

1996 Income Tax Convention

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Status: In Force

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

The Government of the Portuguese Republic and the Government of the Republic of Korea, 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. The existing taxes to which this Convention shall apply are:

a) In the case of Korea:

- i) The income tax;
- ii) The corporation tax;
- iii) The inhabitant tax; and
- iv) The special tax for rural development; (hereinafter referred to as "Korean tax");

b) In the case of Portugal:

- i) Personal income tax (imposto sobre o rendimento das pessoas singulares. IRS);
- ii) Corporate income tax (imposto sobre o rendimento das pessoas colectivas. IRC); and
- iii) Local surtax on corporate income tax (derrama); (hereinafter referred to as "Portuguese 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. 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 "Korea" means the territory of the Republic of Korea including any area adjacent to the territorial sea of the Republic of Korea which, in accordance with international law, has been or may hereafter be designated under the laws of the Republic of Korea as an area within which the sovereign rights of the Republic of Korea with respect to the sea-bed and subsoil and their natural resources may be exercised;
- b) The term "Portugal" means the territory of the Portuguese Republic situated in the European continent, the archipelagoes of Azores and Madeira, the respective territorial sea and any other zone in which, in accordance with the laws of Portugal and international law, the Portuguese Republic has its jurisdiction or sovereign rights with respect to the exploration and exploitation of the natural resources of the sea-bed and subsoil;
- c) The terms "a Contracting State" and "the other Contracting State" mean the Republic of Korea or the Portuguese Republic, as the context requires;
- d) The term "tax" means Korean tax or Portuguese tax, as the context requires;
- e) The term "person" includes an individual, a company and any other body of persons;
- f) The term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

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

h) The term "national" means:

i) All individuals possessing the nationality of a Contracting State;

ii) All legal persons, partnerships and associations deriving their status as such from the laws in force in a Contracting State;

i) 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;

j) The term "competent authority" means:

i) In the case of Korea, the Minister of Finance and Economy or his authorized representative;

ii) In the case of Portugal, the Minister of Finance, the Director-General of Taxation (Director-Geral das Contribuicoes e Impostos) or their authorized representative.

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 tax therein by reason of his domicile, residence, place of head or main office, 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.

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 only of the State in which its place of effective management is situated. In case of doubts 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; 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 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 7 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. Subject to the provisions of paragraphs 4, 7 and 8 of this article, an enterprise of a Contracting State which carries on business activity of a permanent nature through its own employees or any other personnel rendering a substantially similar service for 183 days or more in any twelve-month period in the other Contracting State shall be deemed to have a permanent establishment in that other State.

7. 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.

8. 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. 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 reason to the contrary.

6. Where profits include items of income which are dealt with separately in other articles of this Convention, then the provisions of those articles shall not be affected by the provisions of this article.

Article 8 Shipping and Air Transport

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

2. The provisions of paragraph 1 shall also apply to profits derived 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.

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

3. Notwithstanding the provisions of paragraph 2, 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, the tax so charged shall not exceed with respect to dividends paid after December 31, 1996, 10 per cent of the gross amount of such dividends.

4. 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. The provisions of this article shall also apply to profits attributed or paid to a person associated to a business activity carried out by another person under an arrangement for participation in profits as laid down by the law of each Contracting State (in case of Portugal, associacao em participacao).

5. The provisions of paragraphs 1, 2 and 3 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.

6. 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 the State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

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 the Government of that State, a political or administrative subdivision or a local authority thereof; or

b) If interest is paid to the Government of the other Contracting State, a political or administrative subdivision or a local authority thereof or an institution or body (including a financial institution) in connection with any financing granted by them under an agreement between the Governments of the Contracting States; or

c) In respect of loans or credit made by:

i) In the case of Korea, the Bank of Korea, the Korean Export- Import Bank and the Korea Development Bank; and

ii) In the case of Portugal, the Bank of Portugal, the Caixa Geral de Depositos, the Banco Nacional Ultramarino (BNU), the Bank for External Development (BFE), the Banco Borges e Irmao and the ICEP. Investment, Trade and Tourism of Portugal.

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 as well as all other income assimilated to income from money lent by taxation law of the State in which the income arises.

5. The provisions of paragraphs 1, 2 and 3 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 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.

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.

The term "royalties" also comprises payments received as a consideration for technical assistance in connection with the use or the right to use any copyright, goods or information to which this paragraph applies.

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

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political or administrative 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 the liability to pay the 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 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 a such [sic] 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 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 State; or

b) If his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned.

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

Article 15 Dependent Personal Services

1. Subject to the provisions of articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

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

3. Notwithstanding the preceding provisions of this article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that State.

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 daily activity shall be taxable according to the provisions of article 15.

