

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

The Portuguese Republic and the Principality of Andorra,

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Taking into account that the main purpose of this Convention is to eliminate international double taxation with regard to the different categories of income derived by residents of both States, as well as to prevent fiscal evasion,

Considering that its entry into force will create a more stable and transparent tax framework for investors and other taxpayers of both States and, by doing so, will have a positive impact on the development of the trade of goods and services, the capital flows, the technology transfers and the movement of persons between the two States,

Have agreed as follows:

CHAPTER I  
SCOPE OF THE CONVENTION

ARTICLE 1  
PERSONS COVERED

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

ARTICLE 2  
TAXES COVERED

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political or administrative subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which this Convention shall apply are in particular:

- a) in 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 surtaxes on corporate income tax (derramas);  
(hereinafter referred to as “Portuguese tax”);
- b) in Andorra:
- (i) corporate income tax (Impost sobre les Societats);
  - (ii) personal income tax (Impost sobre la Renda de les Persones Físiques);
  - (iii) tax on income for fiscal non-residents (Impost sobre la Renda dels No Residents Fiscals); and
  - (iv) tax payable on the increase in value in immovable property transfers (Impost sobre les Plusvàlues en les Transmissions Patrimonials Immobiliàries);  
(hereinafter referred to as “Andorran tax”).

4. The Convention shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their taxation laws.

## CHAPTER II DEFINITIONS

### ARTICLE 3 GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:
- a) the term “Portugal” means the Portuguese Republic and when used in a geographical sense comprises the territory of the Portuguese Republic in accordance with the International Law and the Portuguese legislation;
  - b) the term "Andorra" means the Principality of Andorra and, when used in a geographical sense means the territory of the Principality of Andorra in accordance with the International Law and the Andorran legislation;

- c) the terms “a Contracting State” and “the other Contracting State” mean Portugal or Andorra as the context requires;
  - d) the term “tax” means Portuguese tax or Andorran tax, as the context requires;
  - e) the term “person” includes an individual, a company and any other body of persons;
  - f) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - g) the term “enterprise” applies to the carrying on of any business;
  - h) 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;
  - i) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise that 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;
  - j) the term “competent authority” means:
    - (i) in Portugal: the Minister of Finance, the Director General of the Tax and Customs Authority or their authorised representative;
    - (ii) in Andorra: the Minister in charge of Finance or his authorised representative;
  - k) the term “national”, in relation to a Contracting State, means:
    - (i) any individual possessing the nationality of that Contracting State; and
    - (ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;
  - l) the term “business” includes the performance of professional services and of other activities of an independent character.
2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes

to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

#### ARTICLE 4 RESIDENT

1. For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political or administrative subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

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

- a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
- b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
- c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 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 mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
- g) an agricultural, pastoral or forestry exploitation.

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

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

- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 6 applies – is acting 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. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

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

## CHAPTER III TAXATION OF INCOME

### ARTICLE 6 INCOME FROM IMMOVABLE PROPERTY

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

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, 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.

5. The foregoing provisions shall also apply to income from movable property or income derived from services, which are connected with the use or the right to use the immovable property, either of 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 business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.
4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
5. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
6. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

## ARTICLE 8 SHIPPING AND AIR TRANSPORT

1. Profits 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. Whenever companies from different countries have agreed to carry on an air transportation business together in the form of a consortium or a similar form of association, the provisions of paragraph 1 shall apply to such part of the profits of the consortium or association as corresponds to the participation held in that consortium or association 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, if it agrees that the adjustment made by the first-mentioned State is justified both in principle and as regards the amount, shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

## ARTICLE 10 DIVIDENDS

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

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

- a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) that has held directly, for the period of twelve months ending on the date on which entitlement to the dividends is determined, at least 10 per cent of the capital of the company paying the dividends;
- b) 15 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident. The term also includes profits attributed under an arrangement for participation in profits ("associação em participação").

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 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 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 paragraphs 1 and 2, interest arising in a Contracting State shall be taxable only in the other Contracting State if the interest is paid by or beneficially owned by a Contracting State, a political or administrative subdivision or local authority thereof, the central bank of a Contracting State or any agency or instrumentality wholly owned by any of the foregoing.

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. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 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 in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

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

## ARTICLE 12 ROYALTIES

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

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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

4. The provisions of paragraphs 1 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 and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment 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, including such gains from the alienation of such a

permanent establishment (alone or with the whole enterprise), 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 derived by a resident of a Contracting State from the alienation of shares or of a comparable interest deriving more than 50 percent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State. However, this paragraph shall not apply to gains from the alienation of shares of company listed on recognised stock exchange of one or both of the Contracting States where such shares do not represent 25 percent or more of the capital of the listed company.

5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4, shall be taxable only in the Contracting State of which the alienator is a resident.

## ARTICLE 14 DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 15, 17, 18, 19 and 20, 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 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 15 DIRECTORS' FEES

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

## ARTICLE 16 ARTISTES AND SPORTSMEN

1. Notwithstanding the provisions of Article 14, 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 and 14, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived from activities exercised personally and as such, by an entertainer or sportsman who is a resident of a Contracting State in the other Contracting State shall be taxable only in the first-mentioned State if the activities exercised in the other State are mainly financed by public funds of the first-mentioned State, by a political or administrative subdivision or a local authority thereof, or by any of their legal persons of public law.

## ARTICLE 17 PENSIONS

Subject to the provisions of paragraph 2 of Article 18, 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 18 GOVERNMENT SERVICE

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

be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

- a) is a national of that State; or
  - b) did not become a resident of that State solely for the purpose of rendering the services.
2. Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political or administrative subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State. However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
3. The provisions of Articles 14, 15, 16, and 17 shall apply to salaries, wages, pensions, and other similar remuneration 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 19 PROFESSORS AND RESEARCHERS

Subject to the provisions of Article 18 an individual who is or was a resident of a Contracting State immediately before visiting the other Contracting State, solely for the purpose of teaching or scientific research at an university, college, school, or other similar educational or scientific research institution which is recognized as non-profitable by the Government of that other State, or under an official programme of cultural exchange, for a period not exceeding two years from the date of his first arrival in that other State, shall be exempt from tax in that other State on his remuneration for such teaching or research.

#### ARTICLE 20 STUDENTS

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

#### ARTICLE 21 OTHER INCOME

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

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

3. Where, by reason of a special relationship between the person referred to in paragraph 1 and some other person, or between both of them and some third person, the amount of the income referred to in paragraph 1 exceeds the amount (if any) which would have been agreed upon between them in the absence of such a relationship, the provisions of this Article shall apply only to the last mentioned amount. In such a case, the excess part of the income shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

## CHAPTER IV METHODS FOR ELIMINATION OF DOUBLE TAXATION

### ARTICLE 22 ELIMINATION OF DOUBLE TAXATION

1. Where a resident of a Contracting State derives income which, in accordance with the provisions of this Convention, may be taxed in the other Contracting State, the first-mentioned Contracting State shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in that other State. 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 that other State.

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

## CHAPTER V SPECIAL PROVISIONS

### ARTICLE 23 NON-DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, 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. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, paragraph 6 of Article 12, or paragraph 3 of Article 21, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

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

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

## ARTICLE 24 MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 23, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. 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 25 EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political or administrative subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

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

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

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*).

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

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

6. The Contracting States shall comply with the guidelines for the regulation of computer files containing personal data as established by the United Nations General Assembly Resolution A/RES/45/95, adopted on the 14th December 1990.

## ARTICLE 26 USE AND TRANSFER OF PERSONAL DATA

1. The data used and transferred within the framework of this Convention shall, in accordance with the applicable laws, be:

- a) Obtained for the purposes specified in this Convention and shall not be further processed in any way incompatible with those purposes;
- b) Adequate, relevant and not excessive in relation to the purposes for which they are collected, transferred and then processed;
- c) Accurate and, where necessary, kept up to date; all reasonable steps should be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or corrected;
- d) Kept in a form that permits identification of the data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed; they shall be erased after that period.

2. If a person whose data are transferred requests access to them, the requested Contracting State shall grant that person direct access to those data and correct them, except where this request may be refused under the applicable laws.

3. The data received by the competent authorities of the Contracting States within the framework of this Convention shall not be transferred to a third party without the prior consent of the requested Contracting State and the appropriate legal safeguards for the protection of personal data, in accordance with the applicable laws.

## ARTICLE 27

### MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

The provisions of the Convention shall not affect the fiscal privileges of members of diplomatic missions or consular posts or permanent delegations to international organizations, under the general rules of international law or under the provisions of special agreements.

## ARTICLE 28

### ENTITLEMENT TO THE BENEFITS OF THE CONVENTION

1. The provisions of this Convention shall not be interpreted so as to prevent the application by a Contracting State of the anti-avoidance provisions provided for in its domestic law.
2. This Convention shall not prevent the Contracting States from applying their domestic rules regarding international fiscal transparency “Controlled Foreign Company (CFC) rules”.
3. The benefits foreseen in this Convention shall not be granted to a resident of a Contracting State which is not the beneficial owner of the income derived from the other Contracting State.
4. The provisions of this Convention shall not apply if the main purpose or one of the main purposes of any person concerned with the creation or assignment of the property or right in respect of which the income is paid was to take advantage of those provisions by means of such creation or assignment.
5. Notwithstanding any other provision of this Convention, where this Convention provides that an item of income shall be taxable only in a Contracting State, such item of income may nevertheless be taxed in the other State, but only if such item of income is not subject to tax in the first-mentioned Contracting State.
6. Notwithstanding any other provision of this Convention, where under any provision of this Convention a Contracting State reduces the rate of tax on, or exempts from tax, an item of income of a resident of the other Contracting State and under the laws in force in that other Contracting State that resident in respect of that item is subject to tax in that other State only on that part of such income and not by reference to the full amount thereof, then the reduction or exemption shall apply only to so much of the income as is subject to tax in that other State.

7. With respect to the application of the above provisions, the competent authorities of the Contracting States may consult together for the purpose of applying those provisions, taking into account the particular circumstances of the case.

## CHAPTER VI FINAL PROVISIONS

### ARTICLE 29 ENTRY INTO FORCE

1. The present Convention shall enter into force thirty days after the date of receipt of the latter of the notifications, in writing, through diplomatic channels, conveying the completion of the internal procedures of each Contracting State required for that purpose.

2. The provisions of the present Convention shall have effect:

- a) in respect of taxes withheld at source, where the event giving rise to them occurs on or after the first day of January next following the date on which this Convention enters into force; and
- b) in respect of other taxes, for income arising in any fiscal year beginning on or after the first day of January next following the date on which this Convention enters into force.

### ARTICLE 30 DURATION AND TERMINATION

1. This Convention shall remain in force for an unlimited period of time.

2. Following the expiration of an initial period of five years, either Contracting State may denounce the present Convention upon notification, in writing, through diplomatic channels, before the first day of July of the current calendar year.

3. In case of denunciation, the present Convention shall cease to have effect:

- a) in respect of taxes withheld at source, where the event giving rise to them occurs on or after the first day of January next following the date specified in the notice of termination; and
- b) in respect of other taxes, for income arising in any fiscal year beginning on or after the first day of January next following the date specified in the notice of termination.

### ARTICLE 31 REGISTRATION

The Contracting State in whose territory this Convention is signed shall transmit it to the Secretariat of the United Nations for registration, in accordance with Article 102 of the Charter of the United Nations, as soon as possible after its entry into force, and shall notify the other Contracting State of the completion of this procedure, as well as of its registration number.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Convention.

