

No. 11807

**AUSTRIA
and
PORTUGAL**

Convention for the avoidance of double taxation with respect to taxes on income and fortune (with exchange of notes). Signed at Vienna on 29 December 1970

Authentic texts : German and Portuguese.

Registered by Austria on 9 May 1972.

**AUTRICHE
et
PORTUGAL**

Convention tendant à éviter la double imposition en ce qui concerne les impôts sur le revenu et sur la fortune (avec échange de notes). Signée à Vienne le 29 décembre 1970

Textes authentiques : allemand et portugais.

Enregistrée par l'Autriche le 9 mai 1972.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE REPUBLIC OF AUSTRIA
AND THE PORTUGUESE REPUBLIC FOR THE AVOID-
ANCE OF DOUBLE TAXATION WITH RESPECT TO
TAXES ON INCOME AND FORTUNE

The Federal President of the Republic of Austria and the President of the Portuguese Republic, desiring to avoid double taxation with respect to taxes on income and fortune, have agreed to conclude a Convention and for that purpose have appointed as their plenipotentiaries :

The Federal President of the Republic of Austria :

Dr. Josef Hammerschmidt, Director-General of the Federal Ministry of Finance;

The President of the Portuguese Republic :

His Excellency Mr. Guilherme Margarido de Castilho, Ambassador Extraordinary and Plenipotentiary;

who, having exchanged their full powers, found in good and due form, have agreed as follows :

CHAPTER I

SCOPE OF THE CONVENTION

Article 1

PERSONAL SCOPE

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

Article 2

TAXES COVERED

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

¹ Came into force on 27 February 1972, i.e. one month after the exchange of the instruments of ratification, which took place at Lisbon on 27 January 1972, in accordance with article 29 (2).

2. There shall be regarded as taxes on income and on fortune all taxes imposed on total income, on total fortune, or on elements of income or of fortune, including taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation.

(3) The existing taxes to which the Convention shall apply are, in particular :

(a) In the case of Austria :

- (i) The income tax (*Einkommensteuer*);
- (ii) The corporation tax (*Körperschaftsteuer*);
- (iii) The tax on fortune (*Vermögensteuer*);
- (iv) The contribution from income for the promotion of residential building and for the equalization of family burdens (*Beitrag vom Einkommen zur Förderung des Wohnbaues und für Zwecke des Familienlastenausgleiches*);
- (v) The contribution from income to the Disaster Fund (*Katastrophenfondsbeitrag vom Einkommen*);
- (vi) The special tax on income (*Sonderabgabe vom Einkommen*);
- (vii) The tax on directors' fees (*Aufsichtsratsabgabe*);
- (viii) The business tax (*Gewerbsteuer*) (including the pay-roll tax (*Lohnsummensteuer*));
- (ix) The land tax (*Grundsteuer*);
- (x) The tax on agricultural and forestry enterprises (*Abgabe von land- und forstwirtschaftlichen Betrieben*);
- (xi) The tax on the land value of undeveloped real estate (*Abgabe vom Bodenwert bei unbebauten Grundstücken*);
- (xii) The contribution from fortune to the Disaster Fund (*Katastrophenfondsbeitrag vom Vermögen*);
- (xiii) The special tax on fortune (*Sonderabgabe vom Vermögen*);
- (xiv) The tax on property exempt from the inheritance tax (*Abgabe von Vermögen, die der Erbschaftssteuer entzogen sind*);

- (xv) The contributions from agricultural and forestry enterprises to the equalization fund for family subsidies (*Beiträge von land- und forstwirtschaftlichen Betrieben zum Ausgleichsfonds für Familienbeihilfen*);

(hereinafter referred to as "Austrian tax");

(b) In the case of Portugal :

- (i) The land tax (*contribuição predial*);

- (ii) The tax on agriculture (*imposto sobre a indústria agrícola*);
- (iii) The industrial tax (*contribuição industrial*);
- (iv) The tax on income from capital (*imposto de capitais*);
- (v) The professional tax (*imposto profissional*);
- (vi) The supplementary tax (*imposto complementar*);
- (vii) The tax for overseas defence and development (*imposto para a defesa e valorização do ultramar*);
- (viii) The tax on capital appreciation (*imposto de mais-valias*);
- (ix) Surcharges on the taxes referred to in subparagraphs (i) to (viii);
- (x) Other taxes imposed on behalf of local authorities the amount of which is determined on the basis of the taxes referred to in subparagraphs (i) to (viii), and surcharges on those other taxes; (hereinafter referred to as “Portuguese tax”).

