

## **2005 Income Tax Convention and Final Protocol**

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

The Portuguese Republic and the Republic of Turkey, 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 taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, 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:
    - i) The personal income tax (Imposto sobre o Rendimento das Pessoas Singulares - IRS);
    - ii) The corporate income tax (Imposto sobre o Rendimento das Pessoas Colectivas - IRC); and
    - iii) The local surtax on corporate income tax (Derrama);(hereinafter referred to as "Portuguese tax");
  - b) In the case of Turkey:
    - i) The income tax (Gelir Vergisi);
    - ii) The corporation tax (Kurumlar Vergisi);
    - iii) The levy imposed on the income tax and the corporation tax (Gelir Ve Kurumlar Vergisi Uzerinden alinan fon payi);(hereinafter referred to as "Turkish tax").
4. The Convention shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their 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 Portuguese territory, territorial sea as well as the maritime areas over which the Portuguese Republic has jurisdiction or sovereign rights for the purposes of exploration, exploitation and conservation of natural resources, pursuant to international law;
  - b) The term "Turkey" means the Turkish territory, territorial sea as well as the maritime areas over which Turkey has jurisdiction or sovereign rights for the purposes of exploration, exploitation and conservation of natural resources, pursuant to international law;
  - c) The terms "a Contracting State" and "the other Contracting State" mean Portugal or Turkey, as the context requires;
  - d) The term "person" includes an individual, a company and any other body of persons;
  - e) The term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

f) The terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

g) The term "international traffic" means any transport by a ship, aircraft or road vehicle operated by an enterprise of a Contracting State, except when the ship, aircraft or road vehicle is operated solely between places in the other Contracting State;

h) The term "competent authority" means:

i) In Portugal: the Minister of Finance, the Director General of Taxation (Director-Geral dos Impostos) or their authorised representative;

ii) In Turkey: the Minister of Finance or his authorised representative

i) The term "national" means:

i) Any individual possessing the nationality of a Contracting State;

ii) Any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.

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, legal head office, place of management or any other criterion of a similar nature and also includes that State and any political or administrative subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

a) He shall be deemed to be a resident 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 of this Article, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the Contracting State in which its place of effective management is situated. However, if its place of effective management can not be determined, then the competent authorities of the Contracting States shall determine by mutual agreement the State of which the person shall be deemed to be a resident for the purpose of this Convention.

#### **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 building site, construction, assembly or installation project or supervisory activities in connection therewith constitute a permanent establishment only if they last more than 9 months.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- a) The use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- b) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery
- c) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
- e) The maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- f) The maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs 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 in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned State, if:

- a) He has and habitually exercises in a Contracting State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited wholly to the activities described 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; or
- b) He has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise and conducts any other activity that contributes to the sale of goods or merchandise.

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 (including the breeding and cultivation of fish) 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, aircraft and road vehicles shall not be regarded as immovable property.

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

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

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

4. 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. 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, Air and Land Transport**

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

2. The provisions of paragraph 1 shall also apply to profits derived from the participation in a pool, a joint business or an international operating agency.

### **Article 9 Associated Enterprises**

1. Where:

a) An enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

b) The same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits, if the other Contracting State considers the adjustment justified. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

### **Article 10 Dividends**

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other 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 per cent of the gross amount of the dividends paid if the beneficial owner is a company (other than a partnership) that, for an uninterrupted period of two years prior to the payment of the dividends, or if the company paying the dividends has existed for less than two years during the lifetime of the company, holds directly at least 25 per cent of the capital (capital social) of the company paying the dividends; or

b) 15 per cent of the gross amount of the dividends, in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations. 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, founders' shares or other rights, not being debtclaims, 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.

4. Profits of a company of a Contracting State carrying on business in the other Contracting State through a permanent establishment situated therein may, after having been taxed under Article 7, be taxed on the remaining amount in the Contracting State in which the permanent establishment is situated and in accordance with the provisions of domestic law of that State, but the tax so charged shall not exceed 5 percent of that amount.

5. 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.

6. Subject to the provision of paragraph 4, 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:

a) 10 per cent of the gross amount of the interest if it is paid on a loan made for a period of more than two years;

b) 15 per cent of the gross amount of the interest, in all other cases.

3. Notwithstanding the provisions of paragraph 2:

a) The Central Bank of Turkey shall be exempt from Portuguese tax with respect to interest arising in Portugal;

b) The Central Bank of Portugal shall be exempt from Turkish tax with respect to interest arising in Turkey;

c) The Government, the political or administrative subdivisions or the local authorities of one of the Contracting States shall be exempt from tax in the other Contracting State with respect to interest arising in that other 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.

