

1994 Income Tax Convention and Final Protocol

Signed date: September 6, 1994

In force date: December 18, 1995

Effective date: January 1, 1996. See Article 30.

Status: In Force

This convention has been amended by a technical correction dated October 7, 1994. A protocol of exchange was signed December 18, 1995. The text as amended is also available.

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE PORTUGUESE REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the United States of America and the Government of the Portuguese Republic, desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

Article 1 Personal Scope

This Convention shall apply to persons who are residents of one or both of the Contracting States, except as otherwise provided in the Convention.

Article 2 Taxes Covered

1. The existing taxes to which this Convention shall apply are:

(a) in Portugal:

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

(b) in the United States:

- (i) the Federal income taxes imposed by the Internal Revenue Code (but excluding social security contributions); and
 - (ii) the excise tax with respect to the investment income of private foundations under section 4940 of the Internal Revenue Code, as it may be amended from time to time without changing the general principle thereof,
- (hereinafter referred to as "United States tax").

2. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting State shall notify each other of any significant changes that have been made in their respective taxation laws and of any official published material concerning the application of the Convention.

Article 3 General Definitions

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

(a) the terms "a Contracting State" and "the other Contracting State" mean Portugal or the United States as the context requires;

(b) the term "Portugal" means the territory of the Portuguese Republic situated in the European Continent, the archipelagoes of Azores and Madeira, the respective territorial sea and any other zone in which, in accordance with the laws of Portugal and international law, the Portuguese Republic has sovereign rights with respect to the exploration and exploitation of the natural resources of the seabed and subsoil, and of the superjacent waters;

(c) the term "United States" means the United States of America and, when used geographically, means the States thereof, the District of Columbia, the territorial sea adjacent to those States, and any other zone adjacent thereto in which, in accordance with the laws of the United States and international law, the United States has sovereign rights with respect to the exploration and exploitation of the natural resources of the seabed and subsoil, and of the superjacent waters;

(d) the term "person" includes but is not limited to an individual, a company, and any other body of persons;

(e) the term "company" means any body corporate or any entity that 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 "national" means:

(i) any individual possessing the nationality of a Contracting State; and

(ii) any legal person, association, or other entity deriving its status as such from the laws in force in a Contracting State;

(h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State except when such transport is solely between places in the other Contracting State;

(i) the term "competent authority" means:

(i) in the case of the United States: the Secretary of the Treasury or his delegate; and

(ii) in the case of Portugal: the Minister of Finance, the Director General of Taxation (Director Geral das Contribuicoes e Impostos), or their authorized representative.

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

Article 4 Residence

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, place of incorporation, or any other criterion of a similar nature. However, this term does not include any person that is liable to tax in that State in respect only of income from sources in that State.

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

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

(b) if the State in which he has his center of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

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

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

3. Where, by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavor to settle the question by mutual agreement. If the competent authorities are unable to make such a determination, the person shall not be considered to be a resident of either Contracting State for the purposes of enjoying benefits under 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 or a construction, installation, or assembly project, or supervisory activities in connection with such a site or project, or an installation or drilling rig or ship used for the exploration or development of natural resources, constitutes a permanent establishment only if such site, project, or activities last more than 6 months.

4. Notwithstanding the preceding provisions of this Article, an enterprise of a Contracting State that carries on business of a permanent nature in the other Contracting State through its own employees or any other personnel engaged for such purpose for a period or periods amounting to or exceeding in

the aggregate 9 months in any 12-month period commencing or ending in the taxable year concerned shall be deemed to have a permanent establishment in the other State.

5. 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 the activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

6. Notwithstanding the provisions of paragraphs 1 and 2, where a person -- other than an agent of an independent status to whom paragraph 7 applies -- is acting on behalf of an enterprise and has and habitually exercises in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 5 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.

7. Notwithstanding the provisions of paragraph 3 regarding supervisory services or the provisions of paragraph 4, 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.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company that is a resident of the other Contracting State, or that 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.

Article 6 Income From Immovable Property (Real Property)

1. Income derived by a resident of a Contracting State from immovable property (real 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" or "real property," as the case may be, shall have the meaning that it has under the law of the Contracting State in which the property in question is situated. The term in any case shall include property accessory to immovable property (real 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 (real 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 (real 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 (real property).