4. The Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes. At the end of each year, the competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

CHAPTER II

DEFINITIONS

Article 3

GENERAL DEFINITIONS

1. In this Convention, unless the context otherwise requires :

- (a) The terms “ a Contracting State ” and “ the other Contracting State ” mean Austria or Portugal, as the context requires;
- (b) The term “ Austria ” means the Republic of Austria;
- (c) The term “ Portugal ” means European Portugal, comprising the mainland territory and the Azores and Madeira archipelagos, and includes any area outside the territorial sea of Portugal which, in accordance with international law, has been or may hereafter be designated, under the laws of Portugal concerning the continental shelf, as an area within which the rights of Portugal with respect to the sea-bed and subsoil and their natural resources may be exercised;
- (d) The term “ person ” comprises an individual, a company and any other body of persons;
- (e) The term “ company ” means any body corporate or any entity which is treated as a body corporate for tax purposes;

(f) The terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(g) The term “international traffic” includes any voyage of a ship or aircraft operated by an enterprise of a Contracting State other than a voyage which is limited solely or primarily to the other Contracting State;

(h) The term “competent authority” means :

- 1) In Austria : the Federal Minister of Finance or his authorized representative;
- 2) In Portugal : the Minister of Finance, the Director-General of Taxation or their authorized representative.

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

Article 4

FISCAL DOMICILE

1. For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then this case shall be determined in accordance with the following rules :

- (a) He shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (centre of vital interests);
- (b) If the Contracting 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 Contracting State, he shall be deemed to be a resident of the Contracting State in which he has a habitual abode;
- (c) If he has a habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
- (d) If he is a national of both Contracting States or of neither of them, the

competent authorities of the Contracting States shall consult together in accordance with article 25.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

4. Where an individual has transferred his residence from a Contracting State to the other Contracting State, the right of the first-mentioned State to tax the said individual by reason of residence shall be limited to income for the period prior to the transfer of residence and the right of the other Contracting State to tax him by reason of residence shall be limited to income for the period after the transfer of residence.

Article 5

PERMANENT ESTABLISHMENT

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

2. The term “ permanent establishment ” shall include especially :

- (a) A place of management;
 - (b) A branch;
 - (c) An office;
 - (d) A factory;
 - (e) A workshop;
 - (f) A mine, quarry or other place of extraction of natural resources;
 - (g) A building site or construction or assembly project which exists for more than 12 months.
3. The term “ permanent establishment ” shall not be deemed 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 for collecting information, for the enterprise;
 - (e) The maintenance of a fixed place of business solely for the purpose of

advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom paragraph 5 applies—shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

5. 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 State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

6. The fact that a company which is 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 from immovable property may be taxed in the Contracting State in which such property is situated.

2. The term “immovable property” shall be defined in accordance with 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.

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. They shall also apply to any income from movable property which, under the taxation law of the Contracting State in which the said property is situated, is assimilated to income from 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 professional services.

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. 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 acting wholly independently.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, expenses which would not be deductible if the permanent establishment were an enterprise of the said State shall be excluded.

4. In so far 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 laid down in this article.

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

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

7. The provisions of this article shall also apply to profits derived by a sleeping partner from his participation in a sleeping partnership (*stille Gesellschaft*) under Austrian law.

8. 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. Notwithstanding the provisions of article 7, paragraph 1 to 6, profits from the operation of ships or aircraft in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

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

Article 9

ASSOCIATED ENTERPRISES

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.

