

1999 Income Tax Convention and Final Protocol (English Translation)

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CONVENTION BETWEEN THE GOVERNMENT OF PORTUGAL AND THE GOVERNMENT OF MACAU FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

[TRANSLATION]

The Government of Portugal and the Government of Macau, duly authorized by the competent sovereign authority of the Portuguese Republic and with the consent of the Government of the People's Republic of China, desiring to conclude a Convention for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

Chapter I

Scope of Application of the Convention

Article 1 Personal Scope

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

Article 2 Taxes Covered

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political and administrative subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries as well as taxes on capital appreciation.
3. The existing taxes to which the treaty shall apply are in particular:
 - a) in Portugal:
 - i) tax on income of natural persons (imposto sobre o rendimento das pessoas singulares-IRS);
 - ii) tax on income of legal persons (imposto sobre o rendimento das pessoas colectivas-IRC);
 - iii) distribution tax (derrama);(which shall be referred to hereinafter as "Portuguese Tax").
 - b) in Macau:
 - i) complementary income tax (imposto complementar de rendimentos);
 - ii) professional tax (imposto profissional);
 - iii) urban real-estate contribution (contribuição predial urbana);
 - iv) stamp duty imposed on the amount of the bill of contributions and taxes (imposto do selo incidente sobre o valor do conhecimento das contribuições e impostos);(which shall be referred to hereinafter as "Macau tax").
4. The Convention shall apply also to any identical or substantially similar taxes which come into effect after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of significant changes which have been made in their respective taxation laws.

Chapter II

Definitions

Article 3 General Definitions

1. For the purposes of this Convention, unless the context requires a different interpretation:
 - a) the term "Portugal" means the territory of the Republic of Portugal located on the European continent, the archipelagos of the Azores and of Madeira, the respective territorial waters as well as other areas where, in accordance with Portuguese laws and international law, the Portuguese Republic has jurisdiction or sovereign rights to conduct research and exploration of the natural resources of the sea bed, its subsoil as well as the water column.
 - b) the term "Macau" means the peninsula of Macau and the islands of Taipa and Coloane.
 - c) the term "Contracting State" or "the other Contracting State" refers to Portugal or Macau, according to the context herewith.
 - d) the term "tax" refers to the Portuguese tax or the Macau tax, according to the context herewith.

- e) the term "Person" refers to any individual or company or group of people.
 - 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 "Portuguese national" means:
 - i) all individuals possessing the nationality of that State.
 - ii) all bodies corporate, societies of persons and associations constituted in conformity with the laws in effect in that State.
 - i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - j) the term "competent authority" refers to:
 - i) in Portugal, the Minister of Finance, the Executive Manager of the Tax Administration, or his authorized representatives.
 - ii) in Macau, the Governor of Macau, the Director of the Finance Department, or their authorized representatives as well as any entities which may replace them.
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 Contracting State concerning the taxes to which the Convention applies; the interpretation based on the tax laws of this State shall have priority over other laws of this Contracting State.

Article 4 Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" shall have the following meaning:
- a) in the case of Portugal, any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and such term also applies to such Contracting State as well as its political or administrative subdivisions or local authorities. This term, however, does not include any person who is liable to tax in that Contracting State in respect only of income from sources in that Contracting State situated therein; and
 - b) in the case of Macau, any resident person or company who is subject to the territorial tax laws of Macau, in Macau or any of its authorities and also, if and when applicable, any person who, by virtue of the laws of Macau, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.
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 Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting 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 Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
 - c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of Portugal as long as he is a Portuguese national;
 - d) if he is not a Portuguese national, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by virtue of the provisions of Paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

Article 5 Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially:
- a) a place of management;
 - b) a branch;
 - c) an office;

- d) a factory;
 - e) a workshop, and
 - f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. A construction, installation, or assembly site or yard shall only be deemed a permanent establishment as long as its duration exceeds 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 merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - c) the maintenance of a stock of merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - d) the maintenance of a fixed place of business solely for the purpose of purchasing merchandise or of collecting information, for the enterprise;
 - e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
 - f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) through (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character overall.
5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom Paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that Contracting State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in Paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that Paragraph.
6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself be sufficient to make either company a permanent establishment of the other.

Chapter III

Taxation of Income

Article 6 Income From Immovable Property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other Contracting State.
2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.
3. The provisions of Paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to income arising out of immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.
5. The above provisions shall also apply to income derived from immovable property and income derived from the provision of services in connection with the use of, or right to use, immovable property which, in accordance with the tax laws of the Contracting State in which such goods are located, are similar to income derived from immovable goods.

Article 7 Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that Contracting 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 incurred for aforesaid purposes, whether in the Contracting State in which the permanent establishment is situated or elsewhere.
4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in Paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of merchandise for the enterprise.
6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8 Sea and Air Traffic

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

Article 9 Associated Enterprises

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

as long as such other Contracting State considers the adjustment justified. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10 Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other Contracting 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 person receiving the dividends is the beneficial owner of the dividends, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

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

3. The term "dividends" as used in this Article means income from shares 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 Contracting State of which the company making the distribution is a resident.

