' means:

(i) in the case of Portugal, the civil year as laid down in the IRS Code or the taxation period as defined in the IRC Code;

(ii) in the case of India, 'previous year' as defined under section 3 of the Income-tax Act, 196 1.

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

Article 4 Resident

1.For the purposes of this Convention, the term resident of a Contracting State' means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. 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.

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

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

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

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

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

3.Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which, its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

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;

(h) a sales outlet; and

(g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources, including an installation or structure used for the exploration or exploitation of natural resources only if so used for a period of more than 120 days in a fiscal year.

3. A building site, construction, installation or assembly project or supervisory activities in connection therewith constitutes a permanent establishment only if it lasts more than nine 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 sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

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

(a) he has and habitually exercises in that State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited wholly to the activities described in paragraph 4;

(b) he has no such authority, but habitually maintains in the first mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise and some additional activities conducted in that State on behalf of the enterprise have contributed to the sale of the goods or merchandise.

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. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have @ permanent establishment in the other Contracting State if it collects premium in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 6 applies.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is 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 lights 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, motor vehicles 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, or income derived from services connected with the use or the right to use the immovable property, either of which, under the taxation law of the Contracting State in which the property 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 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 (a) that permanent establishment; (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in 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 deduction 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, subject to the provisions of the domestic laws of the Contracting State in which the permanent establishment is situated.

4. 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.

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 reasons 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 Shipping and Air Transport

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State of which the enterprise is a resident.

2. The provisions of paragraph 1 shall also supply to profits from the participation in a pool, a joint business or an international operating agency.

3. Whenever companies from different countries have agreed to carry on an air transportation business together in the form of a consortium; the provisions of paragraph 1 shall apply to such part of the profits of the consortium as corresponds to the participation held in that consortium by a company that is a resident of a Contracting State.

4. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall mean profits derived from the transportation by sea or air of passengers, mail, livestock or goods carried on by the owner or lessees or charterers of the ships or aircraft, including profits from:

(i) the sale of tickets for such transportation on behalf of other enterprises;

(ii) the incidental lease of ships or aircraft used in such transportation, and

(iii) the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) by the enterprise engaged in international traffic in connection with such transportation.

5. Interest on funds generated by the operation of ships or aircraft and arising directly to a permanent establishment of an enterprise of one Contracting State in the other Contracting State, shall be regarded as profits derived from the operation of ships or aircraft in international traffic. It is clarified that such interest shall not refer to interest on fund representing investments.

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 independent enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10 Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but:

(a) Where the dividends are paid by a company which is a resident of Portugal to a resident of India who is the beneficial owner thereof, the Portuguese tax so charged shall not exceed:

(i) 15 per cent of the gross amount of the dividends; or

(ii) 10 per cent of the gross amount of the dividends if the beneficial owner is a company that, for an uninterrupted period of two years prior to the payment of the dividend, owns directly at least 25 per cent of the capital stock (capital social) of the company paying the dividends.

(b) Where the dividends are paid by a company which is a resident of India to a resident of Portugal who is the beneficial owner thereof, the Indian tax so charged shall not exceed:

(i) 15 per cent of the gross amount of the dividends; or

(ii) 10 per cent of the gross amount of the dividends if the beneficial owner is a company that, for an uninterrupted period of two fiscal years prior to the payment of the dividend, owns directly at least 25 per cent of the capital stock of the company paying the dividends.

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 which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident. The term also includes profits attributed under an arrangement for participation in profits (associacao em participacao).

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, 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 the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempted from tax in that State:

(a) if the debtor of such interest is that State, a political or administrative sub-division or a local authority thereof; or

(b) if interest is paid to the other Contracting State, a political or administrative sub-division or a local authority thereof or an institution (including a financial institution) in connection with any finance granted by them under an agreement 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 in particular, income from Government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

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

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political or administrative sub-division thereof, 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 and Fees for Included Services

1. Royalties and fees for included services 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 and fees for included services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties and fees for included services is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount. 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 or any other means of reproduction for use in connection with 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. For the purposes of this Article, 'fees for included services' means payments of any kind, other than those mentioned in Articles 14 and 15 of this Convention, to any person in consideration of the rendering of any technical or consultancy services (including through the provisions of services of technical or other personnel) if such services:

(a) are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 3 is received, or

(b) make available technical knowledge, experience, skill, know-how or processes or consist of the development and transfer of a technical plan or technical design which enables the person acquiring the services to apply the technology contained therein.

