

1974 Income and Capital Tax Convention and Final Protocol, as Amended (English Translation)

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Status: In Force

This convention, signed September 26, 1974, has been amended by a protocol signed June 25, 2012.

CONVENTION BETWEEN SWITZERLAND AND PORTUGAL FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON FORTUNE

The Swiss Federal Council and the Portuguese Government,
Desiring to conclude a convention for the avoidance of double taxation with respect to taxes on income and fortune,

Have agreed as follows:

Chapter I. Scope of the Convention

Article 1 Personal Scope

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

Article 2 Taxes Covered

1. This Convention shall apply to taxes on income and on capital 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 and on fortune all taxes imposed on total income, on total fortune, or on elements of income or of fortune, 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, in particular:

(a) in the case of Portugal:

- (1) the personal income tax (Imposto sobre o Rendimento das Pessoas Singulares – IRS);
 - (2) the corporate income tax (Imposto sobre o Rendimento das Pessoas Colectivas – IRC); and
 - (3) the surtaxes on corporate income tax (Derramas);
- (hereinafter referred to as “Portuguese tax”).

(b) In the case of Switzerland:

The federal, cantonal and communal taxes

- (1) On income (total income, earned income, income from fortune, industrial and commercial profits, capital gains and other income);
 - (2) On fortune (total fortune, movable and immovable property, business assets, capital and reserves and other elements of fortune)
- (hereinafter referred to as “Swiss tax”).

4. The Convention shall apply also to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other at the beginning of each year of any changes which have been made in their respective taxation laws during the preceding year.

5. The Convention shall not apply to taxes imposed on lottery prizes.

Chapter II. Definitions

Article 3 General Definitions

1. In this Convention, unless the context otherwise requires:

- (a) The terms “a Contracting State” and “the other Contracting State” mean Portugal or Switzerland, as the context requires;
- (b) the term “Portugal”, when used in a geographical sense, means the territory of the Portuguese Republic in accordance with international law and the Portuguese legislation, including inland waters and the territorial sea and any other area where the Portuguese Republic exercises its sovereign rights or jurisdiction;
- (c) The term “Switzerland” means the Swiss Confederation;
- (d) The term “person” comprises 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" includes any voyage of a ship or any flight of an aircraft operated by an enterprise of a Contracting State other than a voyage or flight which is limited solely to the other Contracting State;

(h) The term "competent authority" means:

(1) In Portugal, the Minister of Finance, the Director-General of Taxation or their authorized representatives;

(2) In Switzerland, the Director of the Federal Tax Administration or his authorized representative.

2. As regards the application of the Convention by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

Article 4 Resident

1. For the purposes of this 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. With regard to Switzerland, the term "resident of a Contracting State" also means general partnerships (sociétés en nom collectif) and limited partnerships (sociétés en commandite simple) formed or organized in accordance with Swiss law.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, his status shall be determined in accordance with the following rules:

(a) He shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);

(b) If the Contracting 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 Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

(c) If he has an habitual abode in both Contracting States or in neither of them he shall be deemed to be a resident of the Contracting State of which he is a national;

(d) If he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

Article 5 Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business at which the business of the 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, a quarry or any other place of extraction of natural resources;

(g) A building site or construction or installation project which lasts more than 12 months.

3. The term "permanent establishment" shall not be deemed to include:

(a) The use of facilities solely for the purpose of storage, display or delivery of merchandise belonging to the enterprise;

(b) The maintenance of a stock of goods or of 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 advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State--other than an agent of an independent status to whom paragraph 5 applies--shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, a general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

6. 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 from immovable property may be taxed in the Contracting State in which such property is situated.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional 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. 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions all the expenses which would have been deducted if the permanent establishment had constituted an independent enterprise, to the extent to which they are reasonably attributable to it, including executive and general administrative expenses incurred, whether in the State in which the permanent establishment is situated or elsewhere.

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

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

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

7. Where profits include items of income which are dealt with separately in other articles of this Convention, the provisions of those articles shall not be affected by the provisions of this article.