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

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

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting 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 Contracting 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 Contracting 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 Contracting 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 Contracting State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that Contracting State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.
3. Notwithstanding the provisions of Paragraph 2, interest originating in one of the Contracting States shall be exempt from tax in that Contracting State if
 - a) such interest is owed by said Contracting State or a political or administrative subdivision thereof or one of its local authorities, or
 - b) such interest is paid to the other Contracting State or to a political or administrative subdivision thereof or one of its local authorities or to an institution or entity (including financial institutions) within the scope of agreements between the Contracting States, or
 - c) insofar as loans or credits granted by entities belonging entirely to the Portuguese Republic or Macau are concerned.
4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
5. The provisions of paragraphs 1, 2, and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on an industrial or commercial activity in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected therewith. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State in case the payer is such Contracting State, one of its political or administrative subdivisions, one of its local authorities, or a resident of such Contracting 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 Contracting State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 12 Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable in that other Contracting State.

2. These royalties, however, are also taxable in the Contracting State in which they arise in case the laws of this Contracting State establish this; however, in case the person receiving the royalties is their beneficial owner, the tax established in such a manner can not exceed 10 percent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films and recording tapes for radio and television broadcasting, of any patent, trade mark, design or model, plan, secret formula or process as well as for the use of, or the right to use, any industrial, commercial, or scientific equipment or for information concerning experience acquired in the industrial, commercial, or scientific sector.

4. The provisions of Paragraph 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on an activity in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected therewith. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State in case the payer is such Contracting State, one of its political or administrative subdivisions, one of its local authorities, or a resident of such Contracting State. However, in case the payer of the royalties, whether a resident of a Contracting State or not, has a permanent establishment or a fixed base in a Contracting State for which the contract giving rise to the payment of the royalties has been entered and which as such incurs the charge thereof, these royalties are deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the 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 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 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 Contracting State.

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

4. Gains from the alienation of any property other than that referred to in the preceding paragraphs 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 Contracting State. However, such income can be taxed in the other Contracting State in the following cases:

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

b) if the resident is present in the other Contracting State for a period or periods exceeding, in the aggregate, 183 days during any twelve-month period commencing or ending during the fiscal year in question; in this case, only that part of the income obtained by performing the activities in that other Contracting State can be taxed in the other Contracting State.

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

Article 15 Dependent Personal Services

1. Subject to the provisions of Articles 16, 18, 19, and 20, 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 Contracting 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 Contracting State.

2. Notwithstanding the provisions of Paragraph 1 hereof, 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 Contracting State if:

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

b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State, and

c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting State.

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

Article 16 Directors' Fees

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

2. Salaries, wages, and similar remuneration received by a resident of a Contracting State in his capacity as an executive of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

Article 17 Artistes and Sportsmen

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

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

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, the income mentioned therein shall be exempt from tax in the Contracting State in which the professional activities of entertainers or sportsmen are carried out as long as such activities are mainly financed by this Contracting State or

the other Contracting State or in case these activities are carried out within the scope of a cultural agreement between the Contracting States.

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 Contracting State.

Article 19 Government Service

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

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

i) is a national of that State, in case the activity is exercised in Portugal, or

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

2. a) Any pension paid by a Contracting State or a political or administrative subdivision or a local authority thereof or by an entity of the other Contracting Part by virtue of the transfer of funds constituted by the first-mentioned Contracting State to an individual in respect of services rendered to that Contracting State or subdivision or authority shall be taxable only in the last-mentioned Contracting State.

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

3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration as well as pensions paid in respect of services rendered in connection with a commercial or industrial activity carried on by a Contracting State or a political or administrative subdivision or a local authority thereof.

Article 20 Professors and Researchers

1. Any person who is a resident of a Contracting State, or who was immediately prior to transferring to the other Contracting State a resident of a Contracting State, and where the only purpose of such transfer is to lecture or conduct scientific research at a university, college, school or another similar not-for-profit institution engaged in teaching or scientific research or within the scope of an official cultural exchange program, for a period not exceeding two years from the date of arrival in such other Contracting State, shall be exempt from taxes in that other Contracting State for remuneration received as a result of such teaching or research activities.

2. The exemption set forth in Paragraph 1 shall not apply to income arising out of research if such research is not conducted in the public interest, but mainly for the benefit of a specific person or specific persons.

Article 21 Students and Interns

Payments received by a student, a commercial apprentice or an intern who is or was, immediately prior to his presence in a Contracting State, a resident of the other Contracting State and where the sole purpose of his stay in the first-mentioned Contracting State is to pursue studies or training shall be exempt from tax in the first-mentioned Contracting State insofar as payments or income is concerned which he receives or obtains for the purpose of covering his maintenance, education or training expenses, provided that

a) they are derived from sources located outside of this Contracting State;

b) they represent a grant, stipend, or financial aid made by a Contracting State or by a scientific, pedagogical, cultural or any other tax-exempt organization.

