

1991 Income Tax Convention (English Translation)

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

[TRANSLATION]

The Republic of Portugal and the Republic of Mozambique, desiring to further their economic and cultural relations through the avoidance of double taxation with respect to taxes on income and to develop co-operation in the field of taxation, have agreed as follows:

Chapter I. Scope of the Convention

Article 1 Persons Covered

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 by each Contracting State or 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 the taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation.

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

a) In Portugal:

1. O imposto sobre o rendimento das pessoas singulares (IRS) [tax on personal income]

2. O imposto sobre o rendimento das pessoas colectivas (IRC) [tax on corporate income]

3. A derrama [local/council tax];

which shall be referred to hereinafter as "Portuguese tax";

b) In Mozambique:

1. O imposto sobre o rendimento do trabalho [income tax];

2. A contribuição industrial [industrial tax];

3. O imposto complementar [complementary tax];

which shall be referred to hereinafter as "Mozambican tax".

4. The Convention shall apply also to any identical or similar taxes which enter into force 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 otherwise requires:

a) The terms "a Contracting State" and "the other Contracting State" mean the Republic of Portugal or the Republic of Mozambique, according to the context;

b) The term "Portugal" includes the territory of the Republic of Portugal situated in Continental Europe, the archipelagos of the Azores and Madeira and the respective territorial waters, as well as the other zones where, in accordance with Portuguese or international law, the Republic of Portugal enjoys sovereign rights over the search for and exploitation of the natural resources of the seabed, its subsoil and the overlying waters;

c) The term "Mozambique" shall include the territory of the Republic of Mozambique situated in Continental Africa, the respective territorial waters as well as the other areas where, in accordance with Mozambican and international law, the Republic of Mozambique enjoys sovereign rights over the search for and exploitation of the natural resources of the seabed, its subsoil or the overlying waters;

d) The term "person" includes an individual, a company and any other body of persons;

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 effective management in a Contracting State, except where the ship or aircraft is operated solely between places in the other Contracting State;
- h) The term "nationals" means:
1. In Portugal:
 - aa) All individuals who have Portuguese nationality;
 - bb) All bodies corporate, associations or other entities incorporated under laws in force in Portugal;
 2. In Mozambique:
 - aa) All individuals who have Mozambican nationality;
 - bb) All bodies corporate, associations or other entities incorporated under laws in force in Mozambique;
- i) The term "competent authority" means:
1. In Portugal, the Ministro das Finanças [Minister of Finance], the Director-Geral das Contribuições e Impostos [Director General of Taxation] or their authorized representatives;
 2. In Mozambique, the Ministro das Finanças [Ministry of Finances], the Director Nacional de Impostos e Auditoria [National Director of Taxes and Auditing] or their authorized representatives.
2. As regards the application of the Convention by a Contracting State, any term not defined otherwise 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.

Article 4 Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
 - a) He shall be deemed to be a resident 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 if in neither of them, he shall be deemed to be a resident of the State of which he is a national;
 - d) If he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both of the Contracting States, then it shall be deemed to be a resident of the State in which its 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;
 - f) A mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. A building site or construction or assembly project constitutes a permanent establishment only if it continues for a period of more than six months.
4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
 - a) Facilities used solely for the purpose of storage, display or delivery of merchandise belonging to the enterprise;

- b) A stock of merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- c) A stock of merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) A fixed place of business maintained solely for the purpose of purchasing merchandise or of collecting information for the enterprise;
- e) A fixed place of business maintained solely for the purpose of carrying on, for the enterprise, any other business of a preparatory or auxiliary character;
- f) A fixed place of business maintained solely for carrying on any combination of activities mentioned in sub-paragraphs a) to e), provided that the overall business of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting 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. 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 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, 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 shall also apply to the income from movable property which, under the taxation law of the Contracting State in which such property is situated, are equivalent 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 insofar as they 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 conditions 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 business of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

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

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

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

Article 8 Shipping and Air Transport

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

2. If the effective management of a shipping enterprise is situated 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 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.

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, if that other State deems the adjustment to be 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 State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the effective beneficiary of the dividends, the tax so charged shall not exceed 15 percent of the gross amount of the dividends. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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

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

The term "dividends" also includes income from special partnerships.