Article 17 Artists 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 artist, 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. Notwithstanding the provisions of paragraphs 1 and 2 of this article, income derived by entertainers or sportsmen who are residents of a Contracting State from the activities exercised in the other Contracting State under a special programme of cultural exchange agreed upon between the governments of both Contracting States, shall be exempt from tax in that other State.

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) Remuneration, other than a pension, paid by a Contracting State or a political or administrative subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

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

- i) Is a national of that State; or
- ii) Did not become a resident of that State solely for the purpose of rendering the services.

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

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

3. The provisions of articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political or administrative subdivision or a local authority thereof.

4. The provisions of paragraphs 1 and 2 of this article shall likewise apply in respect of remuneration or pensions paid by:

a) In the case of Korea, the Bank of Korea, the Korean Export- Import Bank, the Korea Development Bank, and the Korea Trade Promotion Corporation; and

b) In the case of Portugal, the Bank of Portugal, the Caixa Geral de Depositos, the Banco Nacional Ultramarino (BNU), the Bank for the External Development (BFE), the Banco Borges e Irmao, the ICEP. Investment, Trade and Tourism of Portugal, and the COSEC. Credit Insurance Company.

Article 20 Students and Apprentices

Payments which a student or business apprentice 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 this maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

Article 21 Professors and Teachers

An individual who is or was a resident of a Contracting State immediately before making a visit to the other Contracting State, who, at the invitation of any university, college, school, or other similar educational or scientific research institution which is recognized as non-profitable by the Government of that State, or under an official programme of cultural exchange, visits that other State for a period not exceeding two years from the date of his first arrival in that other State, solely for the purpose of teaching or research or both at such institution shall be exempt from tax in that other State on his remuneration for such teaching or research.

Article 22 Other Income

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

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

Chapter IV

Methods for Elimination of Double Taxation

Article 23 Methods for Elimination of Double Taxation

1. In the case of a resident of Korea, double taxation shall be avoided as follows:

Subject to the provisions of Korean tax law regarding the allowance as a credit against Korean tax of tax payable in any country other than Korea (which shall not affect the general principle hereof), the Portuguese tax payable (excluding, in the case of dividends, tax payable in respect of the profits out of which the dividends are paid) under the laws of Portugal and in accordance with this Convention, whether directly or by deduction, in respect of income from sources within Portugal shall be allowed as a credit against the Korean tax payable in respect of that income. The credit shall not, however, exceed that proportion of the Korean tax which the income from sources within Portugal bears to the entire income subject to Korean tax

2. In the case of a resident of Portugal, double taxation shall be avoided as follows:

a) When a resident of Portugal derives income which, in accordance with the provisions of this Convention, may be taxed in Korea, the Portuguese Republic shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in Korea; 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 Korea; and

b) When 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.

3. For the purpose of paragraphs 1 and 2 of this article, the expressions "Portuguese tax payable" in paragraph 1 or "income tax paid in Korea" in paragraph 2 shall be deemed to include any amount which would have been paid as Portuguese tax or Korean tax, as the case may be, but for the exemption, deduction or reduction of tax under the laws in force in the respective Contracting State.

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 nations 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, 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.
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 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 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.
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 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 26 Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention 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 be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of 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 Diplomatic Agents and Consular Officers

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.

Chapter VI

Final Provisions

Article 28 Entry Into Force

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at . . . as soon as possible. The Convention shall enter into force on the thirtieth day after the date of exchange of the instruments of ratification.

2. This Convention shall have effect:

a) In Korea:

- i) In respect of taxes withheld at the source on or after the first day of January in the year next following that in which this Convention enters into force; and
- ii) In respect of other taxes for any taxable year beginning on or after the first day of January in the year next following that in which this Convention enters into force;

b) 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 that in which this Convention enters into force; and
- ii) In respect of other taxes as to income arising in any fiscal year beginning on or after the first day of January in the year next following that in which this Convention enters into force.

Article 29 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 third year following that in which the instruments of ratification have been exchanged, give to the other Contracting State, through diplomatic channels, written notice of termination and in such event, this Convention shall cease to have effect:

a) In Korea:

- i) In respect of taxes withheld at the source on or after the first day of January in the year next following that in which the notice is given; and
- ii) In respect of other taxes for the taxable year beginning on or after the first day of January in the year next following that in which the notice is given;

b) 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 date on which the period specified in the said notice of termination expires; and
- 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 date on which the period specified in the said notice of termination expires.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Convention.

Done in duplicate at Seoul this 26th day of January of the year one thousand nine hundred and ninety six in the Portuguese, Korean and English languages, all texts being equally authentic. In case of divergency of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE PORTUGUESE REPUBLIC:

Manuel Gervasio Leite

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA:

Gong Ro-Myung