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

Article 7 Business Profits

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

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on or has carried 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 business profits which it might be expected to make if it were a distinct and independent 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 and with any other associated enterprise.

3. In determining the business profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including research and development expenses, interest, and other similar expenses and a reasonable allocation of executive and general administrative expenses, whether incurred in the State in which the permanent establishment is situated or elsewhere.

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

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

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

Article 8 Shipping and Air Transport

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

2. The provisions of the preceding paragraph shall also apply to profits 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 in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those that would be made between independent enterprises, then any profits that, but for those conditions, would 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 competent authority of that other State agrees that the profits so included are profits that would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those that would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be paid to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

3. The provisions of paragraph 1 shall not limit the application of any provisions of the law of either Contracting State relating to the determination of the tax liability of a person, provided that the determination of that tax liability is consistent with the principles stated in this Article.

Article 10 Dividends

1. Dividends paid by a company that 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 15 percent of the gross amount of the dividends. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. Notwithstanding the provisions of paragraph 2, if the beneficial owner is a company that is a resident of the other Contracting State and that, for an uninterrupted period of 2 years prior to the

payment of the dividend, owns directly at least 25 percent of the capital (capital social) of the company paying the dividends, the tax so charged shall not exceed:

(a) with respect to dividends paid after December 31, 1996, and before January 1, 2000, 10 percent of the gross amount of such dividends; and

(b) with respect to dividends paid after December 31, 1999, the rate that Portugal may apply to such dividends paid to residents of European Union member states, provided, however, that the applicable rate shall not be less than 5 percent.

4. Paragraph 3 shall not apply in the case of dividends paid by a United States Regulated Investment Company or a Real Estate Investment Trust. In the case of dividends from a Regulated Investment Company, paragraph 2 shall apply. In the case of dividends from a Real Estate Investment Trust, paragraph 2 shall apply if the beneficial owner of the dividends is an individual holding a less than 25 percent interest in the Real Estate Investment Trust; otherwise, the rate of withholding applicable under domestic law shall apply.

5. The term "dividends" as used in this Article means income from shares, "jouissance" shares, founders' shares, or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights that is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident. The term "dividends" also includes income from arrangements, including debt obligations, carrying the right to participate in profits, to the extent so characterized under the law of the Contracting State in which the income arises. In the case of Portugal, the term also includes profits attributed under an arrangement for participation in profits (*associacao em participacao*).

6. The provisions of paragraphs 1, 2, and 3 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on or has carried 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 or has performed 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 (Business Profits) or Article 15 (Independent Personal Services), as the case may be, shall apply.

7. Where a company that 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.

Article 11 Interest

1. Interest arising in a Contracting State and derived by 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 such interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, interest arising in one of the Contracting States and beneficially owned by a resident of the other Contracting State shall be exempt from tax in the first-mentioned State, provided that:

(a) the debtor of such interest is the Government of that Contracting State, a political or administrative subdivision thereof, or any of its local authorities; or

(b) the interest is paid to the Government of the other Contracting State, to a political or administrative subdivision thereof, or to any of its local authorities, or to an institution or organization (including financial institutions) wholly owned by them; or

(c) it is interest on a long-term loan (5 or more years) granted by a bank or other financial institution that is a resident of the other Contracting State.

4. Notwithstanding the provisions of paragraphs 2 and 3, interest arising in one of the Contracting States that is determined by reference to the profits of the issuer or of one of its associated enterprises and that is beneficially owned by a resident of the other Contracting State may be taxed in the State in which it arises, and according to the laws of that State, but the tax so charged shall not exceed the rate prescribed in paragraph 2 of Article 10 (Dividends).

5. The term "interest" as used in this Convention means income from debt-claims of every kind, whether or not secured by mortgage, and, subject to paragraph 5 of Article 10 (Dividends), 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 or prizes attaching to such securities, bonds, or debentures, as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises.

6. The provisions of paragraphs 1, 2, and 4 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on or has carried on business in the other Contracting State, in which the interest arises, through a permanent establishment situated therein, or performs or has performed in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 15 (Independent Personal Services), as the case may be, shall apply.

7. For purposes of this Article, interest shall be deemed to arise in a Contracting State when the payer is that State itself or a political or administrative subdivision, local authority, or resident of that State. Where, however, the person paying the interest, whether a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base 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.