4. The provisions of paragraphs 1 and 2 shall not apply if the effective beneficiary of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or

performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

Article 11 Interest

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

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the effective beneficiary of the interest the tax so charged shall not exceed 10 percent of the gross amount of the interest.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, interest arising in one of the Contracting States shall be exempt from taxation in that State if:

a) the payer of the interest is the government of that contracting state or a political or administrative subdivision or local authority; or

b) the interest is paid to the government of the other contracting state or to a political or administrative subdivision or local authority or to an institution or body (including financial institutions) by reason of financing granted thereby within the scope of agreements concluded between the governments of the contracting states.

4. The term "interest" as used in this Article means income from the public debt, bonds whether or not secured by mortgage and whether or not carrying a right to participate in the payer's profits and other debt-claims of any nature, and any other income equivalent to the income from the sums loaned under the fiscal laws of the State in which the income arises.

5. The provisions of paragraphs 1 and 2 shall not apply if the effective beneficiary of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political or administrative subdivision, a local authority or a resident of that State.

Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the 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 effective beneficiary 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 between the payer and the effective beneficiary in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 12 Royalties

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

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient of the royalties is their effective beneficiary 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 Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright on literary, artistic or scientific work including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the effective beneficiary of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base.

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

5. The royalties shall be deemed to arise in a Contracting State where the payer is that State itself, a political or administrative subdivision, a local authority or a resident of that State.

Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the 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 effective beneficiary or between both of them and some other person, the amount of royalties, having regard to the right for which they are paid, exceeds the amount which would have been agreed upon by the payer and the effective beneficiary in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess 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 gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a 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 effective management of the enterprise is situated.

4. Gains from the alienation of holdings in companies resident in a Contracting State may be taxed in that State, but the tax levied on capital gains made, after deduction of the capital losses borne, may not exceed 10 percent of this balance where positive, the capital gains and capital losses being calculated by the difference between the realization value and the acquisition value of those holdings, corrected if applicable.

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

Article 14 Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State. Such income may, however, be taxed in the other Contracting State in the following cases:

a) If that resident has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case only the income attributable to that fixed base may be taxed in the other Contracting State; or

b) If the stay of the resident in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the calendar year.

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 similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned;

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

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

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

Article 16 Directors' Fees

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

Article 17 Artistes and Athletes

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 an athlete, 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 an athlete in his capacity as such accrues 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 athlete are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such, being a resident of a Contracting State, shall be taxable only in that State where they are exercised in the other Contracting State within the scope of a cultural or sporting exchange agreed by both of the Contracting States.

Article 18 Pensions

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

Article 19 Remuneration in Respect of Government Service

1.

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

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

i) is a national of that State; or

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

2.

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

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

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

Article 20 Teachers

A person who is or was a resident of a Contracting State immediately before visiting the other Contracting State at the invitation of the Government of that other State or of a University or other educational or scientific research institution belonging to that State, solely in order to teach or carry out scientific research in such institutions, or by reason of an official cultural exchange program during a period not exceeding two years, shall be exempt from taxation in both of the Contracting States in respect of payments received as a result of such teaching or research.

Article 21 Students

1. A person who is or was a resident of a Contracting State immediately before visiting the other Contracting State and who is present temporarily in that other State solely as a student of a university, college, school or similar education institution of that other State, or as a commercial, industrial, agricultural, forestry or technical trainee, shall be exempt from taxation in that other State from the date of his first arrival in that other Contracting State in connection with that visit:

- a) with respect to all payments arising outside that other State and received for the purpose of his maintenance, education or training;
- b) for a period which shall in the aggregate not exceed five years for any payment not exceeding US\$ 5,400 per annum by reason of professional services rendered in that other State, with a view to supplementing payments received for the purpose of his maintenance, education or training.

2. A person who is or was a resident of a Contracting State immediately before visiting the other Contracting State and who is present temporarily in that other Contracting State solely for the purpose of studying, research or training as a beneficiary of a grant, pension or prize awarded by a scientific, educational, religious or charitable organization or by reason of a co-operation program run by the Government of a Contracting State shall be exempt from taxation in that other State, from the date of his first arrival in that other State:

- a) in respect of the amount of that grant, pension or prize;
- b) in respect of all payments arising outside that other State and received for the purpose of his maintenance, education and training; and
- c) for a period which shall not exceed five years in the aggregate for any payment not exceeding US\$ 5,400 per annum by reason of personal services rendered in that other State, with a view to supplementing payments for the purpose of his maintenance, education or training.

