

## **2002 Income Tax Convention and Final Protocol**

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

The Kingdom of Sweden and the Portuguese Republic, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

#### Chapter I

##### Scope of the Convention

#### **Article 1 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 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 as well as taxes on capital appreciation.

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

a) in the case of Portugal:

- i) Personal income tax (Imposto sobre o Rendimento das Pessoas Singulares - IRS),
- ii) Corporate income tax (Imposto sobre o Rendimento das Pessoas Colectivas - IRC),
- iii) Local surtax on corporate income tax (Derrama),  
(hereinafter referred to as "Portuguese tax");

b) in the case of Sweden:

- i) The National income tax (den statliga inkomstskatten),
- ii) The withholding tax on dividends (kupongskatten).
- iii) The income tax on non-residents (den sarskilda inkomstskatten for utomlands bosatta),
- iv) The income tax on non-resident artistes and athletes (den sarskilda inkomstskatten for utomlands bosatta artister m.fl.),
- v) The municipal income tax (den kommunala inkomstskatten),  
(hereinafter referred to as "Swedish tax").

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 taxes referred to in paragraph 3. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

#### Chapter II

##### Definitions

#### **Article 3 General Definitions**

1. For the purposes of this Convention, unless the context otherwise requires:

a) the term "Portugal" means the territory of the Portuguese Republic situated in the European Continent, the Archipelagoes of Azores and Madeira, the respective territorial sea and any other zone in which, according to Portuguese and International Law, the Portuguese Republic has sovereign rights or jurisdiction for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil;

b) the term "Sweden" means the Kingdom of Sweden and, when used in a geographical sense, includes the national territory, the territorial sea of Sweden as well as other maritime areas over which Sweden in accordance with international law exercises sovereign rights or jurisdiction;

- c) the terms "a Contracting State" and "the other Contracting State" mean Portugal or Sweden, as the context requires; the term "the Contracting States" means Portugal and Sweden;
  - 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 ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
  - h) the term "national" means:
    - (1) all individuals possessing the nationality of a Contracting State;
    - (2) any legal person, association or other entity deriving its status as such from the laws in force in a Contracting State;
  - i) the term "competent authority" means:
    - (1) in the case of Portugal, the Minister of Finance, the Director General of Taxation (Director Geral dos Impostos) or their authorized representative;
    - (2) in the case of Sweden, the Minister of Finance, his authorized representative or the authority which is designated as a competent authority for the purposes of this Convention.
2. As regards the application of the Convention at any time by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

#### **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, and also includes that State, any governmental body or agency, political or administrative subdivision or local authority thereof. 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. However, this term applies also in the case of a Swedish partnership, but only to the extent that the income derived by such partnership is subject to tax in Sweden as the income of a resident, either in its hands or in the hands of its partners.
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 only 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 only of the State with which his personal and economic relations are closer (centre of vital interests);
  - b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only 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 only of the State of which he is a national;
  - d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement.

#### **Article 5 Permanent Establishment**

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

e) a workshop; and

f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. a) A building site or construction or installation project constitutes a permanent establishment only if it lasts more than six months within any twelve month period.

b) Subject to the provisions of paragraphs 4, 6 and 7 of this Article, an enterprise of a Contracting State which is furnishing services including consultancy services through employees or other personnel in the other Contracting State shall be deemed to have a permanent establishment in that other State but only where such activity lasts for more than six months within any twelve month period.

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 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 a 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 general law respecting landed property apply, buildings, 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.

The provisions of paragraph 1 shall also apply to income from movable property or income derived from services connected with the use or the right to use immovable property which, under the taxation law of the Contracting State in which the property in question is situated, is assimilated to income from immovable property.

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.

### **Article 7 Business Profits**

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

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

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

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

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

### **Article 8 Shipping and Air Transport**

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

2. The provisions of paragraph 1 shall also apply to profits 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 where that other 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 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 10 per cent of the gross amount of the dividends.

The provisions of the previous sentence shall not apply with respect to dividends paid by a company which is a resident of a Contracting State to a company which is a resident of the other Contracting State with respect to which the provisions of the Directive on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (90/435/EEC) as it may be changed from time to time, are applicable.

The competent authorities of the Contracting States may 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" as used in this Article also comprises profits paid under an arrangement for participation in profits (association for participation).

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

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

### **Article 11 Interest**

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

2. However, such interest 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 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2 interest, mentioned in paragraph 1, shall be taxable only in the Contracting State where the beneficial owner of the interest is a resident if one of the following requirements is fulfilled;

(a) the payer or the recipient of the interest is the Contracting State itself, a statutory body, a political or administrative subdivision or a local authority thereof or the Central Bank of a Contracting State;

(b) the interest is paid in respect of a loan granted by Caixa Geral de Depósitos (CGD), Banco Nacional Ultramarino (BNU), Instituto de Apoio às Pequenas e Médias Empresas e Investimento (IAPMEI), Investimento e Comércio Externo Português (ICEP), Companhia de Seguros de Crédito (COSEC), Organismo Coordenador do POE, Fundo de Internacionalização das Empresas Portuguesas (FIEP) or any other institution of a public character with the objective to promote exports or development;