5. The provisions of paragraphs 1 and 2 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.
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 recordings for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs 1 and 2 shall not apply if the 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 fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by that 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 of an enterprise of a Contracting State from the alienation of ships, aircraft or road vehicles operated in international traffic or movable property pertaining to the operation of such ships, aircraft or road vehicles shall be taxable only in that 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.
5. The provisions of paragraph 4 shall not affect the right of a Contracting State to levy according to its own law a tax on gains derived by a resident of the other State from the alienation of shares that represent a participation of more than 25 percent of the capital stock of a company which is resident of the first-mentioned State if the alienation takes place to a resident of the first-mentioned State, and if the period between acquisition and alienation does not exceed one year.

### **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, such income may also be taxed in the other Contracting State if such services or activities are performed in that other State and if:

- a) He has a fixed base regularly available to him in the other State for the purpose of performing those services or activities; or
- b) He is present in that other State for the purpose of performing those services or activities for a period or periods amounting in the aggregate to 183 days or more in any continuous period of 12 months.

In such circumstances, only so much of the income as is attributable to that fixed base or derived from the services or activities performed during his presence in that other State, as the case may be, may be taxed in that other State.

2. Income derived by an enterprise of a Contracting State in respect of professional services or other activities of a similar character shall be taxable only in that State. However, such income may also be taxed in the other Contracting State if such services or activities are performed in that other State and if:

- a) The enterprise has a permanent establishment in that other State through which the services or activities are performed; or
- b) The period or periods during which the services are performed exceed in the aggregate 183 days in any continuous period of 12 months.

In such circumstances, only so much of the income as is attributable to that permanent establishment or to the services or activities performed in that other State, as the case may be, may be taxed in that other State. In either case, the enterprise may elect to be taxed in that other State in respect of such income in accordance with the provisions of Article 7 of this Convention as if the income were attributable to a permanent establishment of the enterprise situated in that other State. This election shall not affect the right of that other State to impose a withholding tax on such income.

3. 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, and other activities requiring specific professional skill.

### **Article 15 Dependent Personal Services**

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, 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 calendar 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, aircraft or road vehicle 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 of a company which is a resident of the other Contracting State or as a member of any other organ which performs the same functions in the company may be taxed in that other State.

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

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

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

3. Income derived by an entertainer or a sportsman from activities exercised in a Contracting State shall be exempt from tax in that State, if the visit to that State is supported wholly or mainly by public funds of the other contracting state a political or administrative subdivision or local authority thereof.

#### **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. This provision shall also apply to life annuities paid to a resident of a Contracting State.

#### **Article 19 Government Service**

1. a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political or administrative subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State;  
b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

i) Is a national of that State; or

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

2. a) Any pension paid 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 Professors and Researchers**

An individual who is or was a resident of a Contracting State immediately before visiting the other Contracting State, solely for the purpose of teaching or scientific research at an university, college, school, or other similar educational or scientific research institution which is recognised as non-profitable by the Government of that other State, or under an official programme of cultural exchange, for a period not exceeding two years from the date of his first arrival in that other State, shall be exempt from tax in that other State on his remuneration for such teaching or research.

#### **Article 21 Students**

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

2. Remuneration which a student or a trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State derives from an employment which he exercises in the first-mentioned State for a period or periods not exceeding 183 days in a calendar year, in order to obtain practical experience related to his education or formation, shall not be taxed in that State.

#### **Article 22 Other Income**

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

2. The provisions of paragraph 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.

#### **Chapter IV**

#### **Elimination of Double Taxation**

#### **Article 23 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 Turkey, Portugal shall allow as a deduction from the tax-on-the income of that resident an amount equal to the tax paid in Turkey. 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 Portugal;

b) Where in accordance with any provisions of this 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;

c) Notwithstanding the provision of sub-paragraph a), where a company (other than a partnership) which is resident of Portugal receives dividends from a company which is resident of Turkey and which is not exempt from corporation tax in Turkey, Portugal shall allow a deduction for 95 per cent of such dividends included in the tax base of the company receiving dividends, provided that the company which is resident of Portugal is a company that, for an uninterrupted period of two years prior to the payment of the dividends, or if the company paying the dividends has existed for less than two years during the lifetime of the company, holds directly at least 25 per cent of the capital (capital social) of the company paying the dividends.

2. In the case of Turkey, double taxation shall be avoided as follows:

a) Subject to the provisions of the laws of Turkey regarding the allowance as a credit against Turkish tax of tax payable in a territory outside Turkey, Portuguese tax payable under the laws of Portugal and in accordance with this Convention, in respect of income (including profits and chargeable gains) derived by a resident of Turkey from sources within Portugal shall be allowed as a deduction from the Turkish tax on such income. Such deduction, however, shall not exceed the amount of Turkish tax, as computed before the deduction is given, attributable to such income;

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

Chapter V

Special Provisions

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

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, 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. Subject to the provisions of paragraph 4 of Article 10, 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.

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.

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. These provisions 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,

6. The provisions of this Article shall apply to the taxes covered by this Convention.

### **Article 25 Mutual Agreement Procedure**

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within 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 States.

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.

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

### **Article 26 Exchange of Information**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. 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 27 Members of Diplomatic Missions and Consular Posts**

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

Chapter VI

Final Provisions

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

1. Each Contracting State shall notify to the other Contracting State the completion of the procedures required by its law for the bringing into force of this Convention. This Convention shall enter into force on the date of the later of these notifications.

2. The provisions of this Convention shall have effect:

a) In Portugal:

i) In respect of taxes withheld at source, the fact giving rise to them appearing on or after the first day of January of the year next following the year in which this Convention enters into force;

ii) In respect of other taxes as to income arising in any fiscal year beginning on or after the first day of January of the year next following the year in which this Convention enters into force;

b) In Turkey:

In respect of taxes for the taxable period beginning on or after first day of January next following the date upon which this Convention enters into force and subsequent taxable periods.

### **Article 29 Termination**

1. This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the expiration of five years from the date of entry into force of the Convention.

2. In such event, the Convention shall cease to have effect:

a) In Portugal:

i) In respect of taxes withheld at source, the fact giving rise to them appearing on or after the first day of January of the year next following that specified in the said notice of termination;

ii) In respect of other taxes, as to income arising in the fiscal year beginning on or after the first day of January of the year next following that specified in the said notice of termination;

b) In Turkey:

For taxes with respect to every taxable period beginning on or after the first day of January of the year next following that specified in the said notice of termination.

In witness whereof the undersigned, duly authorised thereto, have signed this Convention.

Done in duplicate at Lisbon this eleven day of May, 2005 in the Portuguese, Turkish and English languages, all texts being equally authentic. In case of any divergence of interpretation or application of this Convention, the English text shall prevail.

**FOR THE PORTUGUESE REPUBLIC:**

*Luis Campos e Cunha*

*Minister of State and Finance*

**FOR THE REPUBLIC OF TURKEY:**

*Ali Tuyga*

*Undersecretary of the Ministry of Foreign Affairs*

**PROTOCOL**

At the moment of signature of the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income concluded this day between the Portuguese Republic and the Republic of Turkey, the undersigned have agreed upon the following additional provisions, which form an integral part of the Convention.

Ad Article 6

With reference to Article 6, it is understood that the provisions described therein shall also apply to income from associated movable (personal) property and from the provision of services for the maintenance or operation of immovable property (real property).

Ad Article 8

For the purposes of paragraph 2 of Article 8, it is understood that the provisions of that paragraph include profits of a consortium or a similar form of association as corresponds to the participation held in the consortium or association by a company that is resident of a Contracting State.

Ad Article 10

With reference to paragraph 3 of Article 10, it is understood that the term "dividends" also includes: in the case of Portugal, profits attributed under an arrangement for participation in profits (*associagao em participacao*); in the case of Turkey, income derived from an investment fund and investment trust.

Ad Article 12

For the purposes of paragraph 3 of Article 12, it is understood that the term "royalties" includes gains derived from the use of such right or property in the case of an alienation of such right or property to the extent that such gains are contingent on the productivity, use, or disposition thereof.

Ad Article 14

With reference to paragraph 2 of Article 14, it is understood that if the enterprise of a Contracting State elects to be taxed in the other Contracting State in accordance with the provisions of Article 7 of this Convention, the tax withheld in that other State on the income of that enterprise may be deducted from the tax calculated on income which is determined in accordance with the provisions of Article 7 of this Convention.

Ad Article 25

With respect to paragraph 2 of Article 25, it is understood that the taxpayer must claim the refund resulting from such mutual agreement within a time period provided by the domestic law after the tax administration has notified the taxpayer of the result of the mutual agreement.

In witness whereof the undersigned, duly authorised thereto, have signed this Protocol.

Done in duplicate at Lisbon this eleven day of May, 2005 in the Portuguese, Turkish and English languages, all texts being equally authentic. In case of any divergence of interpretation or application of this Protocol, the English text shall prevail.

**FOR THE PORTUGUESE REPUBLIC:**

*Luis Campos e Cunha*

*Minister of State and Finance*

**FOR THE REPUBLIC OF TURKEY:**

*Ali Tuyga*

*Undersecretary of the Ministry of Foreign Affairs*