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 be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the said dividends.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term “ dividends ” as used in this article means income from shares, *jouissance* shares or *jouissance* rights, mining shares, founder’s shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident. In the case of Portugal, the term also includes profits attributed under an arrangement for participation in profits (*conta em participação*).

4. If the recipient of the dividends, being a resident of a Contracting State, has in the other Contracting State, of which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected, then, subject to the application of the provisions of article 7, paragraphs 1 to 7, the said dividends may also be taxed as such in that other State, but the tax so charged shall not exceed the rate provided for in paragraph 2 of this article.

5. Where a company which is a resident of a Contracting State derives profit or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company to persons who are not residents of that other State, or subject the company’s undistributed profits to a tax on undistributed profits, even if the dividends paid on the undistributed profits consists wholly or partly of profits or income arising in such other State. The foregoing shall not apply if the recipient of the dividends has in the other Contracting State a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected.

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 be taxed in the Contracting State in which it arises, and according to the law of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. The term "interest" as used in this article means income from government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises. In the case of Portugal, the term also includes payments made to an enterprise as compensation for its going out of business or reducing its business activities.

4. If the recipient of the interest, being a resident of a Contracting State, has in the other Contracting State in which the interest arises a permanent establishment with which the debt-claim from which the interest arises is effectively connected, then, subject to the application of the provisions of article 7, paragraphs 1 to 7, the said interest may also be taxed as such in that other State, but the tax so charged shall not exceed the rate provided for in paragraph 2 of this article.

5. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State, Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connexion with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, 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 recipient in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In that case, the excess amount shall remain taxable according to the law 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 be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax so charged shall not exceed :

(a) 10 per cent of the gross amount of the royalties in the case of royalties paid by a company which is a resident of the said Contracting State to a resident of the other Contracting State who holds more than 50 per cent of the capital of the company paying the royalties;

(b) In all other cases, 5 per cent of the gross amount of the royalties.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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

4. If the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise a permanent establishment with which the right or property giving rise to the royalties is effectively connected, then, subject to the application of the provisions of article 7, paragraphs 1 to 7, the said royalties may also be taxed as such in that other State, but the tax so charged shall not exceed the rates provided for in paragraph 2 of this article.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connexion with which the contract giving rise to the royalties was concluded, and such royalties are borne by such permanent establishment itself, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, 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 recipient in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In that case, the excess amount shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13

CAPITAL GAINS

1. Gains from the alienation of immovable property, as defined in article 6, may be taxed in the Contracting State in which such property is situated.

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 professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State. However, gains from the alienation of movable property of the kind referred to in article 22, paragraph 3, may be taxed in the Contracting State in which such movable property is taxable according to the said article.

3. Gains from the alienation of any property other than those mentioned in paragraphs 1 and 2 shall be taxable only in the Contracting State of which the alienator is a resident.

4. The provisions of this article shall not be construed so as to limit the right of Portugal to levy tax gains from the incorporation of reserves into the capital of companies whose head office or place of effective management is situated in Portugal. The said provisions shall likewise not be construed so as to prevent Portugal from levying tax on the issuance of shares where preference is given to the shareholders of such companies.

Article 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall

be taxable only in that 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 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 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) The recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in 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 in respect of an employment exercised aboard a ship or aircraft in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16

DIRECTORS' FEES

Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State. However, any remuneration paid by the company to a member of the board of

directors for the exercise of a permanent activity may be taxed in accordance with the provisions of article 15.

Article 17

ARTISTS AND ATHLETES

Notwithstanding the provisions of articles 14 and 15, income derived by public entertainers, such as theatre, motion picture, radio or television artists, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

Article 18

PENSIONS

Subject to the provisions of article 19, paragraph 1, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

Article 19

GOVERNMENTAL FUNCTIONS

1. Remuneration, including pensions, paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof in the discharge of governmental functions may be taxed in that State.