DONE at \_\_\_\_\_ on \_\_\_\_\_, in two originals, in the Portuguese, Catalan and English languages. In case of any divergence of interpretation, the English text shall prevail.

For

The Portuguese Republic:

For

The Principality of Andorra:

Rui Chancerelle de Machete  
Minister of State and Foreign Affairs

Gilbert Saboya Sunyé  
Minister for Foreign Affairs

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

On signing the Convention between the Portuguese Republic and the Principality of Andorra for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (hereinafter referred to as "the Convention"), the signatories have agreed that the following provisions shall form an integral part of the Convention:

I. With reference to Article 4 (Residence)

Persons under the special regime envisaged in the third transitional provision of the Andorran Law 5/2014 of 24 April 2014, of the personal income tax, are not entitled to the application of the Convention.

II. With reference to Article 25 (Exchange of information)

1. As regards the exchange of information upon request, as provided for in Article 25 of the Convention, the provisions of the Agreement between the Portuguese Republic and the Principality of Andorra for the exchange of information on tax matters, signed on 30 November 2009, shall apply until the Convention enters into force. From that date on, the provisions of that Agreement shall be superseded by the provisions of the Convention.

2. Requests for information made under the Convention and those pending on the date of entry into force of the Convention, shall be processed as provided in the Convention, in accordance with the guidelines contained in the following provisions:

a) It is understood that the standard of "foreseeable relevance" is intended to provide for exchange of information in tax matters to the widest possible extent and, at the same time, to clarify that the Contracting States are not at liberty to engage in "fishing expeditions" or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer.

Requests for information should be as detailed as possible, including the following information:

- (i) the identity of the person under examination or investigation. This information may include the name or other information sufficient to identify the taxpayer;
- (ii) the period to which the request of information refers;
- (iii) a statement of the information sought including its nature and the form in which the requesting State wishes to receive the information;
- (iv) the tax purpose for which the information is sought;

- (v) the reasons why the information requested is foreseeably relevant for carrying out the provisions of the Convention or to the administration or enforcement of the tax laws of the requesting State in regard to the person identified in subparagraph (i) of this paragraph;
- (vi) grounds for believing that the information requested is held in the requested State or is in the possession or control of a person within the jurisdiction of the requested State or can be obtained by such person;
- (vii) to the extent possible, the name and address of any person believed to be in possession or having under control the information requested;
- (viii) a statement that the request is in conformity with the laws and administrative practices of the requesting State, and that the requesting State is authorised to obtain the information under the laws of the requesting State or in the normal course of administrative practice in similar circumstances, in response to a valid request of a Contracting State under the Convention;
- (ix) a statement that the requesting State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

The above requirements contain procedural requirements that must be interpreted with a view not to frustrate effective exchange of information.

- b) The rights and safeguards secured to persons in a Contracting State remain applicable in that Contracting State in the course of the process of information exchange.
- c) Information provided to a requesting State in accordance with the Convention shall not be disclosed to any authority of a third State or jurisdiction.
- d) Notwithstanding the entry into force of the Convention, requests for information may be made in relation to taxable periods for which requests for information may be made under the Agreement between the Portuguese Republic and the Principality of Andorra for the exchange of information on tax matters, signed on 30 November 2009.

3. Andorra will be ready to exchange information automatically as soon as it has effectively adopted the common standard of the OECD concerning the automatic exchange of financial information under a bilateral or multilateral agreement for the full implementation of Article 25 of the Convention.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Protocol.

DONE at New York on 27 st setember of 2015, in two originals, in the Portuguese, Catalan and English languages. In case of any divergence of interpretation, the English text shall prevail.

For

The Portuguese Republic:

For

The Principality of Andorra:

Rui Chancerelle de Machete  
Minister of State and Foreign Affairs

Gilbert Saboya Sunyé  
Minister for Foreign Affairs