(c) the interest is paid in respect of a loan granted by The Swedish International Development Cooperation Agency (SIDA), The Swedish Export Credit Corporation (SEK), Swedfund International AB, The Swedish Export Credits Guarantee Board (Exportkreditnämnden) or any other institution of a public character with the objective to promote exports or development;

(d) the interest is paid in respect of a loan granted by any other financial institution which may be agreed upon between the competent authorities of the Contracting States.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures as well as all other income

assimilated to income from money lent by the taxation law of the State in which the income arises. 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 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 a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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

### **Article 12 Royalties**

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

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State the tax so charged shall not exceed 10 per cent of the gross amount of the royalties. The competent authorities of the Contracting States may 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 of literary, artistic or scientific work including cinematograph films and films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.

The term "royalties" also includes payments in consideration for technical assistance in connection with the use of, or the right to use, any copyright, goods or information as referred to under this paragraph.

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

5. Royalties shall be deemed to arise in a Contracting State when the payer is 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 obligation to pay these royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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

### **Article 13 Capital Gains**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.
4. Gains derived by an individual who is a resident of a Contracting State from the alienation of shares or other corporate rights in an entity which is a resident of the other Contracting State, and gains from the alienation of any other securities which are subjected in that other State to the same taxation treatment as gains from the alienation of such shares or other rights, may be taxed in that other Contracting State, but only if:
  - a) the individual has been a resident of that other Contracting State at any time during the five years immediately preceding the alienation of the shares, rights or securities; and
  - b) the individual was the owner of the above mentioned shares, rights or securities while he was a resident of that other State.
5. Gains from the alienation of any property other than that referred to in paragraphs 1-4 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. However, in the following circumstances such income may be taxed in the other Contracting State:
  - a) If he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in such case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or
  - b) If his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any period of 12 months; in such case, only so much of the income as is attributable to services performed in that other Contracting State may be taxed in that other 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 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
  - a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; and
  - b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
  - c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State, may be taxed in that State.

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

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or supervisory board (in Portugal, conselho fiscal) or of another similar organ of a company which is a resident of the other Contracting State may be taxed in that other State. However, Article 15 shall apply in relation to payments made by such a company to a

member of any board or organ referred to above in respect of the exercise of a permanent or regular activity.

### **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 not to the entertainer or athlete 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 athlete are exercised.

### **Article 18 Pensions**

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

### **Article 19 Government Service**

1. a) 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 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:

(1) is a national of that State; or

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

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

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

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

### **Article 20 Students**

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

### **Article 21 Other Income**

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

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

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

4. Notwithstanding any other provisions of this Convention, disbursements under the Social Security legislation arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the first-mentioned State.

Chapter IV

Methods for Elimination of Double Taxation

### **Article 22 Elimination of Double Taxation**

1. In the case of Portugal, double taxation shall be avoided as follows:

- a) Where a resident of Portugal derives income which, in accordance with the provisions of this Convention may be taxed in Sweden, Portugal shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in Sweden. Such deduction shall not, however, exceed that part of the income tax as computed before the deduction is given, which is attributable to the income which may be taxed in Sweden;
- b) Where in accordance with any provision of the Convention income derived by a resident of Portugal is exempt from tax in this State Portugal may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.
2. In the case of Sweden, double taxation shall be avoided as follows:
- a) Where a resident of Sweden derives income which under the laws of Portugal and in accordance with the provisions of this Convention may be taxed in Portugal, Sweden shall allow -- subject to the provisions of the laws of Sweden concerning credit for foreign tax (as it may be amended from time to time without changing the general principle hereof) -- as a deduction from the tax on such income, an amount equal to the Portuguese tax paid in respect of such income.
- b) Where a resident of Sweden derives income which, in accordance with the provisions of this Convention, shall be taxable only in Portugal, Sweden may, when determining the graduated rate of Swedish tax, take into account the income which shall be taxable only in Portugal.
- c) Notwithstanding the provisions of sub-paragraph (a) of this paragraph, dividends paid by a company which is a resident of Portugal to a company which is a resident of Sweden shall be exempt from Swedish tax according to the provisions of Swedish law governing the exemption of tax on dividends paid to Swedish companies by companies abroad.

#### Chapter V

#### Special Provisions

### **Article 23 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. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. Except where the provisions of 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. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.
4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.
5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

### **Article 24 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 23, 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 endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting State.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting State may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

### **Article 25 Exchange of Information**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of 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 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 enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

### **Article 26 Assistance in Recovery**

1. The Contracting States agree to provide mutual assistance and support for recovering, in accordance with the respective provisions and rules of their legislation or regulations, the taxes covered by this Convention, when these amounts are definitely due under the laws and regulations of the Contracting States seeking the assistance for such recovery.

2. At the request of the applicant State, the requested State shall, with a view to the recovery of an amount of tax, take measures of conservancy even if the claim is contested or is not yet the subject of an instrument permitting enforcement, insofar as such is permitted by the laws and administrative practice of the requested State.

