

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

The Republic of Peru and the Portuguese Republic,

Desiring to conclude a Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, in order to promote and strengthen the economic relations between the two countries,

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 and, in the case of Portugal, on behalf of its political or administrative subdivisions or local authorities as well, 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 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 surtaxes on corporate income (Derramas);

(hereinafter referred to as “Portuguese tax”);

- b) in the case of Peru, the income taxes imposed under the Income Tax Act (Ley del Impuesto a la Renta);

(hereinafter referred to as “Peruvian 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” 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 “Peru”, for purposes of determining the geographical scope of application of this Convention, means the continental territory, the islands, the maritime zones and the air space that covers them, under sovereignty or sovereign rights and jurisdiction of Peru, in accordance with its domestic law and international law;
  - c) the terms “a Contracting State” and “the other Contracting State” mean Portugal or Peru 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 that is treated as a body corporate for tax purposes;
  - f) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

- g) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- h) the term “competent authority” means:
  - (i) in the case of Portugal: the Minister of Finance, the Director General of the Tax and Customs Authority or their authorised representative;
  - (ii) in the case of Peru: the Minister of Economy and Finance or his authorized representative;
- i) the term “national” means:
  - (i) any individual possessing the nationality of a Contracting State; and
  - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

#### ARTICLE 4 RESIDENT

1. For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation 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 situated 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, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Convention, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Convention, except for Articles 24 and 25.

## ARTICLE 5 PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term “permanent establishment” includes especially:

- a) a place of management;
- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop; and
- f) a mine, an oil or gas well, a quarry or any other place relating to the exploration for or the exploitation of natural resources.

3. The term “permanent establishment” shall also include:

- a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than 183 days within any twelve month period;

- b) the furnishing of services, including consulting services, by an enterprise of a Contracting State through employees or other individuals engaged by the enterprise for such purposes in the other Contracting State, but only where such activities continue (for the same or a connected project) within that State for a period or periods aggregating more than 183 days within any twelve month period.

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. 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. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, he will not be considered an agent of an independent status within the meaning of this paragraph.

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 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 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.
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 of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.
2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business, an international operating agency, a consortium or a similar form of association, but only to so much of the profits so derived as is attributable to the participant in proportion to its share in the joint operation.

## 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 accordance with the taxation laws of that other State. 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 provision of paragraph 2 shall not apply in case of fraud, wilful default or neglect.

## 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) 10 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) that either:



- (i) holds directly at least 10 per cent of the capital of the company paying the dividends where such company is a resident of Portugal; or
  - (ii) controls directly at least 10 per cent of the voting power in the company paying the dividends where such company is a resident of Peru;
- b) 15 per cent of the gross amount of the dividends in all other cases.

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 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.

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, 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.

6. Where a company of a Contracting State has a permanent establishment in the other Contracting State, the profits of the permanent establishment attributable to such company may be subject in that Contracting State to a tax other than the tax on the profits of the permanent establishment in that other Contracting State and in accordance with the law of that other State. However, this tax other than the tax on the profits shall not exceed the limit provided for in subparagraph a) of paragraph 2 of this Article.

## ARTICLE 11 INTEREST

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

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

- a) 10 per cent of the gross amount of the interest on any loan granted by a bank;
- b) 15 per cent of the gross amount of the interest in all other cases.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be taxable only in the other Contracting State if the interest is paid by the State in which the interest arises or by a political or administrative subdivision or a local authority thereof, or its Central Bank, or beneficially owned by the other Contracting State, a political or administrative subdivision or a local authority thereof, or to its Central Bank.

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 other income which is subjected to the same taxation treatment as income from money lent by the laws of the Contracting State in which the income arises. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article. Income dealt with in Article 10 shall not be regarded as interest for the purposes of this Convention.

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 exceeds, for whatever reason, 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:
  - a) 10 per cent of the gross amount of the payments received as consideration for the furnishing of technical assistance in connection with the use of, or the right to use, any copyright, goods or information to which paragraph 3 of this Article applies;
  - b) 15 per cent of the gross amount of the royalties in all other cases.
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, scientific or other work, including computer software, cinematograph films and other means of video or audio reproduction, any patent, trade mark, design or model, plan, secret formula or process or other property intangible, or for information concerning industrial, commercial or scientific experience. The term “royalties” also comprises payments received as a consideration for the furnishing of technical assistance in connection with the use of, 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 a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the obligation 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 exceeds, for whatever reason, 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 derived by an enterprise of a Contracting State 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 that State.

4. Gains derived by a resident of a Contracting State from the direct or indirect alienation of shares, comparable interests, securities or other rights representing the capital of a company which is a resident of the other Contracting State may be taxed in that other Contracting State where the resident of the first mentioned State, at any time within the twelve month period preceding such alienation, alone or together with any person who is related to that resident, had a participation of at least 20 per cent in the capital of that company.

5. Notwithstanding the provisions of paragraph 4, gains derived by a resident of a Contracting State from the alienation of shares or comparable interest or other securities 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.

6. Gains from the alienation of any property other than that referred to in the preceding paragraphs of this Article 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 except in the following circumstances, when such income may also be taxed in the other Contracting State:

- a) If he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or
- b) If his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

## ARTICLE 15 DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18 and 19, 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 by an enterprise of a Contracting State may be taxed in that Contracting State.

#### ARTICLE 16 DIRECTORS' FEES

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or supervisory board 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 17 ENTERTAINERS AND SPORTSMEN

1. Notwithstanding the provisions of Articles 7, 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television entertainer, 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. Income derived by an entertainer or a sportsman who is a resident of a Contracting State from his personal activities relating to his reputation as an entertainer or sportsman 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, ANNUITIES AND SIMILAR REMUNERATION

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

## ARTICLE 19 GOVERNMENT SERVICE

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

- a) is a national of that State; or
- b) did not become a resident of that State solely for the purpose of rendering the services.

2. Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political or administrative subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State. However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16, 17, and 18 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a 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 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 beneficial owner 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. Notwithstanding the provisions of paragraphs 1 and 2, 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 ELIMINATION OF DOUBLE TAXATION

### ARTICLE 22 ELIMINATION OF DOUBLE TAXATION

1. In the case 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 Peru, Portugal shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in Peru. 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 Peru;
  - b) Notwithstanding the provision of subparagraph a) of paragraph 1 of this Article, where a company which is a resident of Portugal receives dividends from a company which is a resident of Peru and which is subject to and not exempt from Peruvian tax, Portugal shall allow a deduction for such dividends included in the tax base of the company receiving the dividends, provided that the latter company holds directly a participation corresponding to at least 25 per cent of the capital of the company paying the dividends for an uninterrupted period of two years prior to the date on which the dividends are paid or, if held for a shorter period, if it continues to hold that participation until the two-year-long condition is satisfied. The provisions of this subparagraph shall only apply if the profits out of which such dividends are paid:
    - (i) have been effectively taxed at a rate of 10 per cent or higher; and
    - (ii) do not result from activities which generate passive income, namely royalties, capital gains and other income derived from securities, income from immovable property not situated in the Contracting State



of which the company paying the dividends is a resident, income from insurance activities mainly derived from insurance of property not situated in that Contracting State or of persons who are not residents of that Contracting State, and income from banking operations not mainly directed at the market of that Contracting State.

2. In the case of Peru, double taxation shall be eliminated as follows:

- a) Residents of Peru may credit against Peruvian tax, as a credit, the Portuguese tax payable on income taxed in accordance with the laws of Portugal and the provisions of this Convention. Such credit shall not, in any case, exceed that part of the Peruvian tax which is attributable to the income which may be taxed in Portugal;
- b) Where a company which is a resident of Portugal pays dividends to a company which is a resident of Peru that controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividends, the credit mentioned in subparagraph a) of paragraph 2 of this Article shall take into account the tax payable in Portugal by such company in respect of the profits out of which such dividends are paid but only to the extent that the Peruvian tax exceeds the amount of the credit determined without reference to this subparagraph.

3. Where in accordance with any provisions 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 reduc-

tions 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, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

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

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

#### 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.

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

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.

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.

ARTICLE 26  
MEMBERS OF DIPLOMATIC MISSIONS AND  
CONSULAR POSTS

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

CHAPTER VI  
FINAL PROVISIONS

ARTICLE 27  
ENTRY INTO FORCE

1. This Convention shall enter into force thirty days after the date of receipt of the latter of the notifications, in writing and through diplomatic channels, conveying the completion of the internal procedures of each Contracting State required for that purpose.
2. The provisions of this Convention shall have effect:
  - a) in the case of Portugal:
    - (i) in respect of taxes withheld at source, the fact giving rise to them appearing on or after the first day of January of the calendar year next following that in which this Convention enters into force; and
    - (ii) in respect of other taxes, as to income arising in any fiscal year beginning on or after the first day of January of the calendar year next following that in which this Convention enters into force;
  - b) in the case of Peru, in respect of Peruvian taxes and amounts paid, credited to an account, or accounted as an expense, on or after the first day of January of the calendar year immediately following that in which the Convention enters force.

ARTICLE 28  
DURATION AND TERMINATION

This Convention shall remain in force until terminated by a Contracting State. Following the expiration of an initial period of five years, either Contracting State may terminate the Convention, through diplomatic channels, by giving written notice of ter-

mination at least six months before the end of any calendar year. In such case, the Convention shall cease to have effect:

- a) in the case of Portugal:
  - (i) in respect of taxes withheld at source, the fact giving rise to them appearing on or after the first day of January of the calendar year next following that specified in the notice of termination; and
  - (ii) in respect of other taxes, as to income arising in the fiscal year beginning on or after the first day of January of the calendar year next following that specified in the notice of termination;
- b) in the case of Peru, in respect of Peruvian taxes on or after the first day of January of the calendar year next following that specified in the notice of termination.