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 Contracting State.

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

3. However, items of income of a resident of a Contracting State not dealt with in the preceding articles of this Convention and which do not arise in the other Contracting State can also be taxed in that other State.

Chapter IV

Methods for Elimination of Double Taxation

Article 23 Elimination of Double Taxation

1. Insofar as Portugal is concerned, double taxation shall be eliminated as follows:

a) Where a resident of Portugal receives income which, in accordance with the provisions of this Convention, can be taxed in Macau, Portugal shall deduct from the income tax of such resident an amount equivalent to the income tax paid in Macau. The amount deducted, however, can not exceed that part of income tax, calculated prior to the deduction, which corresponds to the income which can be taxed in Macau.

b) Where a company being a resident of Portugal receives dividends from a company in Macau and the first-mentioned company holds directly no less than 25 percent of the capital stock of the second-mentioned company and the main activity actually exercised by the company distributing the profits is air transportation or, within the scope of the manufacturing industry, the generation or distribution of electricity, gas and water, housing or restoration, mainly in Macau, Portugal shall allow the deduction of 95 percent of these dividends included in the tax base, provided that the aforementioned share has been held two years prior thereto or since the date of establishment of the Portuguese company, whichever comes later, although in both cases only if such share has been held without interruption during this period, and

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

2. Insofar as Macau is concerned, double taxation shall be eliminated as follows: where a resident of Macau receives income which, in accordance with the provisions of this Convention, can be taxed in Portugal, such income shall be exempt from tax in Macau.

3. The term "tax paid in a Contracting State" as used in this present Article shall be deemed to include the tax which would have been paid except for legal provisions pertaining to fiscal reduction or exemption or other fiscal incentives established for a limited period of time, in accordance with the laws of that Contracting State, for the purpose of promoting economic development.

The provisions set forth in this Paragraph only apply to income set forth in Articles 7, 10, 11, and 12 and during the first ten years during which this Convention is in effect. This period can be extended by mutual agreement by the competent authorities of the Contracting States.

Chapter V

Special Provisions

Article 24 Non-Discrimination

1. Nationals of Portugal and the residents of Macau, as the case may be, 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 the residents of Macau and the nationals of Portugal, respectively, in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to Portuguese nationals 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 favorably levied in that other State than the taxation levied on enterprises of that other Contracting State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of Paragraph 1 of Article 9, Paragraph 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 Contracting 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 Contracting 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, of Portugal if he is a Portuguese national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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

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. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

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

Article 26 Exchange of Information

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

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

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

Article 27 Members of Consular Posts

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

Article 28 Limitation of Tax Relief

The provisions of this present Convention can not be construed to limit in any manner whatsoever the exemptions, allowances, deductions, credits or other relief granted in a Contracting State to the nationals or residents of the other Contracting State on the basis of the laws of the first-mentioned Contracting State or under any other agreement entered into between the Contracting States.

Chapter VI

Final Provisions

Article 29 Entry into Force

The Convention shall come into effect on January 1, 1999, and its provisions shall become applicable for the first time

- a) to taxes levied at the source who are based on circumstances arising on or after January 1, 1999, and
- b) insofar as other taxes are concerned, for income generated during the tax year commencing on or after January 1, 1999.

Article 30 Termination

This Convention shall remain in force unless terminated by a Contracting State. This Convention can be terminated, by giving a minimum written notice, through appropriate channels pursuant to the respective laws, of six months prior to the end of any calendar year, for the first time after a period of five years after this Convention has come into effect.

In this case, its provisions shall no longer apply to the following:

- a) to taxes levied at the source who are based on circumstances arising on or after January 1 of the year immediately following the date on which the period specified in the termination notice expires;
- b) insofar as other taxes are concerned, to income generated during the tax year commencing on or after January 1 of the year immediately following the date on which the period specified in the termination notice expires.

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

Done in duplicate in Macau on the twenty-eight day of the month of September of 1999, in the Portuguese and Chinese languages, with both texts being equally valid.

FOR THE GOVERNMENT OF THE PORTUGUESE REPUBLIC:

FOR THE GOVERNMENT OF MACAU:

PROTOCOL

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

Ad Articles 6 and 13

As long as the current nature and the system of the Pension Fund of Macau is maintained, such Fund shall be exempt in terms of income from immovable property located in Portugal, including its respective capital appreciation.

Ad Article 19

This Article only covers remuneration derived from the exercise of public functions.

Ad Article 24

1. The provisions of Article 24 shall not preclude the application of the tax laws of the Contracting States with respect to undercapitalization.

2. The provisions of Article 24 shall be construed to mean that each Contracting State can apply its own domestic procedures insofar as the burden of proof regarding deductibility of expenses that have been paid is concerned.

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

Done in duplicate in Macau on the twenty-eight day of the month of September of 1999, in the Portuguese and Chinese languages, with both texts being equally valid.

FOR THE GOVERNMENT OF THE PORTUGUESE REPUBLIC:

FOR THE GOVERNMENT OF MACAU: