
STATUTORY INSTRUMENTS

1969 No. 599

INCOME TAX

**The Double Taxation Relief (Taxes on Income)
(Portugal) Order 1969**

Laid before the House of Commons in draft

Made - - - - 23rd April 1969

At the Court at Windsor Castle, the 23rd day of April 1969

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order was laid before the Commons House of Parliament in accordance with the provisions of section 347(6) of the Income Tax Act 1952(a), and an Address has been presented to Her Majesty by that House praying that an Order may be made in the terms of this Order:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 347(1) of the said Income Tax Act 1952, as amended by section 17 of the Finance Act 1961(b) and by section 39 and section 64 of the Finance Act 1965(c), and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (Portugal) Order 1969.

2. It is hereby declared—

(a) that the arrangements specified in the Convention set out in the Schedule to this Order have been made with the Government of Portugal with a view to affording relief from double taxation in relation to income tax, corporation tax or capital gains tax and taxes of a similar character imposed by the laws of Portugal; and

(b) that it is expedient that those arrangements should have effect.

W. G. Agnew.

(a) 15 & 16 Geo. 6 & 1 Eliz. 2. c. 10.

(b) 9 & 10 Eliz. 2. c. 36.

(c) 1965 c. 25.

SCHEDULE

CONVENTION BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND PORTUGAL FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The United Kingdom of Great Britain and Northern Ireland and Portugal;
Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;
Have agreed as follows:

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) The taxes which are the subject of this Convention are:—

(a) In the United Kingdom of Great Britain and Northern Ireland:

- (i) the income tax (including surtax);
 - (ii) the capital gains tax; and
 - (iii) the corporation tax
- (hereinafter referred to as “United Kingdom tax”).

(b) In Portugal:

- (i) the property tax (*contribuição predial*);
 - (ii) the agricultural tax (*imposto sobre a indústria agrícola*);
 - (iii) the industrial tax (*contribuição industrial*);
 - (iv) the tax on income from movable capital (*imposto de capitais*);
 - (v) the professional tax (*imposto profissional*);
 - (vi) the complementary tax (*imposto complementar*);
 - (vii) the tax for overseas defence and development (*imposto para a defesa e valorização do Ultramar*);
 - (viii) the tax on capital gains (*imposto de mais-valias*);
 - (ix) any surcharges on the preceding taxes; and
 - (x) other taxes charged by reference to the taxes referred to in heads (i) to (viii) for the benefit of local authorities and the corresponding surcharges
- (hereinafter referred to as “Portuguese tax”).

(2) The Convention shall also apply to any identical or substantially similar future taxes which are imposed in addition to, or in place of, the existing taxes by either Contracting State.

ARTICLE 3

General Definitions

(1) In this Convention, unless the context otherwise requires:

- (a) the term “United Kingdom” means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which, in accordance with international law, has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the sea bed and sub-soil and their natural resources may be exercised;
- (b) the term “Portugal” means European Portugal comprising the continental territory and the archipelagoes of Azores and Madeira 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 sub-soil and their natural resources may be exercised;

- (c) the terms “a Contracting State” and “the other Contracting State” mean the United Kingdom or Portugal as the context requires;
- (d) the term “competent authority” means, in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorized representative; in the case of Portugal, the Director-General of Taxation (*Director-Geral das Contribuições e Impostos*) or his authorized representative;
- (e) the term “tax” means United Kingdom tax or Portuguese tax as the context requires;
- (f) the term “person” comprises an individual, a company and any other body of persons;
- (g) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (h) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (i) the term “international traffic” includes any voyage of a ship or aircraft other than a voyage solely between places in the Contracting State which is not the Contracting State of which a person deriving the profits of the operation of a ship or aircraft is a resident.

(2) Where under the Convention a person is entitled to exemption or relief from tax in a Contracting State on certain income if (with or without further conditions) he is subject to tax in the other Contracting State in respect thereof and he is subject to tax there by reference to the amount of that income which is remitted to, or received in, that other Contracting State the amount of that income on which exemption or relief is to be allowed in the first-mentioned Contracting State shall be limited to the amount so remitted or received.

(3) 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

Residence

(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, and the terms “resident of the United Kingdom” and “resident of Portugal” shall be construed accordingly.

(2) Where by reason of the provisions of paragraph (1) an individual is a resident of both Contracting States, then his status shall be determined 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 an habitual abode;
- (c) if he has an 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 settle the question by mutual agreement.

(3) Where by reason of the provisions of paragraph (1) a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting 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 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 twelve 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 a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

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) (a) The term "immovable property" shall, subject to sub-paragraph (b) below, be defined in accordance with the law of the Contracting State in which the property in question is situated.
(b) The term "immovable property" 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. Those provisions shall also apply to income from property which, under the law of the Contracting State in which the property in question is situated, is assimilated to income from immovable property.
- (4) The provisions of paragraphs (1) to (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 industrial or commercial 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 industrial or commercial 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 industrial or commercial 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 at arm's length with the enterprise of which it is a permanent establishment.
- (3) In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere, excluding expenses which would not be deductible if the permanent establishment were a separate enterprise.
- (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) The term "industrial or commercial profits" means income derived by an enterprise from the conduct of a trade or business, including income derived by an enterprise from the furnishing of services of employees or other personnel and dividends, interest or royalties effectively connected with a trade or business carried on through a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, but the term does not include dividends, interest or royalties not so connected; nor does it include remuneration for personal (including professional) services.

ARTICLE 8

Shipping and Air Transport

(1) Profits which a resident of a Contracting State derives from the operation of ships or aircraft in international traffic shall be taxable only in that Contracting State.

(2) The Agreement between the Contracting States for the Avoidance of Double Taxation on Income derived from Sea and Air Transport, signed at Lisbon on 31st July, 1961, shall, in relation to any tax for any period for which the present Convention has effect as respects that tax, cease to have effect so far as it exempts from United Kingdom tax or Portuguese tax, profits derived from the operation of ships or aircraft by, respectively, Portuguese undertakings or United Kingdom undertakings as therein defined.

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) Dividends paid by a company which is a resident of one Contracting State to a resident of the other Contracting State who is subject to tax in that other State in respect thereof, may be taxed in the first-mentioned State 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 dividends if:
 - (i) the recipient is a company which is a resident of Portugal which controls directly at least 25 per cent of the voting power in the company paying the dividends; or
 - (ii) the recipient is a company which is a resident of the United Kingdom which holds directly at least 25 per cent of the capital of the company paying the dividends;
- (b) in all other cases, 15 per cent of the gross amount of the dividends.

(3) The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident and, in the case of the United Kingdom, includes any item (other than interest or royalties relieved from United Kingdom tax under Article 11 or Article 12 of this Convention) which under the law of the United Kingdom is treated as a distribution of a company and, in the case of Portugal includes, in addition to profits attributed to members of a partnership, profits attributed under an arrangement for participation in profits (*conta em participação*).

(4) If the recipient of dividends does not bear tax at a rate exceeding 20 per cent in respect thereof in the Contracting State of which it is a resident and owns 10 per cent or more of the class of shares in respect of which the dividends are paid then paragraph (2) shall not apply to the dividends to the extent that they can have been paid only out of profits which the company paying the dividends earned or other income which it received in a period ending twelve months or more before the relevant date. For the purposes of this paragraph the term "relevant date" means the date on which the recipient of the dividends became the owner of 10 per cent or more of the class of shares in question. Provided that this paragraph shall not apply if the shares were acquired for bona fide commercial reasons and not primarily for the purpose of securing the benefit of this Article.

(5) The provisions of paragraphs (1) and (2) shall not apply 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. In such a case, the provisions of Article 7 shall apply.

(6) Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company 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 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 be taxed in the Contracting State in which it arises, and according to the law of that State; but where the resident of the other Contracting State is subject to tax there in respect thereof, the tax so charged in the first-mentioned State shall not exceed 10 per cent of the amount of the interest.

(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.

(4) The provisions of paragraphs (1) and (2) shall not apply 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. In such a case, the provisions of Article 7 shall apply.

(5) Interest shall be deemed to arise in a Contracting State when the payer is that State itself, 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 connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the 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 part of the payments 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 where the resident of the other Contracting State is subject to tax there in respect thereof, the tax so charged in the first-mentioned State shall not exceed 5 per cent of the gross amount of the royalties.

(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 and shall include gains derived from the sale or exchange of any right or property giving rise to such royalties.

(4) The provisions of paragraphs (1) and (2) shall not apply 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. In such a case, the provisions of Article 7 shall apply.

(5) Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, 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 connection with which the obligation to pay the royalties was incurred, and the royalties are borne by the permanent establishment, then the 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 part of the payments 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 paragraph (2) of 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.

(3) Notwithstanding paragraph (2) of this Article, gains from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in the Contracting State of which the alienator is a resident.

(4) 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.

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

Employments

(1) Subject to the provisions of Article 17, salaries, wages and other similar remuneration (other than remuneration to which Article 18 applies) 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

Artistes and Athletes

Notwithstanding the provisions of Articles 14 and 15, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, 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 17

Pensions

(1) Any pensions and other similar remuneration (other than pensions or remuneration to which Article 18 applies) paid in consideration of past employment to a resident of a Contracting State and any annuity paid to such a resident shall be taxable only in that State.

(2) The term "annuity" means a stated sum payable 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 18

Governmental Functions

(1) (a) Subject to the provisions of sub-paragraph (b) of this paragraph, remuneration or pensions paid out of public funds of the United Kingdom or Northern Ireland or of the funds of any local authority in the United Kingdom to any individual in respect of services rendered to the Government of the United Kingdom or Northern Ireland or a local authority in the United Kingdom in the discharge of functions of a governmental nature, shall be taxable only in the United Kingdom.

(b) Where the individual is a Portuguese national without also being a United Kingdom national, sub-paragraph (a) of this paragraph shall not apply, but the remuneration or pension shall, for the purposes of Article 22, be deemed to be income from a source within the United Kingdom.

(2) (a) Subject to the provisions of sub-paragraph (b) of this paragraph, remuneration or pensions paid by, or out of funds created by, Portugal or a local authority thereof to any individual in respect of services rendered to Portugal or a local authority thereof, in the discharge of functions of a governmental nature, shall be taxable only in Portugal.

(b) Where the individual is a national of the United Kingdom without also being a Portuguese national, sub-paragraph (a) of this paragraph shall not apply, but the remuneration or pension shall, for the purposes of Article 22, be deemed to be income from a source within Portugal.

(3) The provisions of paragraphs (1) and (2) shall not apply to remuneration or pensions in respect of services rendered in connection with any trade or business.

ARTICLE 19

Students

(1) Payments which a student or business apprentice who is or was immediately before visiting one of the Contracting States a resident of the other Contracting State and who is present in the first-mentioned 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 the first-mentioned State, provided that such payments are made to him from sources outside that State.

(2) Students attending a university, higher educational establishment or establishment for technical instruction in a Contracting State who take employment in the other Contracting State in order to obtain practical experience directly related to their studies shall not be taxed in that other State on income from that employment unless the duration of that employment exceeds 183 days.

ARTICLE 20

Income Not Expressly Mentioned

Items of income of a resident of a Contracting State who is subject to tax there in respect thereof being income of a class or from sources not expressly mentioned in the foregoing Articles of this Convention shall be taxable only in that State. Provided that this Article shall not be construed as affecting the taxation of income attributable to a permanent establishment which a resident of one Contracting State has in the other Contracting State.

ARTICLE 21

Personal Allowances

(1) Subject to paragraph (3) of this Article, individuals who are residents of Portugal shall be entitled to the same personal allowances, reliefs and reductions for the purposes of United Kingdom taxation as British subjects not resident in the United Kingdom.

(2) Subject to paragraph (3) of this Article, individuals who are residents of the United Kingdom shall be entitled to the same personal allowances, reliefs and reductions for the purposes of Portuguese tax as Portuguese nationals (other than Portuguese State employees) resident in the United Kingdom.

(3) Nothing in this Convention shall entitle an individual who is a resident of a Contracting State and whose income from the other Contracting State consists solely of dividends, interest or royalties (or solely of any combination thereof) to the personal allowances, reliefs and reductions of the kind referred to in this Article for the purposes of taxation in that other Contracting State.

ARTICLE 22

Elimination of Double Taxation

(1) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof), Portuguese tax payable under the laws of Portugal and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within Portugal (excluding, in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which the Portuguese tax is computed.

(2) For the purposes of paragraph (1) of this Article, the term "Portuguese tax payable" shall be deemed to include any amount which would have been payable as Portuguese tax but for the exemption or reduction of tax granted under—

(a) any of the following provisions, that is to say:

(i) **Agricultural Tax Code (Decree Law 45104 of 1st July, 1963)**
Article 350

(ii) **Industrial Tax Code (Decree Law 45103 of 1st July, 1963)**
Articles 14 Heads 21 and 22
18 Heads 8 and 9
20
83

(iii) **Code of the Tax on Income from Movable Capital (Decree Law 44561 of 10th September, 1962)**
Articles 21 Head 2
22

(iv) **Complementary Tax Code (Decree Law 45399 of 30th November, 1963)**
Articles 8 Sub-head (1) (g)
35
85 Head 15

(v) **Decree Law 46492 of 18th 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 which is agreed by the competent authorities of the Contracting States to be 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. Provided that relief from United Kingdom tax shall not be given by virtue of this sub-paragraph in respect of income from any source if the income arises in a period starting more than ten years after the exemption from, or reduction of, Portuguese tax was first granted in respect of that source.

(3) United Kingdom tax payable under the laws of the United Kingdom and in accordance with this Convention, whether directly or by deduction, on income or capital gains derived from sources within the United Kingdom by a resident of Portugal

shall be allowed as a deduction from the Portuguese tax payable in respect of that income but the deduction shall not however exceed the smaller of:

- (a) the fraction of the United Kingdom tax corresponding to the fraction of such income or capital gains charged to Portuguese tax; or
- (b) the proportion of the Portuguese tax before any such deduction which the amount of such income or capital gains charged to Portuguese tax bears to the total income or capital gains chargeable to Portuguese tax.

(4) Where profits on which an enterprise of a Contracting State has been charged to tax in that State are also included in the profits of an enterprise of the other Contracting State and the profits so included are profits which would have accrued to that enterprise of the other Contracting State if the conditions made between each of the enterprises had been those which would have been made between independent enterprises, the amount of such profits included in the profits of both enterprises shall be treated for the purpose of this Article as income from a source in the other Contracting State of the enterprise of the first-mentioned Contracting State and credit shall be given accordingly in respect of the extra tax chargeable in the other Contracting State as a result of the inclusion of the said amount.

(5) For the purposes of this Article, profits or remuneration for personal (including professional) services performed in one of the Contracting States shall be deemed to be income from sources within that State, and the services of an individual whose services are wholly or mainly performed in ships or aircraft shall be deemed to be performed in the Contracting State in which is situated the place of the effective management of the enterprise operating the ships or aircraft.

ARTICLE 23

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) in relation to the United Kingdom:

- (i) all citizens of the United Kingdom and Colonies other than those citizens who derive their status as such from connection with any territory to which this Convention may be extended under Article 27 but has not been so extended;
- (ii) all legal persons and associations deriving their status as such from the laws of the United Kingdom or any territory for whose international relations the United Kingdom is responsible to which this Convention is extended under Article 27;

(b) in relation to Portugal: all individuals possessing the nationality of Portugal and all legal persons and associations deriving their status as such from the laws of Portugal.

(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.

(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.

(5) Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident, nor as restricting the right of either Contracting State to tax in accordance with Article 10 dividends paid to a company which is a resident of the other Contracting State.

ARTICLE 24

Mutual Agreement

(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.

(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.

(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 or for the purpose of giving effect to the provisions of the Convention.

ARTICLE 25

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 insofar 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 (including a court or administrative body) concerned with the assessment or collection of, or prosecution in respect of, or the determination of appeals in relation to, 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 (*ordre public*).

(3) The competent authorities of the Contracting States shall notify to each other any changes which have been made in their respective taxation laws.

ARTICLE 26

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 27

Territorial Extension

(1) This Convention may be extended, either in its entirety or with any necessary modifications, to any territory for whose international relations the United Kingdom is responsible or to any part of Portugal which is implicitly excluded from the application of the Convention where, in either case, taxes are imposed 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, as may be specified and agreed between the Contracting States in notes to be exchanged through diplomatic channels.

(2) Unless otherwise agreed by both Contracting States, the denunciation of the Convention by one of them under Article 29 shall terminate, in the manner provided for in that Article, the application of the Convention to any territory or part to which it has been extended under this Article.

ARTICLE 28

Entry into Force

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

(2) The Convention shall enter into force upon the exchange of instruments of ratification (a) and its provisions shall have effect:

(a) In the United Kingdom:

- (i) as respects income tax, surtax and capital gains tax for any year of assessment beginning on or after 6th April in the calendar year next following that in which the Convention enters into force;
- (ii) as respects corporation tax for any financial year beginning on or after 1st April in the calendar year next following that in which the Convention enters into force.

(b) In Portugal:

as respects Portuguese tax on profits, income or capital gains arising on or after 1st January in the calendar year next following that in which the Convention enters into force.

ARTICLE 29

Termination

This Convention shall remain in force until denounced by one of the Contracting States. Either Contracting State may denounce the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the year 1968. In such event, the Convention shall cease to have effect:

(a) In the United Kingdom:

- (i) as respects income tax, surtax and capital gains tax for any year of assessment beginning on or after 6th April in the calendar year next following that in which the notice is given;
- (ii) as respects corporation tax for any financial year beginning on or after 1st April in the calendar year next following that in which the notice is given.

(b) In Portugal:

as respects Portuguese tax on profits, income or capital gains arising on or after 1st January in the calendar year next following that in which the notice is given.

(a) Instruments of ratification were exchanged on 17th January 1969.

In witness whereof the undersigned, being duly authorized thereto, have signed this Convention.

Done in duplicate at Lisbon, this 27th day of March 1968, in the English and Portuguese languages, both texts being equally authoritative.

For the United Kingdom of Great Britain and
Northern Ireland:

ANTHONY LAMBERT

For Portugal:

A. FRANCO NOGUEIRA

EXPLANATORY NOTE

(This Note is not part of the Order.)

Under the Convention with Portugal scheduled to this Order, shipping and air transport profits, certain trading profits not arising through a permanent establishment, pensions (other than Government pensions) and the earnings of temporary business visitors are (subject to certain conditions) to be taxed only in the country of the taxpayer's residence. Capital gains arising from the disposal of movable property are to be taxed only in the country of the taxpayer's residence unless they arise from the disposal of the assets of a permanent establishment which the taxpayer has in the other country. Government salaries and pensions are normally to be taxed by the paying Government only. Payments made for the maintenance, etc., of visiting students are (subject to certain conditions) to be exempt in the country visited.

The rate of tax in the source country on income flowing from one country to the other is, in general, not to exceed 15 per cent in the case of dividends from portfolio investment, 10 per cent in the case of dividends from direct investment and interest, and 5 per cent in the case of royalties.

Where income continues to be taxable in both countries, the country of the taxpayer's residence will relieve the double taxation by giving a credit for the other country's tax. The credit to be given by the United Kingdom includes credit for Portuguese tax which would have been payable but for relief granted under certain provisions of the Portuguese law in order to encourage development there.

There are provisions safeguarding nationals and enterprises of one country against discriminatory taxation in the other country and for the exchange of information and consultation between the taxation authorities of the two countries.

The Convention is to take effect in the United Kingdom for income tax, surtax, corporation tax and capital gains tax in the year following that in which the instruments of ratification are exchanged.

STATUTORY INSTRUMENTS

1969 No. 599

INCOME TAX

**The Double Taxation Relief (Taxes on Income)
(Portugal) Order 1969**

Printed in England by McCorquodale & Co. Ltd., London
and published by
Her Majesty's Stationery Office: 1969