

*República Oriental del Uruguay*

PROTOCOLO À CONVENÇÃO ENTRE A REPÚBLICA ORIENTAL DO URUGUAI E A REPÚBLICA PORTUGUESA PARA EVITAR A DUPLA TRIBUTAÇÃO E PREVENIR A EVASÃO FISCAL EM MATÉRIA DE IMPOSTOS SOBRE O RENDIMENTO E SOBRE O PATRIMÓNIO

No momento da assinatura da Convenção entre a República Oriental do Uruguai e a República Portuguesa para Evitar a Dupla Tributação e Prevenir a Evasão Fiscal em Matéria de Impostos sobre o Rendimento e sobre o Património, os signatários acordaram nas disposições seguintes, que fazem parte integrante da Convenção:

1. *Ad Artigo 2.º, n.º 4 (Impostos Visados)*

Com ressalva do disposto no n.º 4 do Artigo 2.º da Convenção, se Portugal introduzir no seu sistema fiscal um imposto sobre o património de base universal, as autoridades portuguesas comunicarão às autoridades uruguaias a respectiva entrada em vigor e discutirão, entre si, a inclusão do referido imposto no âmbito de aplicação da Convenção.

2. *Ad Artigo 8.º (Tráfego Internacional)*

Quando sociedades de países diferentes acordem em exercer uma actividade de transporte aéreo sob a forma de um consórcio ou de uma associação similar, o disposto no n.º 1 do Artigo 8.º da Convenção aplicar-se-á à parte dos lucros do consórcio ou da associação correspondente à participação detida nesse consórcio ou associação por uma sociedade de um Estado Contratante.

3. *Ad Artigo 10.º, n.º 4 (Dividendos)*

No caso de Portugal, entende-se que a expressão «dividendos» inclui também os lucros atribuídos ao abrigo de um acordo de participação nos lucros (“associação em participação”).

4. *Ad Artigo 16.º (Percentagens de Membros de Conselhos)*

O termo «directorio» aplica-se ao Uruguai e significa Conselho de Administração.



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5. Ad Artigo 27.º (Troca de Informações)

Os Estados Contratantes respeitarão os princípios directores da regulamentação dos arquivos informatizados que contenham dados de carácter pessoal constantes da Resolução A/RES/45/95, da Assembleia Geral das Nações Unidas, adoptada em 14 de Dezembro de 1990.

6. Ad Artigo 27.º, n.º 5 (Troca de Informações)

Não obstante as restrições que as leis vigentes em cada Estado Contratante estabeleçam para o acesso às informações a que se refere o n.º 5 do Artigo 27.º da Convenção, a partir do momento que a Convenção seja ratificada pelos respectivos Poderes Legislativos e entre em vigor, constituirá a base legal para dar resposta aos pedidos de informação, incluindo a informação na posse de instituições financeiras, no âmbito de aplicação da Convenção.

7. Direito aos benefícios previstos na Convenção:

- a) Entende-se que as disposições da Convenção não serão interpretadas de modo a impedir a aplicação por um Estado Contratante das medidas anti-abuso previstas na respectiva legislação interna;
- b) Entende-se que os benefícios previstos na Convenção não serão concedidos a um residente de um Estado Contratante que não seja o beneficiário efectivo dos rendimentos obtidos no outro Estado Contratante.

EM TESTEMUNHO DO QUAL os abaixo assinados, devidamente autorizados para o efeito, assinaram o presente Protocolo.

FEITO, em duplicado, em Estoril, aos 30 dias do mês de Novembro de 2009, nas línguas portuguesa, espanhola e inglesa, sendo todos os textos igualmente válidos. Em caso de divergência, prevalecerá o texto inglês.

Pela República Oriental do Uruguai

Pela República Portuguesa



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

The Oriental Republic of Uruguay and the Portuguese Republic,

Desiring to conclude a Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital:

Have agreed as follows:

CHAPTER I  
SCOPE OF THE CONVENTION

ARTICLE 1  
PERSONS COVERED

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

ARTICLE 2  
TAXES COVERED

1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political or administrative subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which the Convention shall apply are in particular:

a) In Portugal:

- i) the Personal Income Tax (Imposto sobre o Rendimento das Pessoas Singulares - IRS);



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- ii) the Corporate Income Tax (Imposto sobre o Rendimento das Pessoas Colectivas - IRC); and
  - iii) the local surtax on corporate income tax (Derrama);
- (hereinafter referred to as «Portuguese tax»); and

b) In Uruguay:

- i) the tax on business income (Impuesto a las Rentas de las Actividades Económicas - IRAE);
- ii) the personal income tax (Impuesto a las Rentas de las Personas Físicas - IRPF);
- iii) the non-resident income tax (Impuesto a las Rentas de los No Residentes - IRNR);
- iv) the tax for social security assistance (Impuesto de Asistencia a la Seguridad Social - IASS);
- v) the capital tax (Impuesto de Patrimonio - IP);

(hereinafter referred to as («Uruguayan tax»)).