5. Notwithstanding paragraph 4, 'fees for included services' does not include payments:

(a) for services that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property;

(b) for services that are ancillary and subsidiary to the rental of ships, aircraft, containers or other equipment used in connection with the operation of ships or aircraft in international craft;

(c) for teaching in or by educational institutions;

(d) for services for the personal use of the individual or individuals making the payment;

(e) to an employee of the person making the payments or to any individual or firm of individuals (other than a company) for professional services as defined in Article 14;

(f) for services rendered in connection with an installation or structure used for the exploration or exploitation of natural resources referred to in paragraph 2(f) of Article 5;

(g) for services referred to in paragraph 3 of Article 5.

6. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties and fees for included services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties and fees for included services 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 and fees for included services are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

7. Royalties and fees for included services shall be deemed to arise in a Contracting State where the payer is that State itself, a political or administrative sub-division thereof a local authority or a resident of that State. Where, however, the person paying the royalties and fees for included services, whether he is a resident of a Contracting State or not, has in Contracting State a permanent establishment or fixed base in connection with which the obligation to pay the royalties and fees for included services was incurred, and such royalties and fees for included services are borne by that permanent establishment or fixed base, then such royalties and fees for included services shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

8. 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 and fees for included services, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13 Capital Gains

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

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

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

4. Gains from the alienation of shares in the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may also be taxed in that State. Gains from the alienation of shares other than those mentioned above in a company which is a resident of a Contracting State may be taxed in that State.

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

Article 14 Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:
(a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State; or
(b) if his stay in the other State is for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in the other State may be taxed in that other State.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15 Dependent Personal Services

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

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

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State of which the enterprise is a resident.

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.

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. 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, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. However, such income shall not be taxed in the State mentioned in paragraph 1 if the said activities are exercised during a visit to that State by a resident of the other Contracting State and when such visit is wholly or substantially financed by that other State, a political or administrative sub-division or a local authority thereof.

Article 18 Pensions

Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

Article 19 Government Service

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting state or a political or administrative sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State;

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

(i) is a national of that State; or

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

2.(a) Any pension paid by, or out of funds created by, a Contracting State or a political or administrative sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State;

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

3.The provisions of Articles 15, 16,17 and 18 shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political or administrative sub-division or a local authority thereof.

Article 20 Professors, Teachers and Research Scholars

1. A professor, teacher or research scholar who is or was a resident of the Contracting State immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college, school or other approved institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other State.

2. This article shall not apply to income from research, if such research is undertaken primarily for the private benefit of a specific person or persons.

3.For the purposes of this Article and Article 21, an individual shall be deemed to be a resident of a Contracting State if he is resident in that State in the fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year.

4.For the purposes of paragraph 1, 'approved institution' means an institution which has been approved in this regard by the competent authority of the concerned State.

Article 21 Students and Trainees

Payments which a student, a business apprentice or trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives, for the purpose of his maintenance, education or training, shall not be taxed in that State, provided that such payments:

(a) arise from sources outside that State,

(b) are remuneration from employment in that other State in an amount not exceeding US \$ 3,000 per annum during a period not exceeding two years from the day of his first arrival in that other Contracting State, provided that such employment is directly related to his studies.

Article 22 Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt within the foregoing Articles of this Convention shall be taxable only in that State.

2.The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

3.Notwithstanding the provisions of paragraph 1, if a resident of a Contracting State derives income from sources within the other Contracting State in the form of lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any form or nature whatsoever, such income may be taxed in the other Contracting State.

Chapter IV

Methods for Elimination of Double Taxation

Article 23 Elimination of Double Taxation

1. The laws in force in either of the Contracting State will continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Convention.

2. In the case of Portugal double taxation shall be eliminated as follows: Where a resident of Portugal derives income which, in accordance with the provisions of this Convention, may be taxed in India, Portugal shall allow as a deduction from the tax on the income of that resident an amount equal to the

income-tax paid in India. 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 India.

3. In the case of India, double taxation shall be eliminated as follows:-

Where a resident of India derives income which, in accordance with the provisions of this Convention, may be taxed in Portugal, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in Portugal whether directly or by deduction at source. Such amount shall not, however, exceed that part of the income-tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Portugal.