8. 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 that 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 the Convention.

Article 12 Branch Tax

1. A corporation that is a resident of Portugal may be subject in the United States to a tax in addition to the tax allowable under the other provisions of this Convention. Such tax, however, may be imposed only on:

(a) the portion of the business profits of the corporation attributable to a permanent establishment in the United States, or subject to tax in the United States under Article 6 (Income from Immovable Property (Real Property)) or paragraph 1 of Article 14 (Capital Gains), that represents the "dividend equivalent amount," as defined in section 884 of the Internal Revenue Code, as it may be amended from time to time without changing the general principle thereof; and

(b) the excess, if any, of interest deductible in the United States in computing the business profits attributable to a permanent establishment in the United States or taxable in the United States under Article 6 (Income from Immovable Property (Real Property)) or paragraph 1 of Article 14 (Capital Gains), over the interest paid by the permanent establishment or trade or business in the United States.

2. The rate of the tax referred to in paragraph 1(a) shall not exceed the rate specified in paragraph 2 or, when applicable, paragraph 3 of Article 10 (Dividends). The rate of the tax referred to in paragraph 1(b) shall not exceed 5 percent in the case of a bank that is a resident of Portugal and 10 percent in all other cases.

Article 13 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 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 Convention 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 cinematographic films, or films, tapes, and other means of image or sound reproduction, any patent, trademark, design, or model, plan, secret formula, or process, or other like right or property, or for the use of or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial, or scientific experience. It also includes payments for technical assistance performed in a Contracting State by a resident of the other State where such assistance is related to the application of any such right or property. The term "royalties" also includes gains

received 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.

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 or has carried on business in the other Contracting State, in which the royalties arise, through a permanent establishment situated therein, or performs or has performed 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 (Business Profits) or Article 15 (Independent Personal Services), as the case may be, shall apply.

5. For purposes of this Article, royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political or administrative subdivision, local authority, or resident of that State. Where, however, the person paying the royalties, whether a resident of one of the Contracting States or not, has in one of the Contracting States a permanent establishment or fixed base in connection with which the liability to pay the royalties was incurred, and the royalties are borne by the permanent establishment or fixed base, then the royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated. Where the person paying the royalties is not a resident of either Contracting State, and the royalties are not borne by a permanent establishment or fixed base in either Contracting State, but the royalties relate to the use of, or the right to use, in one of the Contracting States, any property or right described in paragraph 3, the royalties shall be treated as arising in that State.

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 the Convention.

Article 14 Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property (real property) situated in the other Contracting State may be taxed in that other State.

2. For the purposes of paragraph 1, immovable property situated in Portugal includes stock, participations, or other rights in a company or other legal person the property of which consists, directly or indirectly, principally of immovable property situated in Portugal; and real property situated in the United States includes a United States real property interest.

3. Gains from the alienation of movable (personal) property forming part of the business property of a permanent establishment that an enterprise of a Contracting State has or had in the other Contracting State, or of movable property pertaining to a fixed base that is or was available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or such a fixed base, may be taxed in that other State.

4. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining thereto shall be taxable only in that State.

5. Gains described in the last sentence of paragraph 3 of Article 13 (Royalties) shall be taxable only in accordance with the provisions of Article 13.

6. Gains from the alienation of any property other than property referred to in paragraphs 1 through 5 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 15 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 except in the following circumstances, when such income may also be taxed in the other Contracting State:

(a) if he has or had a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is or was attributable to that fixed base may be taxed in that other State; or

(b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any 12-month period commencing or ending in the taxable year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

Article 16 Dependent Personal Services

1. Subject to the provisions of Articles 18 (Directors Fees), 19 (Artistes and Sportsmen), 20 (Pensions, Annuities, Alimony, and Child Support), 21 (Government Service), 22 (Teachers and Researchers), and 23 (Students and Trainees), 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 12-month period commencing or ending in the taxable 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 by a resident of a Contracting State in respect of an employment as a member of the regular complement of a ship or aircraft operated in international traffic shall be taxable only in that State.

Article 17 Limitation on Benefits

1. A resident of a Contracting State shall be entitled to the benefits of this Convention only if such person is:

(a) an individual; or

(b) a Contracting State, a political or administrative subdivision or local authority thereof, or an institution or organization wholly owned by them; or

(c) a company

(i) that is a resident of a Contracting State in whose principal class of shares there is substantial and regular trading on a recognized securities exchange, or

(ii) more than 50 percent of each class of whose shares is owned by companies that are residents of either Contracting State, in whose principal class of shares there is substantial and regular trading on a recognized securities exchange, or by persons referred to in subparagraph (b); or

(d) an organization, trust, or other arrangement referred to in subparagraph 3(b) of the Protocol, provided that more than half of the members, participants, or beneficiaries, if any, in such organization, trust, or arrangement are residents of that Contracting State who are entitled, under this Article, to the benefits of this Convention; or

(e) a person with respect to which both of the following conditions are satisfied:

(i) the ultimate beneficial owners of more than 50 percent of the beneficial interest in such person (or, in the case of a company, more than 50 percent of the vote and value of each class of the company's shares) are persons entitled to the benefits of this Convention under this paragraph 1 or citizens of the United States; and

(ii) less than 50 percent of the gross income of such person is used, directly or indirectly, to meet liabilities (including liabilities for interest or royalties) other than to persons entitled to the benefits of this Convention under this paragraph 1 or citizens of the United States.

2. A resident of a Contracting State that is not entitled to the benefits of this Convention under paragraph 1 shall, nevertheless, be entitled to the benefits of this Convention with respect to an item of income derived from the other State if:

(a) the resident is engaged in the active conduct of a trade or business in the first-mentioned State (other than the business of making or managing investments, unless these activities are banking or insurance activities carried on by a bank or insurance company); and

(b) the item of income is connected with or incidental to the trade or business in the first-mentioned State; and

(c) such trade or business is substantial in relation to the activity in the other State that generated the income.

3. A person that is not entitled to the benefits of the Convention pursuant to the provisions of paragraph 1 or 2 may, nevertheless, be granted the benefits of the Convention if the competent

authority of the State in which the income in question arises so determines. For this purpose, one of the factors the competent authorities shall take into account is whether the establishment, acquisition, and maintenance of such person and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under the Convention.

4. For purposes of subparagraph (c) of paragraph 1, the term "recognized securities exchange" means:

(a) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the Securities and Exchange Commission as a national securities exchange for purposes of the Securities Exchange Act of 1934;

(b) the Lisbon and Oporto Stock Exchanges; and

(c) any other stock exchange agreed upon by the competent authorities of the Contracting States.

5. For purposes of subparagraph (e)(ii) of paragraph 1, the term "gross income" means gross receipts, or, where an enterprise is engaged in a business which includes the manufacture or production of goods, gross receipts reduced by the direct costs of labor and materials attributable to such manufacture or production and paid or payable out of such receipts.

6. Notwithstanding the provisions of paragraphs 1 through 5, the benefits of this Convention shall not be allowed to any person that is entitled to income tax benefits under the provisions of the legislation and other measures relating to the tax-free zones (zonas francas) of Madeira and Santa Maria Island, or to benefits similar to those provided with respect to such tax-free zones that are made available under any legislation or other measure adopted by either Contracting State after the date of signature of this Convention. The competent authorities shall notify each other of any such legislation or measure and shall consult as to whether such benefits are similar.

Article 18 Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting State for services performed outside that Contracting State in his capacity as a member of the board of directors or supervisory board (in Portugal, conselho fiscal) or of another similar organ of a company that is a resident of the other Contracting State may be taxed in that other State.

Article 19 Artistes and Sportsmen

1. Notwithstanding the provisions of Articles 15 (Independent Personal Services) and 16 (Dependent Personal Services), income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State except where the amount of the compensation derived by such entertainer or athlete, including expenses reimbursed to him or borne on his behalf, from such activities does not exceed 10,000 United States dollars or its equivalent in Portuguese escudos for the taxable year concerned.

2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete but to another person, that income of that other person may, notwithstanding the provisions of Articles 7 (Business Profits) and 15 (Independent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised, unless it is established that neither the entertainer or athlete nor persons related thereto participate directly or indirectly in the profits of that other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions, or other distributions.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by a resident of a Contracting State as an entertainer or athlete shall be exempt from tax by the other Contracting State if the visit to that other State is substantially supported by public funds of the first-mentioned State or a political or administrative subdivision or local authority thereof.

Article 20 Pensions, Annuities, Alimony and Child Support

1. Subject to the provisions of Article 21 (Government Service):

(a) pensions and other similar remuneration derived and beneficially owned by a resident of a Contracting State in consideration of past employment shall be taxable only in that State; and

(b) social security benefits and other public pensions paid by a Contracting State to a resident of the other Contracting State or a citizen of the United States may be taxed in the first-mentioned State.

2. Annuities derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State. The term "annuities" as used in this paragraph means a stated sum paid periodically at stated times during a specific time period, under an obligation to make the payments in return for adequate and full consideration (other than services rendered).

3. Alimony paid to a resident of a Contracting State shall be taxable only in that State. The term "alimony" as used in this paragraph means periodic payments made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, which payments are taxable to the recipient under the laws of the State of which he is a resident.

4. Periodic payments for the support of a minor child made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, paid by a resident of a Contracting State to a resident of the other Contracting State, shall be taxable only in the first-mentioned State.

Article 21 Government Service

1. (a) 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 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, 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 and national of that State.

3. The provisions of Articles 15 (Independent Personal Services), 16 (Dependent Personal Services), 18 (Directors' Fees), 19 (Artistes and Sportsmen), and 20 (Pensions, Annuities, Alimony, and Child Support) shall apply to remuneration and 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 22 Teachers and Researchers

1. An individual who is a resident of a Contracting State immediately before visiting the other Contracting State and who, at the invitation of the Government of the other Contracting State or of a university or other accredited educational institution or recognized scientific research institution of that other Contracting State, or under an official program of cultural exchange, visits that other State solely for the purpose of teaching or carrying out research at such a university or educational institution shall be exempt from tax in both Contracting States on his remuneration from such activity for a period not exceeding 2 years from the date of his arrival in the other State. An individual shall be entitled to the benefits of this paragraph only once and in no event shall any individual have the benefits of both this Article and Article 23 (Students and Trainees), either simultaneously or consecutively.

2. This Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

Article 23 Students and Trainees

1. (a) An individual who is a resident of a Contracting State immediately before his visit to the other Contracting State and who is temporarily present in that other Contracting State for the primary purpose of:

(i) studying at a university or other accredited educational institution in that other Contracting State;

(ii) securing training required to qualify him to practice a profession or professional specialty; or

(iii) studying or doing research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary, or educational organization,

shall be exempt from tax by that other Contracting State with respect to the amounts described in subparagraph (b) of this paragraph for a period not exceeding 5 years from the date of his arrival in that other State.

(b) The amounts referred to in subparagraph (a) of this paragraph are:

(i) payments from abroad for the purpose of the individual's maintenance, education, study, research, or training;

(ii) the grant, allowance, or award; and

(iii) income from personal services performed in that other Contracting State in an aggregate amount not in excess of 5,000 United States dollars or its equivalent in Portuguese escudos for any taxable year.

2. An individual who is a resident of a Contracting State immediately before his visit to the other Contracting State and who is temporarily present in that other Contracting State as an employee of, or under contract with, a resident of the first-mentioned Contracting State, for the primary purpose of: (a) acquiring technical, professional or business experience from a person other than that resident of the first-mentioned Contracting State, or (b) studying at a university or other accredited educational institution in that other Contracting State, shall be exempt from tax by that other Contracting State for a period of 12 consecutive months with respect to his income from personal services in an aggregate amount not in excess of 8,000 United States dollars or its equivalent in Portuguese escudos.

3. This article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

Article 24 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 unless they arise in the other Contracting State, in which case they may also be taxed in that other State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property (real property) as defined in paragraph 2 of Article 6 (Income from Immovable Property (Real Property)), if the beneficial owner of the income, being a resident of a Contracting State, carries on or has carried on business in the other Contracting State through a permanent establishment situated therein, or performs or has performed 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 (Business Profits) or Article 18 (Independent Personal Services), as the case may be, shall apply.

Article 25 Relief From Double Taxation

1. In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income:

(a) the income tax paid to Portugal by or on behalf of such citizen or resident; and

(b) in the case of a United States company owning at least 10 percent of the voting stock of a company that is a resident of Portugal and from which the United States company receives dividends, the income tax paid to Portugal by or on behalf of the distributing company with respect to the profits out of which the dividends are paid.

2. In the case of an individual who is a citizen of the United States and a resident of Portugal, income that may be taxed by the United States solely by reason of citizenship shall be deemed to arise in Portugal to the extent necessary to avoid double taxation, provided that the tax paid to the United States will not be less than the tax that would be paid under the articles of this Convention if the individual were not a citizen of the United States.

3. In the case of Portugal:

(a) Where a resident of Portugal derives income that, in accordance with the provisions of this Convention may be taxed in the United States (other than solely by reason of citizenship), Portugal shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in the United States. Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, that is attributable to the income that may be taxed in the United States;

(b) In the case of a Portuguese company that receives dividends from a United States company in the capital of which it holds directly a participation of at least 25 percent, Portugal shall allow a deduction for 95 percent of such dividends included in the tax base, provided that that participation was held for the preceding 2 years, or from the date of the organization of the Portuguese company if that occurred later, but in either case only if the participation was held continuously throughout that period.

(c) 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.

Article 26 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 retirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall also apply to persons who are not residents of one or both of the Contracting States. However, for the purposes of United States tax, and subject to Article 25 (Relief from Double Taxation), a United States national who is not a resident of the United States and a Portuguese national who is not a resident of the United States are not in the same circumstances.

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

3. Nothing in this Article shall be construed as preventing either Contracting State from imposing a tax as described in Article 12 (Branch Tax).

4. Except where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 8 of Article 11 (Interest), or paragraph 6 of Article 13 (Royalties) 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 purposes of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

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

6. The provisions of this Article shall, notwithstanding the provisions of Article 2 (Taxes Covered), apply to taxes of every kind and description imposed by a Contracting State or a political or administrative subdivision or local authority thereof.

Article 27 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 national. The case must be presented within 5 years from the first notification of the action resulting in taxation not in accordance with the provisions of this Convention.

2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation that is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention. In particular, the competent authorities of the Contracting States may agree on the procedures for the application of the limits imposed by the taxation at source of dividends, interest, and royalties by articles 10 (Dividends), 11 (Interest) and 13 (Royalties), respectively.

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

Article 28 Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1 (Personal Scope). 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) involved in the assessment, collection, or administration 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 that 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 that 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.

3. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain the information to which the request relates in the same manner and to the same extent as if the tax of the first-mentioned State were the tax of that other State and were being imposed by that other State. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts, and writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of that other State with respect to its own taxes.

4. For the purposes of this Article, the Convention shall apply, notwithstanding the provisions of Article 2 (Taxes Covered), to taxes of every kind imposed at the national level by a Contracting State.

Article 29 Diplomatic Agents and Consular Officers

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

Article 30 Entry Into Force

1. This Convention shall be subject to ratification in accordance with the applicable procedures of each Contracting State and instruments of ratification shall be exchanged at Lisbon as soon as possible.

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

(a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January next following the date on which the Convention enters into force; and

(b) in respect of other taxes, for taxable years beginning on or after the first day of January next following the date on which the Convention enters into force.

Article 31 Termination

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention at any time after 5 years from the date on which the Convention enters into force, provided that at least 6 months' prior notice of termination has been given through diplomatic channels. In such event, the Convention shall cease to have effect

(a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January next following the expiration of the 6-month period;

(b) in respect of other taxes, for taxable years beginning on or after the first day of January next following the expiration of the 6-month period.

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

Done at Washington, in duplicate, in the English and Portuguese languages, both texts being equally authentic, this sixth day of September, 1994.

FOR THE UNITED STATES OF AMERICA:

FOR THE PORTUGUESE REPUBLIC:

PROTOCOL

At the signing today of the Convention between the United States of America and the Portuguese Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, the Contracting States have agreed upon the following provisions, which shall form an integral part of the Convention:

1. With reference to Article 1 (Personal Scope):

(a)

(i) It is understood that the Convention will not impose a tax that is not otherwise imposed under the laws of the Contracting State concerned. This means that the Convention shall not restrict in any

manner any exclusion, exemption, deduction, credit, other allowance, or tax incentive now or hereafter accorded by the laws of the Contracting States. The Convention shall not restrict the benefits conferred under any other agreement between the Contracting States that entered into force prior to the date of signature of this Protocol.

(ii) Notwithstanding any other agreement to which the Contracting States may be parties, a dispute concerning whether a measure is within the scope of this Convention shall be considered only by the competent authorities of the Contracting States, as defined in subparagraph 1(i) of Article 3 (General Definitions) of this Convention, and the procedures under this Convention exclusively shall apply to the under this Convention exclusively shall apply to [sic] the dispute.

(iii) Unless the competent authorities determine that a taxation measure is not within the scope of this Convention, the nondiscrimination obligations of this Convention exclusively shall apply with respect to that measure, except for such national treatment or most-favored-nation obligations as may apply to trade in goods under the General Agreement on Tariffs and Trade. No national treatment or most-favored-nation obligation of any other agreement shall apply with respect to that measure.

(iv) For the purpose of this paragraph, a "measure" is a law, regulation, rule, procedure, decision, administrative action, or any other form of measure.

(b) Notwithstanding any provision of the Convention except paragraph (c) of this provision, a Contracting State may tax its residents (as determined under Article 4 (Residence)), and the United States may tax its citizens, as if the Convention had not come into effect. For this purpose, the term "citizen" shall include a former citizen whose loss of citizenship had as one of its principal purposes the avoidance of tax, but only for a period of 10 years following such loss. For the application of the preceding sentence to a resident of Portugal, the competent authorities shall consult under Article 27 (Mutual Agreement Procedure), upon request by the Portuguese competent authority, on the purposes of such loss of citizenship.

(c) The provisions of the preceding subparagraph (b) shall not affect:

(i) the benefits conferred by a Contracting State under paragraph 2 of Article 9 (Associated Enterprises), under paragraphs 1(b) and 4 of Article 20 (Pensions, Annuities, Alimony, and Child Support), and under Articles 25 (Relief From Double Taxation), 26 (Non-Discrimination), and 27 (Mutual Agreement Procedure); and

(ii) the benefits conferred by a Contracting State under Articles 21 (Government Service), 22 (Teachers and Researchers), 23 (Students and Trainees), and 29 (Diplomatic Agents and Consular Officers), upon individuals who are neither citizens of, nor have immigrant status in, that State.

2. With reference to Article 2 (Taxes Covered):

(a) Article 2 does not apply to social security contributions established under Portuguese law.

(b) Notwithstanding the provisions of paragraph 1(b) of Article 2:

(i) a company that is a resident of Portugal shall be exempt from the United States personal holding company tax in any taxable year only if all its stock is owned by one or more individuals, who are not residents or citizens of the United States, in their individual capacities for that entire year; and

(ii) a company that is a resident of Portugal shall be exempt from the accumulated earnings tax in any taxable year only if it is a company described in paragraph 1(c) of Article 17 (Limitation on Benefits).

3. With reference to paragraph 1 of Article 4 (Residence):

(a) The term "resident of a Contracting State" applies to partnerships, similar pass-through entities, estates, and trusts only to the extent that income derived by such partnership, similar entity, estate, or trust is subject to tax in that State as the income of a resident, either in its hands or in the hands of its partners or beneficiaries.

(b) The term "resident of a Contracting State" includes:

(i) any not-for-profit organization constituted and maintained in that State, provided that the laws of such State or of a political or administrative subdivision thereof limit the use of the organization's resources, both currently and upon the dissolution or liquidation of such organization, to the accomplishment of the purposes that serve as the basis for such organization's exemption from income tax; and

(ii) a pension trust and any other organization or arrangement constituted in that State and operated exclusively to administer or provide pension, retirement, or employee benefits, that is established or sponsored by a person that is otherwise a resident under Article 4 (Residence), notwithstanding that all or part of the income of such organization, trust, or arrangement may be exempt from income taxation in that State.

(c) Portugal shall treat a United States citizen or an alien admitted to the United States for permanent residence (a "green card" holder) as a resident of the United States only if he has a substantial

presence in the United States, or would be a resident of the United States and not of a third country under the principles of subparagraph (a) and (b) of paragraph 2 of Article 4 (Residence).

