

1999 Income and Capital Tax Convention and Final Protocol, as Amended (English Translation)

Signed date: May 25, 1999

In force date: December 30, 2000

Effective date: January 1, 2001. See Article 30.

Status: In Force

This convention, signed May 25, 1999, has been amended by a protocol signed September 7, 2010.

CONVENTION BETWEEN THE PORTUGUESE REPUBLIC AND THE GRAND-DUCHY OF LUXEMBOURG FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESEPECT TO TAXES ON INCOME AND ON CAPITAL [TRANSLATION]

The Government of the Portuguese Republic and the Government of the Grand-Duchy of Luxembourg, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with resepect to taxes on income and on capital, have agreed as follows:

Article 1 Personal Scope

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

Article 2 Taxes Covered

1) The existing taxes to which the Convention shall apply are in particular:

- a) insofar as Luxembourg is concerned:
 - i) income tax (l'impôt des personnes physiques);
 - ii) corporate income tax (l'impôt sur le revenu des collectivités);
 - iii) special tax on royalties (l'impôt spécial sur les tantièmes);
 - iv) profit tax (l'impôt sur la fortune);
 - v) commercial community tax (l'impôt commercial communal), and
 - vi) property tax (l'impôt foncier);(which shall hereinafter be referred to as "Luxembourg Tax").

b) insofar as Portugal is concerned:

- i) income tax (imposto sobre o rendimento das pessoas singulares - IRS);
 - ii) corporate income tax (imposto sobre o rendimento das pessoas colectivas - IRC);
 - iii) additional local tax on corporate income (derrama);
 - iv) property tax for municipalities (contribuição autárquica);
- (which shall hereinafter be 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 at the beginning of each year of significant changes which have been made in their respective taxation laws during the preceding year.

Article 3 General Definitions

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

- a) the terms "Contracting State" or "the other Contracting State" refer to Luxembourg or Portugal, according to the context herewith.
- b) in its geographic sense, the term "Luxembourg" refers to the territory of the Grand-Duchy of Luxembourg.
- c) in its geographic sense, the term "Portugal" refers to the territory of the Portuguese Republic situated on the European continent and the archipelagos of the Azores and Madeira, the territorial waters and in addition thereto the areas over which, in conformity with Portuguese and international law, the Portuguese Republic has jurisdiction and with respect to which it has sovereign rights for the purpose of exploration and exploitation of the natural resources of the sea bottom, the subsoil and water columns.
- d) the term "Person" refers to any individual or company or group of people.
- e) the term "Company" refers to any body corporate or any entity which is treated as a body corporate for tax purposes;

- f) the terms "Enterprise of a Contracting State" and "Enterprise of the other Contracting State" refer respectively to an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - g) the term "International Traffic" means any transport by a ship or aircraft operated by an enterprise whose place of effective management is situated in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - h) the term "Competent Authority" refers to the following:
 - i) insofar as Luxembourg is concerned, the Minister of Finance or his/her authorized representative;
 - ii) insofar as Portugal is concerned, the Minister of Finance, the Director-General of Taxes, or their authorized representatives;
- 2) As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

Article 4 Resident

- 1) For the purposes of this present 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 situated in that State or capital located therein.
- 2) Where by reason of the provisions of Paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
 - a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (center of vital interests);
 - b) if the State in which he has his center of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
 - c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
 - d) if he is a national of both or neither of the Contracting States, 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 a natural person is a resident of both Contracting States, then such person shall be deemed to be a resident of the State in which its place of effective management is situated.

Article 5 Permanent Establishment

- 1) For the purposes of this present 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 construction or assembly site only constitutes a permanent establishment provided its duration exceeds six months.
- 4) Notwithstanding the preceding provisions of this present 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 activities of a preparatory or auxiliary character;

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

5) Notwithstanding the provisions of Paragraphs 1 and 2, where a person - other than an independent agent 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, an enterprise of a Contracting State which exercises its activity in the other Contracting State through its employees or any other staff providing essentially identical services for a period equal to or in excess of 183 days during any twelve-month period beginning or ending during the fiscal year in question in the other Contracting State shall be deemed to have a permanent establishment in such 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 independent agent, 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.

