

## **1997 Income Tax Convention (English Translation)**

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**Status:** In Force

### **CONVENTION BETWEEN THE PORTUGUESE REPUBLIC AND THE KINGDOM OF MOROCCO FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME**

[TRANSLATION]

The government of the Portuguese Republic and the government of the Kingdom of Morocco, desiring to enter into a convention for the avoidance of double taxation 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 or 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.

The existing taxes to which the treaty shall apply are in particular:

a. in Portugal:

- 1) tax on income of natural persons (imposto sobre o rendimento das pessoas singulares - IRS);
  - 2) corporation tax (imposto sobre o rendimento das pessoas colectivas - IRC);
  - 3) local tax on income of corporations (derrama);
- (Which shall be referred to hereinafter as "Portuguese Taxes").

b. in the Kingdom of Morocco:

- 1) tax on income of natural persons;
  - 2) corporation tax;
  - 3) tax on the proceeds of shares or corporate stock and similar revenue;
  - 4) tax on profits from immovable property;
  - 5) contribution to national solidarity;
  - 6) tax on proceeds of fixed-revenue investments;
  - 7) tax on profits resulting from the assignment of shares and corporate stock;
- (Which shall be referred to hereinafter as "Moroccan Taxes").

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of 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 "Contracting State" or "the other Contracting State" refers to the Portuguese Republic or the Kingdom of Morocco according to the context herewith.
  - b) the term "Portugal" means the territory of the Portuguese Republic situated on the European continent and the archipelagos of the Azores and Madeira, the territorial sea as well as other areas over which, in accordance with Portuguese legislation and international law, the Portuguese Republic has jurisdiction and rights of sovereignty in terms of exploration and use of natural resources of the sea floor, subsea floor and waters on top thereof;

- c) the term "Kingdom of Morocco" means the territory of the Kingdom of Morocco and, if used in its geographical sense, it designates the territory of the Kingdom of Morocco and its areas adjacent to the territorial waters of Morocco over which, in conformity with domestic legislation and international law, Morocco exercises its jurisdiction or its sovereign rights for the purpose of exploration and use of the natural resources to the sea bottom, the subsea bottom and waters on top thereof (continental plateau);
  - d) the term "Persons" refers to any individual or company or group of people;
  - e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
  - f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
  - g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
  - h) the term "Concerned Authority" refers to:
    - i) in Portugal, the Minister of Finance, the Director-General of Tax Administration or their legal representatives.
    - ii) in Morocco, the Minister of Finance or his duly authorized or delegated representative.
  - i) the term "nationals" means:
    - i) all individuals possessing the nationality of a Contracting State;
    - ii) all bodies corporate, societies of persons and associations constituted in conformity with the laws in effect in a Contracting State;
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 The Resident**

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature and also applies to that State as well as its political or administrative subdivisions or its local authorities. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State situated therein.
2. Where by reason of the provisions of paragraph one an individual is a resident of both Contracting States, then his status shall be determined as follows:
  - a) this person 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 Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph one a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

#### **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 or assembly site only constitutes a permanent establishment provided its duration exceeds eight months.
4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
  - b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
  - c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
  - e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
  - f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraphs one and two, where a person - other than an agent of an independent status to whom paragraph six 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 four which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

#### Chapter III

#### Taxation of Income

### **Article 6 Income From Immovable Property**

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

### **Article 7 Business Profits**

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment

situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph three, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph two 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 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, then it shall be deemed to be situated in the Contracting State in which the home harbor of the ship 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 one 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 come to an agreement in terms of carrying on an air transport activity in the form of a consortium, the provision of paragraph one shall be applicable to the portion of the profits of aforesaid consortium which correspond to the share held therein 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 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. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

### **Article 10 Dividends**

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

a) 10 percent of the gross amount of the dividends paid after December 31, 1996 if the beneficial owner is a company which, for a consecutive period of two years prior to the payment of dividends, holds directly at least 25 percent of the capital of the company paying the dividends;

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

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

3. The term "dividends" as used in this Article means income from shares, redeemed shares or certificates, mining or founder's shares or other beneficiary rights, not being debt-claims, participating in profits, as well as income which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

The term "dividends" also means profits paid on the basis of a profit-sharing agreement.

4. The provisions of paragraphs one and two 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, either an industrial or commercial activity 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 therewith. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

### **Article 11 Interest**

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 12 percent of the gross amount of the interest.

3. 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. Late-payment penalties are not considered interest as defined in this Article.