Article 8 Shipping and Air Transport

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

2. The provisions of paragraph 1 shall also apply to the profits of an enterprise of a Contracting State from 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 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, 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, if it agrees that the adjustment made by the first-mentioned State is justified both in principle and in amount, shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10 Dividends

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

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

(a) 5 percent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 percent of the capital of the company paying the dividends;

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

3. Notwithstanding the provisions of paragraph 2,

(a) dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State shall be taxable only in that other State if the beneficial owner is the Bank of Portugal or the Swiss National Bank;

(b) dividends paid by a company which is a resident of a Contracting State to a company that is a resident of the other Contracting State shall be taxable only in that other State, provided that the company which derives the dividends holds directly for a minimum of two years at least 25 percent of the capital of the company paying the dividends, that both companies are subject to and not exempt from the taxes covered by Article 2 of the Convention, that, pursuant to a double taxation convention concluded with a third State, none of the companies is a resident for tax purposes of that third State, and that both companies adopt the form of a limited company.

4. 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. This term also includes profits attributed under an arrangement for participation in profits (associação em participação).

5. The provisions of paragraphs 1 and 2 and subparagraph (b) of paragraph 3 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.

6. 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 attributed or 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 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 a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State:

(a) if the interest is paid by the first-mentioned Contracting State, or by a political or administrative subdivision or a local authority thereof; or

(b) if the beneficial owner of the interest is the other Contracting State, or a political or administrative subdivision or a local authority thereof, or the central bank of that other Contracting State.

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 any other income assimilated to income from money lent by the taxation law of the State in which income arises.

5. The provisions of paragraphs 1, 2 and 8 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 attributor or payer is that State itself, a political or administrative subdivision, a local authority or a resident of that State. Where, however, the person attributing or paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

7. Where, by reason of a special relationship between the attributor or payer and the beneficial owner or between both of them and some other person, the amount of the interest attributed or paid, having regard to the debt-claim for which it is accorded, 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 attributions or payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

8. Notwithstanding the provisions of paragraphs 1 and 2, interest arising in a Contracting State and paid between associated companies shall not be subject to taxation in the source State, provided that such companies are affiliated by a direct participation of at least 25 percent for at least two years or are both controlled by a third company which holds a direct participation of at least 25 percent both in the capital of the first company and in the capital of the second company for at least two years, that one company is a resident for tax purposes in a Contracting State and the other company is a resident for tax purposes in the other Contracting State, that under a double tax agreement with a third State, none of the companies is a resident of that third State, that all companies are subject to corporate income tax without being exempted in particular on interest payments, and that each company adopts the form of a limited company.

Article 12 Royalties

1. Royalties arising in a Contracting State and attributed or paid to a resident of the other Contracting State shall be taxable in that other State.
2. However, such royalties may be taxed in the Contracting State in which they arise and according to the laws of that State, but the tax so charged shall not exceed 5 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 of literary, artistic or scientific work including cinematograph films and films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs 1, 2 and 7 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 attributor or payer is that State itself, a political or administrative subdivision, a local authority or a resident of that State. Where, however, the person attributing or paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment with which the use, right or information for which the royalties are attributed or paid is connected and such royalties are borne by such permanent establishment, such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.
6. Where, by reason of a special relationship between the attributor or payer and the beneficial owner or between both of them and some other person, the amount of the royalties attributed or paid, having regard to the use, right or information for which they are attributed or paid, exceeds the amount which would have been agreed upon by the attributor or 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 attributions or payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.
7. Notwithstanding the provisions of paragraphs 1 and 2, royalties arising in a Contracting State and paid between associated companies shall not be subject to taxation in the source State, provided that such companies are affiliated by a direct participation of at least 25 percent for at least two years or are both controlled by a third company which holds a direct participation of at least 25 percent both in the capital of the first company and in the capital of the second company for at least two years, that one company is a resident for tax purposes in a Contracting State and the other company is a resident for tax purposes in the other Contracting State, that under a double tax agreement with a third State, none of the companies is a resident of that third State, that all companies are subject to corporate income tax without being exempted in particular on royalty payments, and that each company adopts the form of a limited company.

Article 13 Capital Gains

1. Gains from the alienation of immovable property referred to in article 6, paragraph 2, may be taxed in the Contracting State in which such property is situated.
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 professional services, including such gains from the alienation of such permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State. However, gains from the alienation of movable property of the kind referred to in article 22, paragraph 3, shall be taxable only in the Contracting State in which such movable property itself is taxable according to the said article.
3. Gains derived by a resident of a Contracting State from the alienation of shares deriving more than 50 percent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.
4. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2 and 3, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14 Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State, but only so much of it as is attributable to that fixed base.