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) located in the other Contracting State is subject to tax 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 private law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

3) The provisions of Paragraph 1 shall apply to income derived from the direct use, renting or 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 preceding provisions of this present Article also apply to income derived from movable property which, in accordance with the tax laws of the Contracting State in which the property in question is situated, is similar 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 are 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, regardless of whether they are incurred in the State in which the permanent establishment is situated or elsewhere.

4) Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this present Article.

5) No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6) For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7) Where profits include items of income which are dealt with separately in other Articles of this present Convention, then the provisions of those Articles shall not be affected by the provisions of this present Article.

Article 8 Sea and Air Traffic

1) Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2) If the place of effective management of a shipping enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbor of the ship or boat is situated, or, if there is no such home harbor, in the Contracting State of which the operator of the ship or boat is a resident.

3) The provisions of Paragraph 1 above shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9 Associated Enterprises

1) Where

a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2) Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits as long as that other State deems such adjustment justified. In determining such adjustment, due regard shall be had to the other provisions of this present Convention, and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10 Dividends

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

2) However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient of the dividends is their beneficial owner, the tax so charged shall not exceed 15 per cent of the gross amount of said dividends.

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

This present 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 present 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.

Insofar as Portugal is concerned, the term also includes profits paid by virtue of a profit-sharing agreement (joint venture) and, insofar as Luxembourg is concerned, income received by the provider of funds who shares the profits of a commercial enterprise.

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 can also be taxed in the Contracting State in which it arises and in accordance with the laws of that State, but if the recipient of the interest is its beneficial owner, the tax so charged shall not exceed:

a) 10 percent of the gross amount of the interest in case such interest is paid by an enterprise of a Contracting State, under the laws of which interest is deemed to be a deductible expense, to a financial institution which is a resident of the other Contracting State;

b) 15 percent of the gross amount of interest in all other cases.

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

3) The term "interest" as used in this present Article refers to income from government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and income from debt-claims of every kind as well as any other proceeds similar to income from funds loaned under the tax laws of the State where such income arises.

4) The provisions of Paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on an industrial or commercial activity in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected therewith. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5) Interest shall be deemed to arise in a Contracting State when the payer is a such State itself, a political or administrative subdivision 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.

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 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 present 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 present Convention.

Article 12 Royalties

- 1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable in that other State.
- 2) However, such royalties can also be taxed in the Contracting State in which they arise and in accordance with the laws of that State, but if the recipient of the royalties is their beneficial owner, the tax so charged shall not exceed 10 percent of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.
- 3) The term "royalties" as used in this present Article means compensation of any kind paid 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 programs, any patent, trade mark, design or model, plan, secret formula or process as well as for the use, or the right to use, industrial, commercial or scientific equipment and for information concerning industrial, commercial or scientific experience (know-how). The term "royalties" also includes payments for technical assistance in connection with the use, or the right to use, rights, goods or information covered under this present Paragraph.
- 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 an industrial or commercial activity in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected therewith. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
- 5) The royalties are deemed to arise in a Contracting State in case the payer is that State itself, a political or administrative subdivision thereof, a local authority or a resident of that State. In case the payer of the royalties, whether a resident of a Contracting State or not, however, has a permanent establishment in a Contracting State for which the obligation giving rise to the payment of the royalties has been assumed and which as such incurs the charge thereof, these royalties are deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.
- 6) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the service for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this present Article shall apply only to the last-mentioned amount. In such case, the excess part shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this present Convention.

Article 13 Capital Gains

- 1) Gains derived by a person residing in a Contracting State from the alienation of immovable property in accordance with Article 6 may be subject to tax in the other Contracting 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 derived 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 that Contracting State in which the place of effective management of the enterprise is located.
- 4) Gains from the alienation of any property other than that referred to in the 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. Such income, however, shall be taxable in the other Contracting State in the following cases:
 - a) if such resident has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in this case, the income may be taxed in the other State but only so much of it as is attributable to that fixed base, or
 - b) if such resident is present in the other Contracting State for a period or periods exceeding in the aggregate 183 days during any twelve-month period beginning or ending during the fiscal year in question.