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

5. The tax paid in a Contracting State mentioned in paragraphs 1 and 2 of this Article shall be deemed to include the tax on dividends, interest, royalties and fees for included services and business profits which would have been payable as laid down in this Convention but for the legal provisions concerning tax reduction or exemption of the Contracting States for the encouragement of genuine investment or economic development. The provisions of this paragraph shall apply for the first seven years during which this Convention is applicable. This period may be extended by mutual agreement between the competent authorities.

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

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

3. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11, or paragraph 4 of Article 12, apply, interest, royalties, technical fees and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

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

Article 25 Mutual Agreement Procedure

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

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

not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time-limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

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

Article 26 Exchange of Information

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

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 at variance with the laws and administrative practice of that or of the other Contracting State;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

Article 27 Collection Assistance

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

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

Article 28 Members of Diplomatic Missions and Consular Posts

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

Article 29 Entry Into Force

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

2. This Convention shall apply:

(a) in Portugal:

(i) in respect of taxes withheld at source, the fact giving rise to them appearing on or after the first day of January in the year next following the year in which this Convention enters into force;

(ii) in respect of other taxes as to income arising in the fiscal year beginning on or after the first day of January in the year next following the year in which this Convention enters into force;

(b) in India:

in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the Convention enters into force.

Article 30 Termination

This Convention shall remain in force indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year from the fifth year following that in which the

notifications have been given, terminate the Convention through diplomatic channels. In such event, the Convention shall cease to have effect:

(a) in Portugal:

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

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

(b) in India:

in respect of income arising in any fiscal beginning on or after the first day of April next following the date on which the period specified in the said notice of termination expires.

In witness whereof the undersigned, duly authorised thereto, have signed this Convention.

Done in duplicate, at Lisbon this September 11th day of 1998 in Hindi, Portuguese and English languages, each text being equally authentic, the English text prevailing in case of doubt.

FOR THE GOVERNMENT OF THE REPUBLIC OF INDIA:

FOR THE GOVERNMENT OF THE PORTUGUESE REPUBLIC:

PROTOCOL

At the moment of signing the Convention between the Republic of India and the Portuguese Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed upon the following which shall be an integral part of the Convention.

Ad Article 3:

For the purposes of paragraph 3, the reference to the time of application of the Convention shall mean the time when the income which is the subject-matter of this Convention arises.

Ad Article 3 and 23:

For the purposes of paragraph 1(d), of Article 3 and Article 23, the expression 'tax' shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which the Convention applies or which represents a penalty imposed relating to those taxes.

Ad Article 5:

For the purposes of paragraph 2, a warehouse in relation to a person providing storage facilities for others will be considered as constituting a permanent establishment.

Ad Article 6:

For the purposes of paragraph 1, it is agreed that the Contracting State of which the person deriving income from property is a resident is also entitled to tax such income.

Ad Article 7:

For the purposes of paragraph 3, it is agreed that the provisions of the domestic tax laws referred to therein relate, in the case of India, to section 44C of the Income-tax Act, 1961. It is further agreed that in no event the conditions and limits referred to in section 44C shall not be less favourable than those in force on the date of the signing of this Convention.

Ad Article 13:

For the purposes of paragraphs 1 and 4, it is agreed that the Contracting State of which the person deriving the capital gains is a resident is also entitled to tax such capital gains.

Ad Article 23:

It is understood that the term 'economic development' used in paragraph 5 of Article 23 would mean industrial development or development of infrastructural facilities.

Ad Article 24:

1. The provisions of Article 24 do not preclude the application of any provision of the tax law of the Contracting States dealing with thin capitalisation problems.

2. The provisions of Article 24 shall be construed in the sense that insofar as the deductibility of the incurred disbursements is concerned, each Contracting State may apply its own procedures regarding the burden of proof.

3. The provisions of paragraph 2 shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment 91 which a company of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first-mentioned Contracting State subject to the difference between the two rates not being more than 10%.

In witness whereof, the undersigned, duly authorised thereto, have signed this Protocol.

Done in duplicate, at Lisbon this September 11th day of 1998 in Hindi, Portuguese and English languages, each text being equally authentic, the English text prevailing in case of doubt.

FOR THE GOVERNMENT OF THE REPUBLIC OF INDIA:

FOR THE GOVERNMENT OF THE PORTUGUESE REPUBLIC: