

1996 Income Tax Convention and Final Protocol

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

The Government of the Portuguese Republic and the Government of the Republic of Venezuela, 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 Personal Scope

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

Article 2 Taxes Covered

1. 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 case of Venezuela:

- i) The income tax, even if levied by way of withholding at source;
- ii) The tax on business assets; (hereinafter referred to as "Venezuelan 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 States shall notify each other of substantial changes which have been made in their respective taxation laws.

Chapter II. Definitions

Article 3 General Definitions

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

- a) The term "Portugal" means the territory of the Portuguese Republic situated in the European Continent, the archipelagos 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 its jurisdiction or sovereign rights with respect to the exploration and exploitation of the natural resources of the sea bed and subsoil, and of the superadjacent waters;
- b) The term "Venezuela" means the Republic of Venezuela;
- c) The terms "a Contracting State" and "the other Contracting State" mean Portugal or Venezuela, 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 Contracting State;
- g) The term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- h) 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;
- i) The term "competent authority" means:

- i) In Portugal: the Minister of Finance, the director general of Taxation (director-geral das Contribuicoes e Impostos) or their authorized representative;
 - ii) In Venezuela: the superintendent of the Integrated National Service of Tax Administration [Servicio Nacional Integrado de Administracion Tributaria (SENIAT)], his authorized representative or the authority which is designated by the Minister of Finance as a competent authority for the purposes of the Convention.
2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall unless the context otherwise requires, have the meaning which 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:
- a) In the case of Portugal, any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature and also includes that State 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; and
 - b) In the case of Venezuela, any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature and also includes any resident person or company subject to the Venezuelan territorial system of taxation, the Republic of Venezuela or a political subdivision thereof or any agency or instrumentality of any such Republic, subdivision or authority.
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 personal and economic relations are closer (centre of vital interests);
 - b) If the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
 - c) If he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
 - d) If he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

Article 5 Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially:
- a) A place of management;
 - b) A branch;
 - c) An office;
 - d) A factory;
 - e) A workshop;
 - f) A warehouse in relation to a person providing storage facilities for others;
 - g) A store or other sales outlet; and
 - h) A mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. A building site or construction or installation project or supervisory activities in connection therewith, constitutes a permanent establishment only if it lasts more than nine 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 or 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 or display or delivery;
- c) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- e) The maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- f) The maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person -- other than an agent of an independent status to whom paragraph 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 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. Notwithstanding the preceding provisions of this article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. 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 which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Chapter III. Taxation of Income

Article 6 Income From Immovable Property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, 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, boats and aircraft shall not be regarded as immovable property.

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

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

5. The foregoing provisions shall also apply to income from movable property which, under the taxation law of the Contracting State in which the property is situated, is assimilated to income from immovable property.

Article 7 Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on 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 profits of the enterprise may be taxed in the other State but only so much of them as is attributable to: a) that permanent establishment; or b) sales in the other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment.

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

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than as a reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a bank, as interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a bank, as interest on moneys lent to the head office of the enterprise or any of its other offices.

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

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

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

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

Article 8 Shipping and Air Transport

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

2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

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

4. Notwithstanding paragraph 1 of this article, profits derived by a resident of a Contracting State from the operation of ships used for the transport of hydro-carbons may be taxed in the other Contracting State.

5. Whenever companies from different countries have agreed to carry on an air transportation business together in the form of a consortium, the provisions of paragraph 1 shall apply to such part of the profits of the consortium as corresponds to the participation held in that consortium by a company that is a resident of a Contracting State.

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 charge therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

3. The provisions of paragraph 2 shall not be applied in cases of extreme negligence, fraud or wilful misconduct.

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 15% of the gross amount of the dividends until 31st December 1996 and 10% of such amount as from 1st January 1997.

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, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident. The term also includes profits attributed under an arrangement for participation in profits (associacao em participacao).

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

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

Article 11 Interest

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

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State, shall be exempted from tax in that State:

a) If the debtor of such interest is the Government of that State, a political or administrative subdivision or a local authority thereof; or

b) If interest is paid to the Government of the other Contracting State, a political or administrative subdivision or a local authority thereof or an institution (including a financial institution) in connection

with any financing granted by them under an agreement between the Governments of the Contracting States; or

c) In respect of loans or credit made by:

i) In the case of Portugal, the Caixa Geral de Depositos (CGD), the Banco Nacional Ultramarino (BNU), the Banco de Fomento e Exterior (BFE), the Banco Borges & Irmao (BBI) and the ICEP -- Investment, Trade and Tourism of Portugal;

ii) In the case of Venezuela, the Fondo de Inversiones de Venezuela (Venezuela Investment Fund -- FIV) and the Fondo de Financiamiento de las Exportaciones (Exports Financing Fund -- FINEXPO).

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

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 is a resident of the other Contracting State, the tax so charged shall not exceed:

a) In the case of royalties in general, 12 percent of the gross amount of the royalties;

b) In the case of fees for technical assistance, 10 percent of the gross amount of the fees for technical assistance.

3. The term "royalties" as used in this article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, and films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

The term "royalties" also comprises payments received as a consideration for technical assistance in connection with the use or the right to use any copyright, goods or information to which this paragraph applies.

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 that State itself, a political or administrative subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a

Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the 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 from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of shares or other rights in a company which assets principally, directly or indirectly, consist of immovable property situated in a Contracting State or rights pertaining to such immovable property, may be taxed in that State.

5. Gains from the alienation of shares, other than those sold through a recognized stock exchange of the Contracting State, that represent a participation of more than 25 percent of the stock of a company resident of a Contracting State may be taxed in that State.

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

Article 14 Independent Personal Services

1. Income derived by an individual who is 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:

a) The individual has a fixed base regularly available to him in that other State for the purpose of performing his activities, but only so much thereof as is attributable to that fixed base; or

b) The remuneration for his activities in the other Contracting State is paid by or on behalf of a resident of the other Contracting State or is borne by a permanent establishment or a fixed base situated in that Contracting State and exceeds in the fiscal year a gross amount equivalent to US\$20,000.

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

Article 15 Dependent Personal Services

1. Subject to the provisions of articles 16, 18, 19 and 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 fiscal year concerned; and

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

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

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

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 any similar body of a company which is a resident of the other Contracting State 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.

Article 18 Pensions

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

Article 19 Government Service

1.

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

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

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 Students

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

Article 21 Professors and Researchers

1. An individual who is or was a resident of a Contracting State immediately before visiting the other Contracting State, solely for the purposes 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.

2. The preceding provision of this article shall also apply to an individual who carries out research within the scope of a scholarship granted by a government, religious, charitable, scientific, literary or educational organization, if such scholarship is exempt from tax.

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

Chapter IV. Methods for the Elimination of Double Taxation

Article 23 Elimination of Double Taxation

1. In the case of a resident of Portugal, double taxation shall be eliminated as follows:
 - a) Where a resident of Portugal derives income which, in accordance with the provisions of this Convention, may be taxed in Venezuela, the Portuguese Republic shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in Venezuela; 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 Venezuela; and
 - b) Where in accordance with any provision of the Convention income derived by a resident of Portugal is exempt from tax in this State, Portugal may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.
2. In the case of a resident of Venezuela, double taxation shall be eliminated as follows: where a resident of Venezuela derives income which, in accordance with the provisions of this Convention, may be taxed in Portugal, such income shall be exempt from Venezuelan tax.

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. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. 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 subject 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.
4. The provisions of this article shall, notwithstanding the provisions of article 2, apply to taxes of every kind and description.

Article 25 Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the 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.

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

4. The competent authorities of the Contracting States may communicate with each other directly, 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. The exchange of information is not restricted by article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchanges of information shall be made, including, where appropriate, exchanges of information regarding tax avoidance.

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;

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 (order 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.

Article 28 Other Provisions

1. The provisions of this Convention shall not be construed as restricting in any way the exemptions, allowances, deduction, credits or other reliefs which are or may be granted:

a) Under the laws of a Contracting State for the purpose of determining the tax levied by such State; or

b) Under any special agreement concluded by a Contracting State.

2. The competent authorities of both Contracting States shall endeavour to solve the cases of undue use of this Convention.

Chapter VI. Final Provisions

Article 29 Entry Into Force

1. The Contracting States shall notify each other that the constitutional requirements for the entry into force of this Convention have been complied with. The Convention shall enter into force thirty days after the date of the latter of the notifications.

2. This Convention shall apply:

a) 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;

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

3. The Convention between the Contracting States for the Avoidance of Double Taxation of Air Transport Enterprises, signed in Caracas on 29th May 1978 shall cease to have effect in respect of taxes concerning any period of time to which this Convention shall apply regard to such taxes.

Article 30 Termination

This Convention shall remain in force indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year from the third year following that in which the

notifications have been given, terminate the Convention through diplomatic channels. In such event, this Convention shall cease to have effect:

a) 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 date on which the period specified in the said notice of termination expires; and

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

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

Done at this day of 23th April 1996, in Lisbon in duplicate in the Portuguese, Spanish and English languages, all texts being equally authentic. In case of divergency of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE PORTUGUESE REPUBLIC:

Jaime Jose Matos da Gama,

Minister for Foreign Affairs

FOR THE GOVERNMENT OF THE REPUBLIC OF VENEZUELA:

Miguel Angel Burelli Rivas,

Minister for 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 Government of the Portuguese Republic and the Government of the Republic of Venezuela, the undersigned have agreed upon the following additional provisions, which form an integral part of the Convention

Ad. article 2

If for any reason the Republic of Venezuela is able to exempt the payment of the tax on industrial and commercial patent or a similar tax, such tax would be covered automatically by this Convention. The National Government of Venezuela undertakes to do its best efforts to reach an agreement with Venezuelan local authorities for the purpose of securing an exemption to Portuguese persons of the tax on industrial and commercial patent to meet the general commitment undertaken by both Contracting States to avoid double taxation. Portugal reserves the right to exclude its local taxes from the scope of this Convention if Venezuelan local authorities impose the tax on industrial and commercial patent or similar tax on enterprises from such Contracting State. The competent authorities shall endeavor to resolve by the mutual agreement procedure any dispute arising from the application of this provision.

Ad. article 4

It is understood that if Venezuela changes its present territorial tax system to a world-wide system of taxation the term "resident of a Contracting State" shall mean any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature and also includes that State and any political or administrative subdivisions 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.

Ad. article 7

1. With respect to paragraphs 1 and 2 of article 7, where an enterprise of a Contracting State sells merchandise or exercises an activity in the other Contracting State through a permanent establishment situated therein, the profits of such permanent establishment shall not be determined on the basis of the total amount derived by the enterprise, but only on the basis of the remuneration attributable to the activity which is effectively carried out by the permanent establishment in connection with the sales or activities. Especially in the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but only on the basis of that part of the contract which is effectively carried out by that permanent establishment in the State in which it is situated. The provisions of this paragraph shall not preclude the application of article 12 whenever there are cases of mixed contracts involving sales or activities with transfer of know-how. In these cases, only the appropriate portion concerning such payments shall be considered in the application of that article.

2. With respect to paragraph 3, the term "expenses which are incurred for the purposes of the permanent establishment" shall be construed as expenses directly related to the activity of such permanent establishment.

3. In the case of Venezuela the provision of paragraph 3 would only be applied if Venezuela changes its territorial tax system to a world-wide system of taxation. Meanwhile, for the purposes of the determination of the taxable profit of a permanent establishment, interest, royalties and other disbursements may be deducted in the same terms and conditions as if they had been incurred by a resident enterprise.

Ad. article 8

The amount of tax to be levied in accordance with paragraph 4 shall not in any case be higher than that provided under the tax legislation of the Contracting State in force at the time of signature of this Convention.

Ad. article 14

The Contracting States agree that in case Venezuela or Portugal agree to an amount different from that established in paragraph 1, b), they will undertake to revise the terms of article 14 to avoid any discriminatory treatment for residents of both Contracting States.

Ad. article 23

Notwithstanding paragraph 2 of article 23, in case Venezuela adopts a world-wide basis of taxation, double taxation shall be eliminated as follows:

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

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

Ad. Article 24

1. 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. In the case of Venezuela, this provision would only be applied if Venezuela changes its territorial tax system to a world-wide system of taxation.

2. The provisions of article 24 do not preclude the application of any provision of the tax law of a Contracting State dealing with thin capitalization problems.

3. The provisions of article 24 shall be construed in the sense that insofar as the deductibility of the incurred disbursements is concerned, each Contracting State may apply its own procedures regarding the burden of proof.

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

FOR THE GOVERNMENT OF THE PORTUGUESE REPUBLIC:

*Jaime Jose Matos da Gama,
Minister for Foreign Affairs*

FOR THE GOVERNMENT OF THE REPUBLIC OF VENEZUELA:

*Miguel Angel Burelli Rivas,
Minister for Foreign Affairs*