2. The provisions of articles 15, 16 and 18 shall apply to remuneration or pensions in respect of services rendered in connexion with any trade or business carried on by one of the Contracting States or a political subdivision or a local authority thereof.

Article 20

STUDENTS

1. Payments which a student or business apprentice who is or was formerly a resident of a Contracting State and who is present in the other Contracting

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 other State, provided that such payments are made to him from sources outside that other State.

2. Students attending a university or other recognized educational establishment in a Contracting State who take employment in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned shall not be taxed in that other State on the remuneration derived in respect of that employment, provided that such employment is related to their education or training.

Article 21

INCOME NOT EXPRESSLY MENTIONED

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing articles of this Convention shall be taxable only in that State.

CHAPTER IV

TAXATION OF FORTUNE

Article 22

FORTUNE

1. Fortune represented by immovable property, as defined in article 6, may be taxed in the Contracting State in which such property is situated.

2. Fortune represented by movable property forming part of the business property of a permanent establishment of an enterprise, or by movable property pertaining to a fixed base used for the performance of professional services, may be taxed in the Contracting State in which the permanent establishment or fixed base is situated.

3. Ships and aircraft operated in international traffic, and movable property pertaining to the operation of such ships and aircraft, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

4. All other elements of fortune of a resident of a Contracting State shall be taxable only in that State.

CHAPTER V

PROVISIONS FOR THE ELIMINATION OF DOUBLE TAXATION

Article 23

METHOD

1. Where a resident of a Contracting State derives income or owns fortune which, in accordance with the provisions of this Convention, may be taxed in the other Contracting State, the first-mentioned State shall, subject to the provisions of paragraph 2, exempt such income or fortune from tax but may, in calculating tax on the remaining income or fortune of that person, apply the rate of tax which would have been applicable if the exempted income or fortune had not been so exempted.

2. Where a resident of a Contracting State derives income which, in accordance with the provisions of articles 10, 11 and 12, may be taxed in the other Contracting State, the first-mentioned State shall allow as a deduction from the tax on the income of that person an amount equal to the tax paid in that other Contracting State. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is appropriate to the income taxed in that other Contracting State.

3. Where an exemption from or reduction of Portuguese taxes on income has been granted under :

(a) Any of the following provisions :

Code of the Tax on Income from Capital, article 10, article 21, paragraph 2, and article 22;

Professional Tax Code, article 4, paragraph 1;

Supplementary Tax Code, article 8, paragraph 1 (*n*), (*p*), (*q*), (*r*), (*s*), (*t*), (*u*) and (*v*), and article 86;

Legislative Decree No. 46,492 of 18 August 1965, article 27;

So far as they were in force on, and have not been modified since, the date of signature of this Convention, or have been modified only in minor respects so as not to affect their general character;

(b) Any other provision which may subsequently be made granting an exemption or reduction of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character;

then the amount allowed as a deduction from Austrian tax in accordance with paragraph 2 shall be equal to the Portuguese tax which, in accordance with this

Convention, would have been paid on the income in question if such exemption or reduction had not been granted.

CHAPTER VI
SPECIAL PROVISIONS

Article 24

NON-DISCRIMINATION

1. The 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 are or may be subjected.

2. The term “ nationals ” means :

- (a) All individuals possessing the nationality of a Contracting State;
- (b) All legal persons, partnerships and associations deriving their status as such from the law in force in a Contracting State.

3. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

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 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 that first-mentioned State are or may be subjected.

Article 25

MUTUAL AGREEMENT PROCEDURE

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies

provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident.

The objection must be submitted within two years from the date of notification of the tax to which it relates or, in the case of taxation in both States, from the date of notification of the second taxation or, in the case of taxation by deduction at the source, from the date of payment of the income taxed at the source, even where, in the last-mentioned case, the objection relates to the second taxation.

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 an appropriate 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 not in accordance with the Convention.

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

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a commission consisting of representatives of the competent authorities of the Contracting States.

Article 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention and of the domestic laws of the Contracting States concerning taxes covered by this Convention in so far as the taxation thereunder is in accordance with this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes which are the subject of the Convention.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on one of the Contracting States the obligation :

- (a) To carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;
- (b) To supply particulars which are 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.

Article 27

DIPLOMATIC AND CONSULAR OFFICIALS

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

Article 28

TERRITORIAL EXTENSION

1. This Convention may be extended, either in its entirety or with any necessary modifications, to any part of the territory of Portugal which is excluded from the application of the Convention and which imposes taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed between the Contracting States in notes to be exchanged through the diplomatic channel or in any other manner in accordance with their constitutional procedures.

2. Unless otherwise agreed by both Contracting States, the denunciation of the Convention by one of them under article 30 shall terminate, in the manner provided for in that article, the application of the Convention to any part of the territory of Portugal to which it has been extended under this article.

CHAPTER VII

FINAL PROVISIONS

Article 29

ENTRY INTO FORCE

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Lisbon as soon as possible.

2. The Convention shall enter into force one month after the exchange of instruments of ratification and its provisions shall apply for the first time :

(a) In Austria :

- (i) To taxes payable by deduction at the source on income accruing after the thirty-first day of December of the year in which the Convention enters into force;
- (ii) To other taxes levied in respect of the calendar year next following the year in which the Convention enters into force;

(b) In Portugal :

- (i) To taxes payable by deduction at the source which are levied on the basis of a circumstance occurring on or after the first day of January of the year next following the year in which the Convention enters into force;
- (ii) To other taxes levied on income for the calendar year next following the year in which the Convention enters into force.

3. Notwithstanding the provisions of paragraph 2, the provisions of article 8, article 13, paragraph 2, last sentence, and article 22, paragraph 3, shall apply to taxes for the calendar year 1965 and subsequent years.

Article 30

TERMINATION

This Convention shall remain in force until denounced by one of the Contracting States. Either Contracting State may denounce the Convention, through the diplomatic channel, by giving notice of termination at least six months before the end of any calendar year. In such event, the Convention shall apply for the last time :

(a) In Austria :

- (i) To taxes payable by deduction at the source on income accruing on or before the thirty-first day of December of the year in which notice of termination is given;
- (ii) To other taxes levied in respect of the year in which notice of termination is given;

(b) In Portugal :

- (i) To taxes payable by deduction at the source which are levied on the basis of a circumstance occurring on or before the thirty-first day of December of the year in which notice of termination is given;
- (ii) To other taxes levied on income for the year in which notice of termination is given.

IN WITNESS WHEREOF the plenipotentiaries of the two States have signed this Convention and have thereto affixed their seals.

DONE at Vienna, on 29 December 1970, in duplicate in the Portuguese and German languages, both texts being equally authentic.

For the Republic of Austria :
HAMMERSCHMIDT

For the Portuguese Republic :
GUILHERME DE CASTILHO

EXCHANGE OF NOTES

I

Vienna, 29 December 1970

Sir,

On the occasion of the signing this day of the Convention between the Republic of Austria and the Portuguese Republic for the avoidance of double taxation with respect to taxes on income and fortune, I have the honour to bring to your attention the following :

In the course of the negotiations for the drawing up of this Convention, the Austrian and Portuguese delegations agreed that the provisions of article 19 of the said Convention shall also apply to remuneration derived by employees of the trade mission which one of the Contracting States maintains in the other State.

I should be grateful if you could inform me that you agree with this interpretation of article 19 of the Convention.

Accept, Sir, etc.

HAMMERSCHMIDT

His Excellency Mr Guilherme Margarido de Castilho
Ambassador Extraordinary and Plenipotentiary of the Portuguese Republic
Vienna

II

Vienna, 29 December 1970

Sir,

By note of today's date, you informed me of the following :

[See note I]

I have the honour to inform you that I agree with this interpretation of article 19.

Accept, Sir, etc.

GUILHERME DE CASTILHO

Dr. Josef Hammerschmidt
Director-General of the Federal Ministry of Finance
Vienna