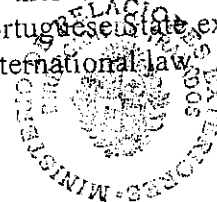
4. The Convention shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of significant changes that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

CHAPTER II  
DEFINITIONS

ARTICLE 3  
GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:

- a) the term «Portugal» means the territory of the Portuguese Republic situated in the European Continent and the archipelagos of Azores and Madeira, including the inland waters and the territorial sea thereof as well as the continental shelf and any other areas wherein the Portuguese State exercises sovereign rights or jurisdiction in accordance with international law



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- b) the term «Uruguay» means the territory of the Eastern Republic of Uruguay, and when used in a geographical sense means the territory on which the tax laws are applied, including the maritime areas under Uruguayan sovereign rights or jurisdiction in accordance with international law and national law;
- c) the terms «a Contracting State» and «the other Contracting State» mean Portugal or Uruguay as the context requires;
- d) the term «tax» means Portuguese tax or Uruguayan tax as the context requires;
- e) the term «person» includes an individual, a company and any other body of persons;
- f) the term «company» means any body corporate or any entity that is treated as a body corporate for tax purposes;
- g) the terms «enterprise of a Contracting State» and «enterprise of the other Contracting State» mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- h) the term «international traffic» means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- i) the term «competent authority» means:
  - i) in Portugal, the Minister of Finance, the Director General of Taxation (Director-Geral dos Impostos) or their authorised representative; and
  - ii) in Uruguay, the Minister of Economy and Finance (Ministro de Economía y Finanzas) or his authorised representative;
- j) the term «national», in relation to a Contracting State, means:
  - i) any individual possessing the nationality or citizenship of that Contracting State; and
  - ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State.

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



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ARTICLE 4  
RESIDENT

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

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

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

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

ARTICLE 5  
PERMANENT ESTABLISHMENT

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

2. The term «permanent establishment» includes especially:



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

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than 9 (nine) months.

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

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

5. Notwithstanding the provisions of paragraphs 1 and 2 where a person – other than an agent of an independent status to whom paragraph 6 applies – is acting on behalf of an enterprise and has and habitually exercises in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

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6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

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

CHAPTER III  
TAXATION OF INCOME

ARTICLE 6  
INCOME FROM IMMOVABLE PROPERTY

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

2. The term «immovable property» shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships 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, «aparceria», or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

5. The foregoing provisions shall also apply to income from movable property related to immovable property and from the provision of services for the maintenance or operation of immovable property.

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ESTADO  
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ARTICLE 7  
BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on or has carried on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

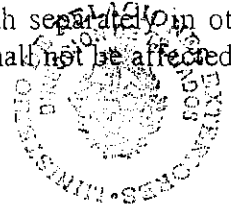
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

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

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. 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.



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ARTICLE 8  
INTERNATIONAL TRAFFIC

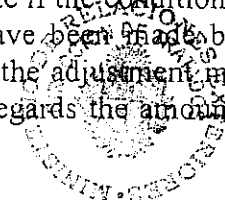
1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.
3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9  
ASSOCIATED ENTERPRISES

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

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

2. Where a Contracting State includes in the profits of an enterprise of that State — and taxes accordingly — profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State, if it agrees that the adjustment made by the first-mentioned State is justified both in principle and as regards the amount, shall



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make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10  
DIVIDENDS

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

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

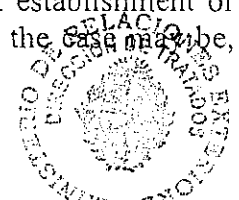
- a) 5% of the gross amount of the dividends if the beneficial owner is a company that holds directly at least 25% of the capital of the company paying the dividends;
- b) 10% of the gross amount of the dividends, in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

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

4. The term «dividends» as used in this Article means income from shares, «jouissance» shares or «jouissance» rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.



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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, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11  
INTEREST

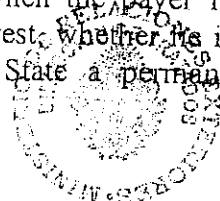
1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10% on the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. The term «interest» as used in this Article means income from debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as income which is subjected to the same taxation treatment as income from money lent by the laws of the State in which the income arises. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent



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