4. With reference to Article 5 (Permanent Establishment):

The provisions of paragraph 4 shall apply only for the first 5 years in which the provisions of the Convention have effect, as provided in paragraph 2(b) of Article 30 (Entry into Force).

5. With reference to Article 6 (Income From Immovable Property (Real Property)):

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).

6. With reference to paragraph 3 of Article 7 (Business Profits):

It is understood that each Contracting State may apply its own domestic law, whether based on tracing or allocation, for attributing research and development expenses, interest, and other similar expenses to a permanent establishment situated in its territory, provided that such rules are consistent with the provisions of Article 7.

7. With reference to Article 8 (Shipping and Air Transport):

The term "income from the operation of ships or aircraft in international traffic" will be defined in accordance with paragraphs 5 through 12 of the Commentary on Article 8 (Shipping, Inland Waterways Transport and Air Transport) of the 1992 Model Convention for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital of the Organization for Economic Cooperation and Development.

8. With reference to Article 10 (Dividends):

Although the substitute gift and inheritance tax (imposto sobre sucessões e doações por avença) imposed by Portugal is in fact a gift and inheritance tax and not an income tax, it is agreed that if the rate of such tax is increased above the rate applicable on the date of signature of this Convention, such increase shall not apply to dividends beneficially owned by residents of the United States. It is understood that shares that have been subject to the substitute gift and inheritance tax are not subject to taxes imposed by Portugal upon transfer by death or gift.

9. With reference to Article 11 (Interest):

Paragraphs 2 and 3 shall not apply to the U.S. taxation of an excess inclusion derived by a resident of Portugal with respect to a residual interest in a Real Estate Mortgage Investment Conduit ("REMIC"). Such amounts shall be taxable at the rate provided by domestic law.

10. With reference to Article 12 (Branch Tax):

If Portugal establishes hereafter, under its taxation law, a tax comparable to the United States "branch tax," the provisions of this Convention in respect of the "branch tax" shall also apply in respect of such taxation, after any necessary adjustment.

11. With reference to paragraph 2 of Article 13 (Royalties):

Royalties received in consideration for the use of, or the right to use, containers in international traffic shall be taxable only in the Contracting State of which the recipient is a resident.

12. With reference to paragraph 3 of Article 14 (Capital Gains):

(a) The term "activo" as used in paragraph 3 of the Portuguese text means "business property". However, the term "activo" is also used in paragraph 2 as the translation of the term "property", it being understood that, in some cases, the term "business property" has a narrower meaning than the term "property".

(b) It is understood that gains from the alienation or transfer of movable (personal) property that is effectively connected with a permanent establishment or fixed base that a resident of a Contracting State has or had in the other Contracting State and that is removed from the other Contracting State may be taxed in that other Contracting State in accordance with its law, but only to the extent of the gain that has accrued as of the time of such removal, and may be taxed in the first-mentioned Contracting State in accordance with its law, but only to the extent of the gain accruing subsequent to that time of removal.

(c) The tax liability, if any, imposed by Portugal on the incorporation of a permanent establishment of a U.S. company will be determined in accordance with Decree Law 6/93, implementing the provisions of Directive 90/434/EEC of 23 July, 1990, with respect to the incorporation of branches in Portugal of companies resident in other member states of the European Union.

13. With reference to Article 15 (Independent Personal Services):

The term "fixed base" shall be interpreted according to paragraphs 3 and 4 of the Commentary on Article 14 (Independent Personal Services) of the 1992 Model Convention for the Avoidance of Double Taxation with Respect to Taxes on Income and Capital of the Organization for Economic Cooperation

and Development and of any guidelines that, for the application of such term, may be developed by such Organization in the future.

14. With reference to Article 28 (Exchange of Information):

It is understood that the information that may be exchanged includes information from records of financial institutions, including records relating to third parties involved in transactions with the taxpayer(s) and records relating to persons referred to in paragraph 6 of Article 17 (Limitation on Benefits), and that such information will be made available to the same extent as permitted by the domestic law of the Contracting State from which the information is requested. It is further understood that the appropriate tax authorities are empowered to request and agree to assist in obtaining such records pursuant to requests made by the other Contracting State in accordance with the provisions of Article 28 and the preceding sentence of this paragraph.

FOR THE UNITED STATES OF AMERICA:

FOR THE PORTUGUESE REPUBLIC: