

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

The Government of the Portuguese Republic and the Government of the State of Kuwait, desiring to promote their mutual economic relations through the conclusion between both Contracting States of a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;

Have agreed as follows:

ARTICLE 1

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 the case of Kuwait:
    - (1) The corporate income tax;
    - (2) The contribution from the net profits of the Kuwaiti shareholding companies payable to the Kuwait Foundation for Advancement of Science (KFAS);
    - (3) The contribution from the net profits of Kuwaiti shareholding companies payable to support the National Budget;
    - (4) The Zakat;
    - (5) The tax subjected according to the supporting of national employees law; (hereinafter referred to as “Kuwaiti tax”);
  - b) In the case of Portugal:

- (1) The personal income tax (Imposto sobre o Rendimento das Pessoas Singulares – IRS);
  - (2) The corporate income tax (Imposto sobre o Rendimento das Pessoas Colectivas – IRC); and
  - (3) The local surtax on corporate income tax (Derrama);
- (hereinafter referred to as “Portuguese tax”).

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

### ARTICLE 3

#### GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:
  - a) The terms “a Contracting State” and “the other Contracting State” mean Portugal or Kuwait, as the context requires;
  - b) The term “Kuwait” means the territory of the State of Kuwait in accordance with International Law and the laws of Kuwait, including its territorial sea, as well as those maritime areas adjacent to the outer limit of the territorial sea, comprising the seabed and subsoil thereof, over which the State of Kuwait exercises sovereign rights or jurisdiction;
  - c) The term “Portugal” means the territory of the Portuguese Republic in accordance with International Law and the laws of the Portuguese Republic, including its territorial sea, as well as those maritime areas adjacent to the outer limit of the territorial sea, comprising the seabed and subsoil thereof, over which the Portuguese Republic exercises sovereign rights or jurisdiction;
  - d) The term “person” includes an individual, a company and any other body of persons;
  - e) The term “national” means:
    - (1) Any individual possessing the nationality of a Contracting State;
    - (2) Any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
  - f) The term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
  - g) 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;

- h) 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;
  - i) The term “tax” means Portuguese tax, or Kuwaiti tax, as the context requires;
  - j) The term “competent authority” means:
    - (1) In the case of Kuwait: the Minister of Finance or an authorized representative of the Minister of Finance;
    - (2) In the case of Portugal: the Minister of Finance, the Director General of Taxation (Director-Geral dos Impostos) or their authorized representative.
2. As regards the application of this Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that State for the purposes of the taxes to which this Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

#### ARTICLE 4

##### RESIDENT

1. For the purposes of this Convention, the term “resident of a Contracting State” means:
  - a) In the case of Kuwait: an individual who is a Kuwaiti national and who is present in Kuwait for a period or periods totalling in the aggregate at least 183 days in the fiscal year concerned, and company which is incorporated or has its place of management in the State of Kuwait;
  - b) In the case of Portugal: any person who, under the laws of Portugal, is liable to tax therein by reason of his residence, place of management or place of incorporation or any other criterion of a similar nature.
2. For the purposes of paragraph 1, a resident of a Contracting State shall include all of the following:
  - a) That Contracting State and any political or administrative subdivision or local authority thereof;
  - b) Any governmental institution created in that Contracting State under public law for public purposes wholly owned by that State.
3. 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 (center of vital interests);
  - b) If the State in which he has his center 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 his status cannot be determined under the provisions of subparagraphs a)-c), the competent authorities of the Contracting States shall settle the question by mutual agreement.
4. 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 relating to the exploration for or exploitation of natural resources.
3. A building site, a construction, assembly, erection or installation project or supervisory activities in connection therewith carried out in a Contracting State, constitute a permanent establishment only if such site, project or activities continue for a period of more than nine months.
4. The furnishing of services, including consultancy or managerial services, by an enterprise of a Contracting State through employees or other personnel engaged by the enterprise for such purpose, in the other Contracting State constitutes a permanent establishment only if activities of that nature continue for a period or periods aggregating more than nine months within any twelve-month period.
5. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State and to carry on business through that permanent establishment if substantial equipment is being used in that Contracting State for more than three months within any twelve-month period by, for or under contract with the enterprise in exploration for, or the exploitation of, natural resources, or in activities connected with such exploration or exploitation.
6. 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 subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

7. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 8 applies – is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State, in respect of any activities which that person undertakes for the enterprise, if:

- a) He has, and habitually exercises in the first-mentioned Contracting State, an authority to conclude contracts in the name of such enterprise, unless the activities of such person are limited to those mentioned in paragraph 6 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;
- b) He has no such authority, but habitually maintains in the first mentioned Contracting State a stock of goods or merchandise belonging to such enterprise from which he regularly sells on behalf of such enterprise.

8. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting 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 other enterprises, which are controlled by it or have a controlling interest in it, he shall not be considered an agent of an independent status within the meaning of this paragraph.

9. 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 Contracting State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

## ARTICLE 6

### INCOME FROM IMMOVABLE PROPERTY

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

payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office or any of its other offices.

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

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

7. Where profits include items of income or gains 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 Contracting State.

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall include profits from the rental on a bareboat basis of ships or aircraft where such rental is incidental to such operation.

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

## ARTICLE 9

### ASSOCIATED ENTERPRISES

1. Where:

- a) An enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- b) The same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that Contracting State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting 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 % of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10 % of the capital of the company paying the dividends, or if the beneficial owner of the dividends is a resident of the other Contracting State as defined in paragraph 2 of Article 4;
- b) 10 % of the gross amount of 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 which is subjected to the same taxation treatment as income from shares by the taxation laws of the Contracting 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 in that other Contracting State, or performs in that other Contracting State independent personal services from a fixed base situated in that other Contracting State, 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 Contracting 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 Contracting State who is the beneficial owner of the dividends 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 Contracting 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 % 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. 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 income which is subjected to the same taxation treatment as income from money lent by the taxation 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.
4. 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 in that other Contracting State, or performs in that other Contracting State independent personal services from a fixed base situated in that other Contracting State, 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.
5. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that Contracting 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 Contracting 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 of the interest, 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 Contracting State, but if the beneficial owner of the royalties is a resident of the other State the tax so charged shall not exceed 10% of the gross amount of such royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of the 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 cinematography films and works on films, tapes or other means of reproduction for use in connection with television or radio broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or the use of, or the right to use, industrial, commercial or scientific equipment, or for information (know-how) 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 in that other Contracting State, or performs in that other Contracting State independent personal services from a fixed base situated in that Contracting State, 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 Contracting State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting 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 of the royalties or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 13  
CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State, may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in the other Contracting 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 Contracting State.
4. Gains derived by a resident of a Contracting State from the alienation of shares deriving more than 50% of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.
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  
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 Contracting State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has or had such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.
2. The term “professional services” includes especially independent scientific, literary, artistic, educational or teaching activities, as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE 15  
DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that Contracting 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 Contracting 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 Contracting State if:

- a) The resident is present in the other Contracting 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;
- b) The remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State;
- c) The remuneration is not borne by a permanent establishment or a fixed base, which the employer has in the other Contracting 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 the Contracting State in which the place of effective management of the enterprise is situated.

## ARTICLE 16

### DIRECTORS' FEES

1. 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 other similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.

2. However, such fees and other similar payment may also be taxed in the Contracting State of which the aforementioned company is a resident, but the tax so charged shall not exceed 15% of the gross amount of such fees or payment.

## ARTICLE 17

### ARTISTES AND SPORTSMEN

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

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

3. The provisions of paragraphs 1 and 2 shall not apply to income derived by entertainers or sportsmen who are residents of a Contracting State from personal activities as such exercised in the other Contracting State if their visit to that other Contracting State is substantially supported from the public funds of the first-mentioned State, including those of any political or administrative subdivision, local authority or statutory body thereof.

## ARTICLE 18

### PENSIONS AND ANNUITIES

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration and annuities paid to an individual who is a resident of a Contracting State in consideration of past employment shall be taxable only in that State.
2. As used in this Article:
  - a) The terms “pensions and other similar remuneration” mean periodic payments made after retirement in consideration of past employment or by way of compensations for injuries received in connection with past employment.
  - b) The term “annuity” means a stated sum payable to an individual periodically at stated times during life, or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

## ARTICLE 19

### GOVERNMENT SERVICE

1.
  - a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political or administrative subdivision or a local authority thereof to an individual in respect of services rendered to that Contracting State or subdivision or authority shall be taxable only in that State.
  - b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who either:
    - (1) Is a national of that State; or
    - (2) Did not become a resident of that State solely for the purpose of rendering the services.
2.
  - a) Any pension paid by, or out of funds created by, a Contracting State or a political or administrative subdivision or a local authority thereof to an individual in respect of services rendered to that Contracting State or subdivision or authority shall be taxable only in that State.
  - b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other State.
3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration and to pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political or administrative subdivision or a local authority thereof.

## ARTICLE 20

### TEACHERS AND RESEARCHERS

An individual who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who, at the invitation of the Government of the first-mentioned State or of a university, college, school, museum or other cultural institution in that first-mentioned Contracting State or under an official programme of cultural exchange, is present in that Contracting State for a period not exceeding two consecutive years solely for the purpose of teaching, giving lectures or carrying out research at such institution shall be exempt from tax in that State on his remuneration for such activity.

## ARTICLE 21

### STUDENTS AND TRAINEES

1. Payments which a student or business trainee 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.

2. Notwithstanding the provisions of paragraph 1, remuneration which a student or business trainee 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 derives from temporary services rendered in the first-mentioned Contracting State shall not be taxed in that State, provided that:

- a) Such services are in connection with his education or training; and
- b) Such services are rendered for a period not exceeding three years; and
- c) The remuneration for such services is necessary to supplement the resources available to him for the purpose of his maintenance.

## ARTICLE 22

### OTHER INCOME

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

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

## ARTICLE 23

### ELIMINATION OF DOUBLE TAXATION

1. The laws in force in either of the Contracting States shall continue to govern the taxation in the respective Contracting State except where provisions to the contrary are made in this Convention.

2. It is agreed that double taxation shall be avoided in accordance with the following paragraphs of this Article:

a) (1) In the case of Kuwait:

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

(2) In the case of Portugal:

Where a resident of Portugal derives income which, in accordance with the provisions of this Convention, may be taxed in Kuwait, Portugal shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Kuwait; 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 Kuwait.

b) For the purposes of item 1), a) of this subparagraph, the Zakat mentioned in subparagraph a) of paragraph 3 of Article 2 shall be considered an income tax.

3. Where in accordance with any provision of the 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.

## ARTICLE 24

### NON-DISCRIMINATION

1. Individuals possessing the nationality of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is more burdensome than the taxation and connected requirements to which individuals possessing the nationality of that other State in the same circumstances are or may be subjected.

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 State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

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

4. Nothing in this Article shall be interpreted as imposing a legal obligation on a Contracting State to extend to the residents of the other Contracting State the benefit of any treatment, preference or privilege which may be accorded to any third state or its residents by virtue of the formation of a customs union, economic union, a free trade area or any regional or sub-regional arrangement relating wholly or mainly to taxation or movement of capital to which the first-mentioned State may be a party.

5. In this Article, the term “taxation” means taxes, which are the subject of this Convention.

## ARTICLE 25

### MUTUAL AGREEMENT PROCEDURE

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

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

## ARTICLE 26

### EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is 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 27

### MISCELLANEOUS RULES

1. The provisions of this Convention shall not be construed so as to restrict in any manner any exclusion, exemption, deduction, credit or other allowance now or hereafter accorded either:

- a) By the laws of a Contracting State in the determination of the tax imposed by that Contracting State;
- b) By any other special arrangement on taxation in connection with the economic or technical cooperation between the Contracting States.

2. It is understood that 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.

3. The competent authorities of each Contracting State may prescribe regulations in order to carry out the provisions of this Convention.

## ARTICLE 28

### MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

Nothing in this Convention shall affect the fiscal privileges of members of a diplomatic mission, a consular post or an international organization under the general rules of international law or under the provisions of special agreements.

## ARTICLE 29

### ENTRY INTO FORCE

1. Each of the Contracting States shall notify the other in writing through diplomatic channels of the completion of its constitutional procedures for the entry into force of this Convention. This Convention shall enter into force on the date of the later of these notifications.

2. The provisions of this Convention shall have effect:

a) In Portugal:

- (1) In respect of taxes withheld at source, the fact giving rise to them appearing on or after the first day of January of the year next following the year in which this Convention enters into force;
- (2) In respect of other taxes, as to income arising in any fiscal year beginning on or after the first day of January of the year next following the year in which this Convention enters into force;

b) In Kuwait:

- (1) In respect of taxes withheld at source, for amounts paid or credited on or after the first day of January of the year next following the year in which this Convention enters into force;
- (2) In respect of other taxes, for taxable periods beginning on or after the first day of January of the year next following the year in which this Convention enters into force.

## ARTICLE 30

### DURATION AND TERMINATION

This Convention shall remain in force for a period of five years and shall continue in force thereafter for a period or periods of three years unless either Contracting State notifies the other in writing through diplomatic channels, six months before the expiry of the initial or any subsequent period, of its intention to terminate this Convention. In such event, this Convention shall cease to have effect:

- 1) In Portugal:
  - a) In respect of taxes withheld at source, the fact giving rise to them appearing on or after the first day of January of the year next following that specified in the said notice of termination;
  - b) In respect of other taxes, as to income arising in the fiscal year beginning on or after the first day of January of the year next following that specified in the said notice of termination;
- 2) In Kuwait:
  - a) In respect of taxes withheld at source for amounts paid or credited on or after the first day of January of the year next following that in which the notice of termination is given;
  - b) In respect of other taxes, for taxable periods beginning on or after the first day of January of the year next following that in which the notice of termination is given.

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

DONE at Lisbon this 23<sup>th</sup> day of February 2010, corresponding to the 9<sup>th</sup> day of Rabi 1 1431H, in two originals, in the Portuguese, Arabic and English languages, all texts being equally authentic. In case of divergence of interpretation or application of this Convention, the English text shall prevail.

For the Portuguese Republic:

For the State of Kuwait:

Minister of State and Foreign Affairs

LUÍS AMADO

Deputy Prime Minister and  
Minister of Foreign Affairs

MOHAMMAD AL-SABAH AL-SALEM  
AL-SABAH

## **PROTOCOL**

At the moment of signing the Convention for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with respect to Taxes on Income, this day concluded between the Portuguese Republic and the State of Kuwait, the undersigned have agreed that the following provisions shall form an integral part of the Convention.

### **Ad Article 4 (2)**

It is agreed that governmental institutions of a Contracting State within the meaning of sub-paragraph b) of paragraph 2 of Article 4 are the following corporate entities created under public law which are wholly owned and controlled by that State:

- the Central Banks;
- public corporations;
- authorities;
- government agencies;
- foundations;
- development funds.

Subject to the provisions of sub-paragraph b) of paragraph 2 of this Article further institutions can be recognized as governmental institutions by means of mutual agreement between the competent authorities.

### **Ad Article 7**

If the information available to the competent authority of a Contracting State is inadequate to determine the profits to be attributed to the permanent establishment of a person, nothing in this Article shall affect the application of any law or regulation of that Contracting State relating to the determination of the tax liability of that permanent establishment by making of an estimate by the competent authority of that State of the profits to be subject to tax, provided that such law or regulations shall be applied, taking into account the information available to the competent authority, consistently with the principles of this Article.

### **Ad Article 21 (2)**

The provisions of paragraph 2 shall apply only to remuneration from employment in an amount not exceeding the monetary equivalent to the Portuguese annual minimum wage.

### **Ad Article 24 (2)**

In the case of Kuwait, the taxation on a permanent establishment, which an enterprise of Portugal has in Kuwait, shall not be less favourably levied in Kuwait than the taxation levied on enterprises of third states, carrying on the same activities in the same circumstances.

### **Ad Article 26**

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.

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

DONE at Lisbon this 23<sup>th</sup> day of February 2010, corresponding to the 9<sup>th</sup> day of Rabi 1 1431H, in two originals, in the Portuguese, Arabic and English languages, all texts being equally authentic. In case of divergence the English text shall prevail.

For the Portuguese Republic:

For the State of Kuwait:

Minister of State and Foreign Affairs

LUÍS AMADO

Deputy Prime Minister and

Minister of Foreign Affairs

MOHAMMAD AL-SABAH AL-SALEM  
AL-SABAH