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

Article 15 Dependent Personal Services

1. Subject to the provisions of articles 16, 18, 19 and 20, wages, salaries 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 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

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

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

Article 17 Artistes and Athletes

Notwithstanding the provisions of articles 14 and 15, income derived by an entertainer, such as a theatre, motionpicture, radio or television artiste or a musician, or by an athlete from his personal activities as such may be taxed in the Contracting State in which the said activities are exercised.

Article 18 Pensions

Subject to the provisions of article 19, paragraph 1, 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. Salaries, wages and other similar remuneration 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. 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:

(a) is a national of that State; or

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

2. Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration 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. However, such pensions and other similar remuneration 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, pensions and other similar remuneration in respect of services rendered in connection with a trade or business carried on by a Contracting State or a political or administrative subdivision or a local authority thereof.

Article 20 Students

1. Payments which a student, business apprentice or trainee who is or previously was a resident of a Contracting State and who is present in the other Contracting 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 other State, provided that such payments arise from sources outside that other State.

2. Any individual who is or previously was a resident of a Contracting State and who is present in the other Contracting State in order to pursue his studies, research or training or in order to acquire technical, professional or trade experience and who, for a period or periods not exceeding in the aggregate 12 months, exercises a remunerative activity in that other State shall not be subject in that other State to tax on remuneration paid in respect of that activity, provided that the activity is directly related to his studies, research, training or technical, professional or trade apprenticeship and that the remuneration arising from the activity does not exceed 12,000 Swiss francs or the equivalent in Portuguese currency at the official rate of exchange.

Article 21 Income Not Expressly Mentioned

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing articles of this Convention shall be taxable only in that State.

Chapter IV. Taxation of Fortune

Article 22 Fortune

1. Fortune represented by immovable property referred to in article 6, paragraph 2, may be taxed in the Contracting State in which such property is situated.

2. Fortune represented by movable property forming part of the business property of a permanent establishment of an enterprise, or by movable property pertaining to a fixed base used for the performance of professional services, may be taxed in the Contracting State in which the permanent establishment or fixed base is situated.

3. Ships and aircraft operated in international traffic by an enterprise of a Contracting State and movable property pertaining to their operation shall be taxable only in that State.

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

Chapter V. Provisions for Elimination of Double Taxation

Article 23 Methods for Elimination of Double Taxation

1. Where a resident of Portugal derives items of income which, in accordance with the provisions of this Convention, may be taxed in Switzerland, Portugal shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in Switzerland. Such deduction shall not, however, exceed that part of the Portuguese tax, as computed before the deduction is given, which is attributable to such items of income taxed in Switzerland.

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

3. Where a resident of Switzerland derives income or owns fortune which, in accordance with the provisions of this Convention, may be taxed in Portugal, Switzerland shall, subject to the provisions of paragraph 3, exempt such income or fortune from tax but may, in calculating the amount of tax on the remaining income or fortune of such resident, apply the rate of tax which would have been applicable if the income or fortune in question had not been so exempted. However, such exemption shall apply to gains referred to in paragraph 3 of Article 13 only if actual taxation of such gains in Portugal is demonstrated.

4. Where a resident of Switzerland derives income which, in accordance with the provisions of articles 10, 11 and 12, may be taxed in Portugal, Switzerland shall, on application, grant the said resident relief from tax. The relief shall consist of:

(a) A deduction of the tax paid in Portugal in accordance with the provisions of articles 10, 11 and 12 from the Swiss tax on the income of the said resident, provided that such deduction shall not exceed that part of the Swiss tax, as computed before the deduction is given, which is attributable to the income taxed in Portugal; or

(b) A lump-sum reduction of the Swiss tax, calculated according to pre-established rules, which takes account of the general principles of relief from tax stated in subparagraph (a) above; or

(c) A partial exemption of the income in question from Swiss tax, but at least a deduction of the tax paid in Portugal from the gross amount of the income derived from Portugal.

Switzerland shall determine the type of relief and the appropriate procedure in accordance with the provisions concerning the application of international conventions entered into by the Confederation for the avoidance of double taxation.

5. A company which is a resident of Switzerland and which derives dividends from a subsidiary company which is a resident of Portugal shall be granted, with regard to the Swiss tax relating to such dividends, the same advantages as would be granted if the subsidiary company attributing or paying the dividends were a resident of Switzerland.

Chapter VI. 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.

2. The term "nationals" means:

(a) All individuals possessing the nationality of a Contracting State;

(b) All legal persons, partnerships and associations deriving their status as such from the law in force in a Contracting State.

3. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less 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.

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. 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.

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

6. In this article the term "taxation" means taxes of every kind and description.

Article 25 Mutual-Agreement Procedure

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with 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.

The objection must be submitted within two years from the date of notification of the tax or payment of the income subject to withholding source to which it relates or, in the case of taxation in both States, from the second taxation.

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.

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 States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable, in order to reach agreement, to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

Article 25bis Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes 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.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1. 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. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorizes such use.

3. In no case shall the provisions of paragraphs 1 and 2 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*).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. In the case of Switzerland, in order to obtain such information, the tax authorities of the requested Contracting State, if necessary to comply with its obligations under this paragraph, shall have the power to enforce the disclosure of information covered by this paragraph, notwithstanding paragraph 3 or any contrary provisions in its domestic laws.

Article 26 Diplomatic Agents and Consular Officers

1. 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.

2. In so far as, by reason of the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special international agreements, income or fortune is not taxable in the receiving State, the right of taxation shall be reserved to the sending State.

3. For the purposes of the Convention, members of a diplomatic or consular mission of a Contracting State accredited to the other Contracting State or to a third State who are nationals of the sending State shall be deemed to be residents of the sending State if they are subject therein to the same liability with respect to taxes on income and fortune as residents of that State.

4. The Convention shall not apply to international organizations, to the organs or officials thereof or to persons who are members of a diplomatic or consular mission of a third State if they are present in the territory of a Contracting State and are not treated as residents in either Contracting State for the purposes of taxes on income and fortune.

Article 27 Entitlement to Treaty Benefits

1. It is understood that the domestic laws and procedures of the Contracting States concerning abuse of law may be applied to combat such abuse with regard to the provisions of the Convention.

2. It is understood that the benefits under the Convention shall not be granted to a resident of a Contracting State which is not the beneficial owner of the income derived from the other Contracting State.

3. It is understood that the provisions of the Convention shall not apply if the main purpose of any person concerned with the creation or assignment of the property or right in respect of which the income is paid is to take advantage of these provisions by means of such creation or assignment.

Chapter VII. Final Provisions

Article 28 Entry Into Force

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

2. The Convention shall enter into force on the fifteenth day following the date of the exchange of the instruments of ratification, and its provisions shall have effect:

(a) In Portugal:

(1) In respect of taxes payable by deduction at the source resulting from operations effected after 31 December of the year of the entry into force of the Convention;

(2) In respect of other taxes on income referring to calendar years beginning after 31 December of the year of the entry into force of the Convention;

(b) In Switzerland:

(1) In respect of taxes payable by deduction at the source on income paid after 31 December of the year of the entry into force of the Convention;

(2) In respect of other Swiss taxes levied for the fiscal years beginning after 31 December of the entry into force of the Convention.

3. Notwithstanding the provisions of paragraph 2, the provisions of article 8, article 13, paragraph 2, last sentence, and article 22, paragraph 3, shall apply to taxes for the calendar year 1963 and subsequent years.

Article 29 Termination

1. This Convention shall remain in force until denounced by a Contracting State. Either Contracting State may denounce the Convention, through the diplomatic channel, giving notice at least six months before the end of any calendar year. In such event, the Convention shall cease to have effect:

(a) In Portugal:

(1) In respect of taxes payable by deduction at the source resulting from operations effected after 31 December of the year of denunciation;

(2) In respect of other taxes on income for the calendar years beginning after 31 December of the year of denunciation;

(b) In Switzerland:

(1) In respect of taxes payable by deduction at the source on income paid after 31 December of the year of denunciation;

(2) In respect of other Swiss taxes for the fiscal years beginning after 31 December of the year of denunciation.

In witness whereof, the plenipotentiaries of the two States have signed this Convention and have thereto affixed their seals.

Done at Berne on 26 September 1974, in duplicate in the French and Portuguese languages, both texts being equally authentic.

FOR THE SWISS FEDERAL COUNCIL:

P. Graber

FOR THE PORTUGUESE GOVERNMENT:

B. Bugalho

ADDITIONAL PROTOCOL TO THE CONVENTION BETWEEN SWITZERLAND AND PORTUGAL FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON FORTUNE

On proceeding to sign the Convention concluded this day between Switzerland and Portugal for the avoidance of double taxation with respect to taxes on income and on fortune, the undersigned plenipotentiaries have agreed on the following additional provisions, which shall form an integral part of the Convention:

1. It is understood that, with regard to article 2:

(a) The said Convention shall apply to both ordinary taxes and extraordinary taxes on income and fortune;

(b) If a tax on fortune is ever introduced in Portugal, the Convention shall apply to that tax.

