TREATY USA - PORTUGAL

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE PORTUGUESE REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, TOGETHER WITH A RELATED PROTOCOL SIGNED AT WASHINGTON ON SEPTEMBER 6, 1994

GENERAL EFFECTIVE DATE UNDER ARTICLE 30: 1 JANUARY 1996

ARTICLE 17
Limitation on Benefits

1) A resident of a Contracting State shall be entitled to the benefits of this Convention only if such person is:

a) an individual; or

b) a Contracting State, a political or administrative subdivision or local authority thereof, or an institution or organization wholly owned by them; or

c) a company
   i) that is a resident of a Contracting State in whose principal class of shares there is substantial and regular trading on a recognized securities exchange, or
   ii) more than 50 percent of each class of whose shares is owned by companies that are residents of either Contracting State, in whose principal class of shares there is substantial and regular trading on a recognized securities exchange, or by persons referred to in subparagraph (b); or

d) an organization, trust, or other arrangement referred to in subparagraph 3(b) of the Protocol, provided that more than half of the members, participants, or beneficiaries, if any, in such organization, trust, or arrangement are residents of that Contracting State who are entitled, under this Article, to the benefits of this Convention; or

e) a person with respect to which both of the following conditions are satisfied:
   i) the ultimate beneficial owners of more than 50 percent of the beneficial interest in such person (or, in the case of a company, more than 50 percent of the vote and value of each class of the company's shares) are persons entitled to the benefits of this Convention under this paragraph or citizens of the United States; and
   ii) less than 50 percent of the gross income of such parson is used, directly or indirectly, to meet liabilities (including liabilities for interest or royalties)

other than to persons entitled to the benefits of this Convention under this paragraph or citizens of the United States.

2) A resident of a Contracting State that is not entitled to the benefits of this Convention under paragraph 1 shall, nevertheless, be entitled to the benefits of this Convention with respect to an item of income derived from the other State, if:

    a) the resident is engaged in the active conduct of a trade or business in the first-mentioned State (other than the business of making or managing investments, unless these activities are banking or insurance activities carried on by a bank or insurance company); and

    b) the item of income is connected with or incidental to the trade or business in the first-mentioned State; and (c) such trade or business is substantial in relation to the activity in the other State that generated the income.

3) A person that is not entitled to the benefits of the Convention pursuant to the provisions of paragraph 1 or 2 may, nevertheless, be granted the benefits of the Convention if the competent authority of the State in which the income in question arises so determines. For this purpose, one of the factors the competent authorities shall take into account is whether the establishment, acquisition, and maintenance of such person and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under the Convention.

4) For purposes of subparagraph (c) of paragraph 1, the term "recognized securities exchange" means:

    a) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the Securities and Exchange Commission as a national securities exchange for purposes of the Securities Exchange Act of 1934;

    b) the Lisbon and Oporto Stock Exchanges; and

    c) any other stock exchange agreed upon by the competent authorities of the Contracting States.

5) For purposes of subparagraph (e) (ii) of paragraph 1, the term "gross-income" means gross receipts, or, where an enterprise is engaged in a business which includes the manufacture or production of goods, gross receipts reduced by the direct costs of labor and materials attributable to such manufacture or production and paid or payable out of such receipts.

6) Notwithstanding the provisions of paragraphs 1 through 5, the benefits of this Convention shall not be allowed to any person that is entitled to income tax benefits under the provisions of the legislation and other measures relating to the tax-free zones (zones francas) of Madeira and Santa Maria Island, or to benefits similar to those provided with respect to such tax-free zones that are made available under any legislation or other measure adopted by either Contracting State after the date of signature of this Convention. The competent authorities shall notify each other of any such legislation or measure and shall consult as to whether such benefits are similar.