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 paid 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 paid 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 during any twelve-month period beginning or ending during the fiscal year in question, 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 present Article, remuneration derived from paid employment aboard a ship or aircraft operated in international traffic shall be taxable in the Contracting State in which the place of effective management of the enterprise is located.

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 a similar body of a company which is a resident of the other Contracting State may be taxed in that other State. However, compensation paid by said company to a member of its bodies for a permanent activity shall be taxable in accordance with the provisions of Article 15 of this present Convention.

Article 17 Artistes and Sportsmen

1) Notwithstanding the provisions of Articles 7, 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 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.

Article 18 Pensions

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

2) Notwithstanding the provisions of Paragraph 1, pensions and other similar remuneration paid pursuant to the social-security laws of a Contracting State shall be taxable in that State.

Article 19 Government Service

1) a) Remunerations, other than retirement pay, paid by a Contracting State or one of its political or administrative subdivisions or local authorities to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

b) However, these remunerations 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 and

i) is a national of that State or

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

2) a) Any retirement pay paid by, or out of funds created by, a Contracting State or one of its political or administrative subdivisions or local authorities, whether directly or by drawing on funds specifically created for that purpose, to an individual in respect of services rendered to that State or to that subdivision or local authority shall be taxable only in that State.

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

3) The provisions of Articles 15, 16, 17 and 18 shall apply to remunerations as well as retirement pay in respect of services rendered in connection with an industrial or commercial activity carried on by a Contracting State or one of its political or administrative subdivisions or local authorities.

Article 20 Teachers

Subject to the provisions of Article 19, remuneration of a teacher or another member of the teaching staff who is or was immediately prior to 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 teaching or engaging in scientific research, for a period not in excess of two years, at a university or another not-for-profit teaching or scientific research institution shall only be taxed in said other Contracting State.

Article 21 Students

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 his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State or are received in consideration for an activity exercised on a part-time basis in that State for the purpose of allowing such individual to pursue his studies or professional training.

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 present Convention shall be taxable only in that State provided that they are taxable therein.

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

Article 23 Capital

1) Capital represented by immovable property as defined by Article 6 owned by a person residing in a Contracting State and located in the other Contracting State may be taxed in the other Contracting State.

2) Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services may be taxed in that other State.

3) Capital represented by ships and aircraft operated by a person residing in one of the Contracting States in international traffic as well as by movable property pertaining to the operation of such ships or aircraft shall be taxable only in that Contracting State in which the place of effective management of the company is located.

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

Article 24 Prevention of Double Taxation

1) Insofar as Luxembourg is concerned, double taxation shall be prevented as follows:

a) Where a person residing in Luxembourg receives income or owns property which, in accordance with this present Convention, can be taxed in Portugal, Luxembourg shall exempt such income or capital from tax, subject to the provisions of letters b) to e);

b) Where a person residing in Luxembourg receives items of income which, in accordance with the provisions of Articles 10, 11, and 12, can be taxed in Portugal, Luxembourg agrees to grant a deduction in an amount equal to the tax paid in Portugal for the tax levied on the income of such resident. However, this deduction may not exceed the fraction of the tax, calculated before deduction, which corresponds to such items of income received in Portugal.

c) At variance with letter b), the system set forth under letter a) shall apply to dividends distributed by a company which is a resident of Portugal which is subject in that State to a tax corresponding to the commercial community tax on income in Luxembourg, to a joint stock company which is a resident of Luxembourg which holds, since the beginning of its business period, directly at least 25 percent of the capital of the first-mentioned company. The shares or stock of the Portuguese company are, pursuant to the same conditions, exempt from the Luxembourg tax on capital.