3. A resident of a Contracting State employed by an enterprise of that State or an organization mentioned in paragraph 2 of this Article or who has a contract therewith and who is present temporarily in the other Contracting State for a period which does not exceed one year solely for the purpose of acquiring technical, professional, commercial or industrial experience from any person who is not that company or organization shall be exempt from taxation by that other State as consideration for services, irrespective of where they are rendered, unless the corresponding amount exceeds US\$ 5,400.

Article 22 Other Income

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

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

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not mentioned in the foregoing Articles of this Convention and arising from the other Contracting State may be taxed in that other State.

Chapter IV. Elimination of Double Taxation

Article 23 Methods

1.

- a) Where a resident of Portugal derives income which, in accordance with the provisions of this Convention, may be taxed in the Republic of Mozambique, Portugal shall deduct from the tax on the income of that resident an amount equal to the tax paid in the Republic of Mozambique. The amount deducted shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to the income that may be taxed in the Republic of Mozambique.

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

2. For the purpose of the provisions of paragraph 1 of this Article, the term "tax on income paid in the Republic of Mozambique" includes any sum which should have been paid as Mozambican tax, but which was not by reason of the exemption or reduction of tax granted under the laws fostering the economic development of Mozambique, especially the promotion of foreign investment. The tax payable in Mozambique shall be deducted up to the amount of the tax which should have been paid, in accordance with the provisions of this Convention.

3.

a) Where a resident of Mozambique derives income which, in accordance with the provisions of this Convention, may be taxed in Portugal, Mozambique shall deduct from the tax on the income of that resident an amount equal to the tax paid in Portugal. The amount deducted shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to the income that may be taxed in Portugal.

b) Where in accordance with the provisions of this Convention income derived by a resident of Mozambique is exempt from tax in that State, Mozambique may, 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. 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. Stateless persons who are residents of a Contracting State shall not be subjected in a 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 State in the same circumstances are or may be subjected.

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

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 connected therewith which is other or more burdensome than the taxation and connected requirements to which similar enterprises of the first-mentioned State are or may be subjected.

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

2. 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.

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 in the sense of the preceding paragraphs. If it appears that such agreement may be facilitated by exchanges of oral impressions, such exchanges of impressions may be made through a commission consisting of representatives of the competent authorities of the Contracting States.

Article 26 Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for applying this Convention or the domestic laws of the Contracting States concerning taxes covered by the Convention, insofar as the taxation thereunder is not contrary to the Convention. Any information so exchanged shall be treated as secret and shall be disclosed only to persons or authorities (including courts) involved in the assessment or collection of the taxes which are the subject of the Convention.

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

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

Article 27 Fiscal Co-Operation

With a view to fiscal co-operation the competent authorities of the Contracting States shall establish agreements on training and the exchange of qualified personnel, technical information and studies, as well as on experience in the area of the organization and functioning of the tax administration.

Article 28 Members of Diplomatic Missions and Consular Posts

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

Article 29 Miscellaneous Provisions

1. The provisions of this Convention shall not be construed as in any way limiting the exemptions, reliefs, deductions, debt-claims or other relief which is or which comes to be granted:

- a) Under the laws of a Contracting State for the purpose of determining the tax charged by that State; or
- b) Under any other special agreement concluded by a Contracting State.

Chapter VI. Final Provisions

Article 30 Entry Into Force

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

2. The Convention shall enter into force in the month after the exchange of the instruments of ratification and its provisions shall have effect for the first time:

- a) On taxes due at source the chargeable event of which occurs after 31 December of the year of the exchange of the instruments of ratification;
- b) On remaining taxes in respect of income deriving in the period of taxation which begins after 31 December of the year of the exchange of the instruments of ratification.

Article 31 Termination

This Convention shall remain in force until it is terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the second year following that of the exchange of the instruments of ratification. In such event the Convention shall cease to have effect:

- a) on taxes due at source the chargeable event of which occurs after 31 december of the year of termination;
- b) on remaining taxes in respect of income deriving in the periods of taxation which begin after 31 december of the year of termination.

Done in duplicate at Lisbon, this 21st day of March 1991, in the Portuguese language, each text being equally authentic.

FOR THE REPUBLIC OF PORTUGAL:

José Oliveira Costa

Secretary of State for Fiscal Affairs

FOR THE REPUBLIC OF MOZAMBIQUE:

Abdul Magid Osman

Minister of Finance