3. The competent authorities of the Contracting States shall consult each other to decide the mode of application of this Article in case they consider the rendering of assistance in recovery of taxes feasible.

### **Article 27 Limitations of Benefits**

Notwithstanding any other provisions of this Convention, where

a) a company that is a resident of a Contracting State derives its income primarily from other States

i) from activities of banking, shipping, financing or insurance or

ii) from being the headquarters, co-ordination centre or similar entity providing administrative services or other support to a group of companies which carry on business primarily in other States; and

b) except for the application of the method of elimination of double taxation normally applied by that State, such income would bear a significantly lower tax under the laws of that State than income from similar activities carried out within that State or from being the headquarters, co-ordination centre or similar entity providing administrative services or other support to a group of companies which carry on business in that State, as the case may be,

any provisions of this Convention conferring an exemption or a reduction of tax shall not apply to the income of such company and to the dividends paid by such company.

### **Article 28 Diplomatic Agents and Consular Officers**

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

#### Chapter VI

#### Final Provisions

### **Article 29 Entry Into Force**

The Convention shall enter into force on the thirtieth day after the later of the dates on which the respective Governments have notified each other in writing that the formalities constitutionally required in their respective States have been complied with and its provisions shall have effect:

a) in the case of Portugal:

(i) in respect of taxes withheld at source the fact giving rise to them appearing on or after the first day of January 2000;

(ii) in respect of other taxes as to income arising in the fiscal year beginning on or after the first day of January 2000;

b) in the case of Sweden:

(i) in respect of taxes withheld at source, for amounts paid on or after the first day of January 2000;

(ii) in respect of other taxes on income, on taxes chargeable for any fiscal year beginning on or after the first day of January 2000.

### **Article 30 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 written notice of termination at least six months before the end of any calendar year after the expiration of a period of three years from the date of its entry into force. In such event the Convention shall cease to have effect:

a) in the case of Portugal:

(i) in respect of taxes withheld at source, the fact giving rise to them appearing on or after the first day of January next following the date on which the period specified in the said notice of termination expires;

(ii) in respect of other taxes as to income arising in the fiscal year beginning on or after the first day of January next following the date on which the period specified in the said notice of termination expires;

b) in the case of Sweden:

(i) in respect of taxes withheld at source, for amounts paid on or after the first day of January in the year next following the end of the six month period;

(ii) in respect of other taxes on income, on taxes chargeable for any fiscal year beginning on or after the first day of January in the year next following the end of the six month period.

In witness whereof the undersigned being duly authorized thereto have signed the present Convention and have affixed thereto their seals.

Done at Helsingborg this 29th day of August 2002, in duplicate in the Portuguese, Swedish and English languages, all texts being equally authentic. In case of divergence between the texts the English text shall prevail.

#### **FOR THE KINGDOM OF SWEDEN:**

*Anna Lindh*

#### **FOR THE PORTUGUESE REPUBLIC:**

*António Martins da Cruz*

### **PROTOCOL**

At the moment of signing the Convention between the Kingdom of Sweden and the Portuguese Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed that the following provisions shall form an integral part of the Convention.

#### **I. Ad Article 2, paragraph 3**

1. It is agreed that the Convention also shall apply to

a) in the case of Portugal: Local immovable property tax (*Contribuição Autárquica*), and

b) in the case of Sweden: the real estate tax (*den statliga fastighetsskatten*).

2. The provisions in the Convention concerning income from immovable property shall also apply, *mutatis mutandis*, in relation to the taxes referred to in paragraph 1.

#### **II. Ad Article 8**

With respect to profits derived by the air transport consortium Scandinavian Airlines System (SAS) the provisions of paragraph 1 of Article 8 shall apply only to such part of the profits as corresponds to the participation held in that consortium by SAS Sverige AB, the Swedish partner of SAS.

III. Ad Article 13, paragraph 3

With respect to gains derived by the air transport consortium SAS, the provisions of this paragraph shall apply only to such part of the gains as corresponds to the participation held in that consortium by SAS Sverige AB, the Swedish partner of SAS.

IV. Ad Article 15, paragraph 3

Where a resident of Sweden derives remuneration in respect of an employment exercised aboard an aircraft operated in international traffic by the air transport consortium SAS, such remuneration shall be taxable only in Sweden.

V. Ad Article 29

Notwithstanding the provisions of Article 29, the provisions of Article 8 and paragraph 3 of Article 13 and respective provisions of this Protocol shall have effect in both Contracting States with respect to the fiscal years beginning on or after 1 January 1985.

In witness whereof the undersigned being duly authorized thereto have signed the present Protocol and have affixed thereto their seals.

Done at Helsingborg this 29th day of August 2002, in duplicate in the Portuguese, Swedish and English languages, all texts being equally authentic. In case of divergence between the texts the English text shall prevail.

**FOR THE KINGDOM OF SWEDEN:**

*Anna Lindh*

**FOR THE PORTUGUESE REPUBLIC:**

*António Martins da Cruz*