2. With reference to Article 6 of the Convention, it is understood that its provisions shall also apply to income derived from movable (personal) property connected to immovable property and the provision of maintenance services or property management."

3. Notwithstanding the provisions of paragraph 1 and subparagraph (b) of paragraph 2 of Article 10 of the Convention, dividends may also be taxed in the other Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but the tax so charged shall not exceed 5 percent of the gross amount of the dividends if the beneficial owner of the dividends is a pension fund, being a resident of a Contracting State, in which individuals participate in order to secure retirement, disability and survivors' benefits where such pension fund is established, recognized for tax purposes, and controlled in accordance with the laws of that State.

4. The provisions of paragraphs 2 and 3 of Article 10 of the Convention and the provisions of paragraph 3 of the Additional Protocol shall not affect the taxation of the company in respect of the profits out of which the dividends are paid. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of the limitations set forth in the provisions referred to in this paragraph.

5. It is understood that the provisions of paragraph 6 of Article 10 shall not prevent a State from taxing dividends arising from a participation effectively connected with a permanent establishment operated in that State by a resident of the other State.

6. With respect to paragraph 3 of Article 12 of the Convention, it is understood that payments in relation to software shall fall within the definition of "royalties" where less than the full rights to the software are transferred either if the payments are in consideration for the right to use a copyright on software for commercial exploitation (except payments for the right to distribute standardized software copies, not comprising the right either to customize nor to reproduce them) or if they relate to software acquired for the business use of the purchaser, when, in this last case, the software is not completely standardized but adapted to the purchaser.

7. With respect to paragraph 8 of Article 11 and paragraph 7 of Article 12 of the Convention, it is understood that the Amending Protocol shall not apply before July 1, 2013.

8. It is understood that the term "pensions" as used in Articles 18 (Pensions) and 19 (Government Service) of the Convention covers not only periodic payments but also lump sum payments.

9. If after the date of signature of the Amending Protocol to the Convention, Portugal agrees to introduce an arbitration clause in a double taxation agreement concluded with a third State, the Portuguese and Swiss competent authorities may consult together with a view to adding a similar dispute resolution clause to Article 25 (Mutual Agreement Procedure) of the Convention.

10. With respect to Article 25bis (Exchange of Information) of the Convention:

(a) It is understood that an exchange of information will only be requested once the requesting Contracting State has exhausted all regular sources of information available under the internal taxation procedure.

(b) It is understood that the tax authorities of the requesting State shall provide the following information to the tax authorities of the requested State when making a request for information under Article 25bis (Exchange of Information) of the Convention:

(i) the identity of the person under examination or investigation;

(ii) the period of time for which the information is requested;

(iii) a statement of the information sought including its nature and the form in which the requesting State wishes to receive the information from the requested State;

(iv) the tax purpose for which the information is sought;

(v) to the extent known, the name and address of any person believed to be in possession of the requested information.

The reference to "foreseeable relevance" is intended to provide for exchange of information in tax matters to the widest possible extent without permitting the Contracting States to engage in "fishing expeditions" or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. While this subparagraph (b) contains important procedural requirements that are intended to ensure that "fishing expeditions" do not occur, clauses (i) through (v) nevertheless are not to be interpreted to frustrate effective exchange of information.

(c) It is further understood that Article 25bis (Exchange of Information) of the Convention does not require the Contracting States to exchange information on a spontaneous or automatic basis.

(d) It is understood that in the case of an exchange of information, the administrative procedural rules regarding taxpayers' rights provided for in the requested Contracting State remain applicable before the information is transmitted to the requesting Contracting State. It is further understood that this provision aims at guaranteeing the taxpayer a fair procedure and not at preventing or unduly delaying the exchange of information process.

11. It is understood that if a tax on fortune is ever introduced in Portugal, the Swiss tax on fortune, levied in accordance with the provisions of the Convention, shall be deducted from the Portuguese tax on fortune under the conditions set forth in article 23, paragraph 1.
Done at Berne on 26 December 1974, in duplicate in the French and Portuguese languages, both texts being equally authentic.

FOR THE SWISS FEDERAL COUNCIL:

P. Graber

FOR THE PORTUGUESE GOVERNMENT:

B. Bugalho