d) Where by reason of special measures aimed at promoting the economic and social conditions in Portugal, the interest and royalties covered, respectively, under letter a) of Paragraph 2 of Article 11 and under paragraph 2 of Article 12, paid by a resident of Portugal are exempt from tax or subject to a reduced tax rate in Portugal, such income shall be considered, for the purposes of the application of letter b) of this present Paragraph, as having been taxed in Portugal at a rate of 10 percent of its gross amount. The provisions of this present letter shall apply for a period of eight years starting on January 1 of the year following the year during which this present Convention comes into effect.

e) Where, in accordance with any provision of this present Convention, except for letter c) of this present Paragraph, the income which a resident of Luxembourg receives or the capital such individual possesses is exempt from tax in Luxembourg, such exempted income or capital can nonetheless be included for the purpose of calculating the amount of tax for the remaining income or the capital of such resident.

2) Insofar as Portugal is concerned, double taxation shall be prevented in accordance with the provisions of Portuguese law (insofar as such provisions are not at variance with the general principles contained in this present Paragraph) as follows:

a) Where a person residing in Portugal receives income which, in accordance with this present Convention, can be taxed in Luxembourg, Portugal shall deduct from the amount of income tax of this resident an amount equivalent to the tax paid in Luxembourg. However, this deduction may not exceed the fraction of the income tax, calculated before deduction, which corresponds to the income which is taxable in Luxembourg.

b) Where a company which is a resident of Portugal receives dividends from a company which is a resident of Luxembourg in which the first-mentioned company holds directly at least 25 percent, Portugal shall deduct, for the purpose of determining the taxable profit which is subject to corporate income tax, 95 percent of these dividends included in the tax base, pursuant to the terms and conditions set forth in the Portuguese laws;

c) Where, in accordance with any provision of this present Convention, the income which a resident of Portugal receives is exempt from tax in Portugal, such exempted income can nonetheless be included by Portugal for the purpose of calculating the amount of tax for the remaining income of such resident.

Article 25 Non-Discrimination

1) Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and associated requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to individuals who are not residents of a Contracting State or of the two Contracting States.

2) The term "nationals" has the following meaning:

a) All individuals who have the nationality of a Contracting State;

b) All bodies corporate, partnerships and associations constituted in accordance with the laws in effect in a Contracting State.

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

4) Except where the provisions of Paragraph 1 of Article 9, Paragraph 6 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. Accordingly, debts incurred by a company of a Contracting State with respect to a person residing in the other Contracting State shall be deductible for the purpose of determining the taxable capital of such company pursuant to the same terms as debts owed to a person residing in the first-mentioned State.

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

Article 26 Mutual Agreement Procedure

- 1) Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this present Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under Paragraph 1 of Article 25, to that of the Contracting State of which he is a national. The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.
- 2) The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention.
- 3) The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention.
- 4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement as set forth in the preceding Paragraphs. In the event that oral communications appear suitable to reach an agreement, such exchange of opinions may take place via a joint commission consisting of representatives of the competent authorities of the Contracting States.

Article 27 Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, their political or administrative subdivisions or local authorities insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.
2. Any information received under paragraph 1 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 referred to in paragraph 1, or the oversight of the above. 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.
3. In no case shall the provisions of paragraphs 1 and 2 be construed 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 order (*ordre public*).
4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even if it does not need the information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.
5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 28 Members of Diplomatic Missions and Consular Posts

This present Convention shall not affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

Article 29 Exclusions

1) The provisions of this present Convention shall not apply to companies benefiting from special tax treatment under the laws or pursuant to the administrative practice of one or the other of the Contracting States, nor shall they apply to income which a resident of the other Contracting State derives from similar companies or shares or other equity securities in such companies which are held by such individual.

2) The Governments of the Contracting States shall agree from time to time on the definition of the term "companies benefiting from special tax treatment under the laws or pursuant to the administrative practice of one or the other of the Contracting States" pursuant to the terms of the provisions of Paragraph 1 of this present Article.

Article 30 Entry Into Force

1) This present Convention shall be ratified, and the ratification instruments shall be exchanged in Lisbon, as quickly as possible.

2) The Convention shall come into effect thirty days after the exchange of the instruments of ratification, and the provisions of the Convention shall apply:

a) in Luxembourg:

i) insofar as taxes levied at the source are concerned, to income levied or paid on or after January 1 of the year following the year during which the Convention came into effect;

ii) insofar as other taxes are concerned, to all fiscal years commencing on or after January 1 of the year following the year during which the Convention came into effect.

b) in Portugal:

i) to taxes levied at the source arising on or after January 1 of the year following the year during which the Convention came into effect;

ii) insofar as other taxes are concerned, to income pertaining to any fiscal year commencing on or after January 1 of the year following the year during which the Convention came into effect.

Article 31 Termination

This Convention shall remain in force until terminated by one of the Contracting States. Each Contracting State can terminate this Convention by notifying the other Contracting State thereof in writing through diplomatic channels at least six months prior thereto. In this case, its provisions shall no longer apply to the following:

a) in Luxembourg:

i) insofar as taxes levied at the source are concerned, to income levied or paid on or after January 1 of the year following the date on which the deadline set forth in the termination notice expires;

ii) insofar as other taxes are concerned, to all fiscal years commencing on or after January 1 of the year following the date on which the deadline set forth in the termination notice expires.

b) in Portugal:

i) to taxes levied at the source arising on or after January 1 of the year following the date on which the deadline set forth in the termination notice expires;

ii) insofar as other taxes are concerned, to income pertaining to any fiscal year commencing on or after January 1 of the year following the date on which the deadline set forth in the termination notice expires.

In witness whereof the undersigned, duly authorized to that effect, have signed this present Protocol. Executed in Brussels on May 25, 1999 in two copies in Portuguese and French; both versions shall be equally binding.

FOR THE GOVERNMENT OF THE PORTUGUESE REPUBLIC:

Signature

FOR THE GOVERNMENT OF THE GRAND-DUCHY OF LUXEMBOURG:

Signature

PROTOCOL

During the signing of the Convention concerning Avoidance of Double Taxation and the Prevention of Tax Evasion with Respect to Taxes on Income and on Capital entered into this present day between the Government of the Portuguese Republic and the Government of the Grand-Duchy of Luxembourg, the undersigned have agreed on the following additional provisions, which shall be an integral part of the Convention.

Ad Article 2

In the event that Portugal implements a tax comparable to the Luxembourg capital tax, the Contracting States shall consult each other to reach an agreement on whether to amend the Convention to cover such tax or not.

Ad Article 18, Paragraph 2

Luxembourg does not exercise its right to tax up to the proportional share of pensions below 50,000 LUF per month and paid to a resident of Portugal, in application of the social-security laws of Luxembourg. For that purpose, and after application of the provisions regarding rates in effect, from the tax so charged, the tax based on the monthly scale for the withholding tax on pensions for the taxable income bracket immediately below the amount of 50,000 LUF per month shall be deducted. The competent authorities of the two Contracting States shall consult each other from time to time to adjust the aforesaid amount of 50,000 LUF.

Ad Article 29

The term "companies benefiting from special tax treatment under the laws or pursuant to the administrative practice of one or the other of the Contracting States" refers to holding companies as defined by the Luxembourg laws on the basis of the Law of July 31, 1929 and the Grand-Ducal Decree of December 17, 1938.

Ad Article 30

Notwithstanding the provisions of Article 30, the provisions of Article 8 of Paragraph 3, Article 13, and of Paragraph 3 of Article 23 shall be applicable in the two Contracting States to any fiscal year commencing on or after January 1, 1989.

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

Executed in Brussels on May 25, 1999 in two copies in Portuguese and French; both versions shall be equally binding.

FOR THE GOVERNMENT OF THE PORTUGUESE REPUBLIC:

Signature

FOR THE GOVERNMENT OF THE GRAND-DUCHY OF LUXEMBOURG:

Signature