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

DONE in duplicate at Lisbon this 19 day of November 2012, in the Spanish, Portuguese and English languages, all texts being equally authentic. In case of any divergence of interpretation of the text of this Protocol, the English text shall prevail.

FOR THE REPUBLIC OF PERU:

FOR THE PORTUGUESE REPUBLIC:

Rafael Roncagliolo Orbegoso  
(Minister for Foreign Affairs)

Paulo de Faria Lince Nuncio  
(State Secretary for Tax Affairs)

PROTOCOL TO THE CONVENTION BETWEEN THE REPUBLIC OF PERU AND  
THE PORTUGUESE REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXA-  
TION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAX-  
ES ON INCOME

On signing the Convention between the Portuguese Republic and the Republic of Peru 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:

1. Mode of application of the Convention

The Contracting States may settle the mode of application of the Convention.

2. With reference to Article 3, paragraph 1, subparagraph d)

In the case of Peru, the term “person” shall include estates in the course of administration (“sucesiones indivisas”) as well as matrimonial partnerships (“sociedades conyugales”), both of which shall be treated as an individual for the purposes of the Convention.

3. With reference to Article 5, paragraph 3

For the purposes of computing the time period or periods mentioned in paragraph 3 of Article 5 of the Convention, it is agreed that the duration of the activities carried on by an enterprise shall include the activities carried on by associated enterprises, within the meaning of Article 9 of the Convention, if the activities carried on by the associated enterprises are identical or substantially similar and are carried on in connection with the same site or project.

4. With reference to Article 10, paragraph 3

In the case of Portugal, the term “dividends” shall also include profits attributed under an arrangement for participation in profits (“associação em participação”).

5. With reference to paragraph 2 of Articles 11 and 12

If Peru, under a convention concluded with another member State of the OECD or of the European Union after the entry into force of the Convention, agrees on a tax rate on interest or royalties that is lower than the one provided in this Convention, such lower rate shall, for the purposes of the Convention and under the terms provided for in the convention with such State, automatically apply with respect to paragraph 2 of Articles 11 or 12 of the Convention. Such lower rates shall in no case be less than 5 per cent. For the purposes of this provision, it is understood that Peru has concluded a convention with another member State of the OECD or of the European Union when such convention has entered into force. Peru shall send Portugal through diplomatic channel without delay the notification of the entry into force of such a convention.

6. With reference to Article 12, paragraph 3

It is agreed that payments in relation to software shall only fall within the definition of “royalties” where less than the full rights to the software are transferred either if the payments are in consideration for the right to use a copyright on software for commercial exploitation (except payments for the right to distribute standardized software copies, not comprising the right either to customize nor to reproduce them) or if they relate to software acquired for the business use of the purchaser, when, in this last case, the software is not absolutely standardized but somehow adapted to the purchaser.

7. With reference to Article 13, paragraph 4

It is agreed that the term “indirect alienation”, for the purposes of paragraph 4 of Article 13 of the Convention, means alienation by a resident of a Contracting State of shares, comparable interests, securities or other rights representing the capital of a company that owns, directly or through any other legal entity or entities, shares, comparable interests, securities or other rights representing the capital of a company which is a resident of the other Contracting State.

8. With reference to Article 18

It is agreed that, notwithstanding the provisions of Article 18 of the Convention, pensions, annuities and other similar remuneration paid to a resident of a Contracting State may also be taxed in the Contracting State from which they arise, if and insofar they are not taxed in the first mentioned Contracting State.

9. With reference to Article 25, paragraph 5

In applying paragraph 5 of Article 25, the Contracting States shall follow the constitutional and legal procedures necessary to obtain the requested information.

10. With reference to Article 26, paragraph 2

It is agreed that the 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.

11. With reference to the Convention

- a) It is understood that the provisions of the 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;
- b) It is understood that the benefits foreseen in the Convention shall not be granted to a resident of a Contracting State which is not the beneficial owner of the income derived from the other Contracting State;

- c) It is understood that the provisions of the Convention shall not apply if it was 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 to take advantage of those provisions by means of such creation or assignment;
- d) Nothing in the Convention shall preclude the application of the provisions of Peruvian Law Acts (Decretos Legislativos) numbers 662, 757 and 109 and Acts (Leyes) numbers 26221, 27342, 27343, 27909 as they are in force at the time of the signature of the Convention and as they may be amended from time to time without changing their principle or the optional nature of entering into the tax stability contracts. A person that is a party to a contract which grants tax stability in accordance with the above-mentioned provision shall, notwithstanding any rate of tax set out in the Convention, remains subject to the rates of tax stabilized by the contract for its duration;
- e) Notwithstanding any other international agreement (including the General Agreement on Trade in Services), any dispute between the Contracting States concerning a tax to which the Convention applies shall be subject only to the provisions of the Convention.

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

DONE in duplicate at Lisbon this 19 day of November 2012, in the Spanish, Portuguese and English languages, all texts being equally authentic. In case of any divergence of interpretation of the text of this Protocol, the English text shall prevail.

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