4. The provisions of paragraphs one and two 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 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 a similar 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 State.
2. These royalties, however, are also taxable in the Contracting State in which they arise and according to the laws of this State; however, the tax established in such a manner can not exceed 10 percent of the gross amount of the royalties. The competent authorities of the Contracting States shall mutually agree on the modalities of application of this limitation.
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films and firms and recordings for radio and televised transmission, of any patent, trade mark, design or model, plan, secret formula or process as well as for the use of any industrial, commercial, agricultural or scientific equipment or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraph one 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 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 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 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 similar relationships, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

## **Article 13 Capital Gains**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. Gains from the alienation of any property other than that referred to in paragraphs one, two and three, 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 unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.
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 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 one, 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 concerned, and
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

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

### **Article 16 Directors' Fees**

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

### **Article 17 Artistes and Sportsmen**

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

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

3. Notwithstanding the provisions of paragraphs one and two of this Article, the income from activities of an entertainer or sportsman who is a resident of the Contracting State may only be taxed in that State in case this activity is exercised in the other Contracting State within the scope of cultural or athletic exchanges approved by the two Contracting States.

### **Article 18 Pensions**

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

### **Article 19 Government Service**

1. a) Remuneration, wages and 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 State or subdivision or authority shall be taxable only in that State.

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

i) is a national of that State; or

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

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

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

3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration, and to pensions, 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. A person visiting a Contracting State upon invitation by that State, a university or a not-for-profit educational or cultural institution of that State or within the scope of a cultural exchange program, for a period not exceeding 12 months, for the purpose of teaching, attending conferences or conducting

research for that institution and who is or was, immediately prior to this visit, a resident of the other Contracting State, shall be exempt from taxes in aforesaid first State insofar as the remuneration for such activity is concerned, provided that this remuneration is received outside of this State.

2. The provisions of paragraph one shall not apply to remuneration received for research that was not conducted in the public interest, but mainly in order to gain a particular advantage benefiting one or more specific person(s).

### **Article 21 Students**

1. 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 studies or training receives for the purpose of his maintenance, studies or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

### **Article 22 Other Income**

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

2. The provisions of paragraph one shall not apply to income, other than income from immovable property as defined in paragraph two of Article 6, if the recipient 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.

#### Chapter IV

#### Elimination of Double Taxation

### **Article 23 Method**

1. Where a resident of a Contracting State derives income which, in accordance with the provisions of this Convention, may be taxed in the other Contracting State, the first-mentioned State shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in that other State. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to the income derived from that other State.

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

#### Chapter V

#### Special Provisions

### **Article 24 Non-Discrimination**

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

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

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

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

5. The provisions of this Article

- shall not affect the application of any provision of tax legislation of a Contracting State concerning issues of undercapitalization;
- do not hinder the application of the respective procedure in each of the Contracting States regarding burden of proof insofar as deductibility of charges is concerned.

6. 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 one of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall 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 law 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 consisting of these 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 the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of the taxes covered by the Convention, the enforcement or prosecution in respect of these taxes, or the determination of appeals in relation to these taxes. They may disclose the information in public court proceedings or in judicial decisions.

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

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

### **Article 27 Members of Diplomatic Missions and Consular Posts**

Nothing in this Convention shall 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.

Chapter VI

Final Provisions

### **Article 28 Entry Into Force**

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at \_\_\_\_\_ as soon as possible.

2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

- a) to taxes levied at the source where the event giving rise to them occurs after December 31 of the year of the exchange of the instruments of ratification;
- b) to other taxes for all tax periods commencing after December 31 of the year of the exchange of the instruments of ratification;

### **Article 29 Termination**

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination no later than by June 30 of the year specified in such notice. Such notice may only be given after a period of five years has elapsed from the date of entry into force of the Convention. In such event, the Convention shall cease to have effect:

- a) to taxes levied at the source where the event giving rise to them occurs after January 1 of the year following that specified in the notice of termination;
- b) to other taxes on income for the tax year commencing January 1 of the year following that specified in the notice of termination.

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

Done in two original copies in Rabat on September 29, 1997, in the Portuguese, Arabic, and French languages, in three equally valid texts. In the case of discrepancies in the interpretation of the provisions of this Convention, the text in the French language shall prevail.

**FOR THE GOVERNMENT OF THE PORTUGUESE REPUBLIC:**

**FOR THE GOVERNMENT OF THE KINGDOM OF MOROCCO:**