



CIDEEFF

WORKING PAPERS

Nº 14 / 2024

STUDENTS, TEACHERS AND PROFESSORS -
ARTICLE 20 OF THE OECD AND UN MODELS

AN OVERVIEW OF THE PORTUGUESE TAX TREATY NETWORK

Maria D'Albuquerque



CIDEEFF

fct

Fundação
para a Ciência
e a Tecnologia



CIDEEFF

CIDEEFF

WORKING PAPERS

ISSN: 2795-4218

-

Nº14/2024

GOVERNANÇA FISCAL | TAX GOVERNANCE

Students, teachers and professors – Article 20 of the OECD and UN Models
An Overview of the Portuguese Tax Treaty Network

Author

Maria D’Albuquerque

WP Coordinators

Ana Paula Dourado

Pedro Infante Mota

Miguel Moura e Silva

Nazaré da Costa Cabral

Publisher

**CIDEEFF - Centre for Research in
European, Economic, Fiscal and Tax Law**

www.cideeff.pt | cideeff@fd.ulisboa.pt



FACULDADE DE DIREITO
UNIVERSIDADE DE LISBOA

Alameda da Universidade
1649-014 Lisboa



Fundação
para a Ciência
e a Tecnologia

Esta publicação é financiada por fundos nacionais através da FCT – Fundação para a Ciência e a Tecnologia, I.P.,
no âmbito do projeto UIDB/04176/2020

-

Design & Production

OH! Multimedia

mail@oh-multimedia.com



Students, teachers and professors – Article 20 of the OECD and UN Models An Overview of the Portuguese Tax Treaty Network¹

MARIA D'ALBUQUERQUE

¹ This working paper represents the conclusion of extensive research conducted as part of the GTTC University Project competition organized by IBFD, under the coordination of Professor Ana Paula Dourado (PhD) and Professor Paula Rosado Pereira (PhD)

Table of Contents

Abstract (pag. 4) ►

1. Introduction (pag. 5) ►

**2. Taxation of students under Article 20
of the OECD and UN Models** (pag. 7) ►

**3. Taxation of visiting teachers
and professors** (pag. 13) ►

Abstract

Educational, teaching and research development activities play an important role in cross-border exchange of knowledge thus being encouraged to take place within the current globalization context.

Questions regarding the tax treatment of students and teachers who temporarily move to another state in order to pursue their studies or teaching and research activity often arise, and states usually include in their treaties a provision dealing with taxation of students and/or teachers following the OECD and UN Models.

Article 20 of the OECD and UN Models provide a legal framework aimed at encouraging cross-border exchange of knowledge by granting benefits in form of exemptions, reliefs or reductions on certain qualifying payments derived by students and teachers.

Notwithstanding the benefits granted, for such payments to qualify for an exemption, certain conditions and thresholds must be respected and several restrictions may be imposed, namely on the duration of the exemption or the types of payments covered and its source.

Portuguese treaty policy in respect of taxation of students and teachers is drafted in line with the OECD and UN Models. Nonetheless, there are several treaties providing a different legal framework from the one established in the OECD and UN Model.

Keywords: Taxation of students, Taxation of teachers, OECD Model, UN Model, Article 20, cross-border exchange of knowledge, exemptions, restrictions, Portuguese treaty policy.



1. Introduction

The Portuguese treaty network currently consists of 79 Double Tax Conventions, being 78 of those Conventions currently in force and 1 Convention signed and soon becoming legally binding.

Article 20 of the OECD and UN Models is a consistent rule within the Portuguese treaty network.

Taxation of students and teachers under article 20 of the OECD and UN Model is a provision aimed at assuring that certain payments received by students and teachers are not subject to tax, provided that certain criteria necessarily need to be met in order for those payments to qualify for an exemption.

As for taxation of students, payments arising from sources outside of the study state and received by students for maintenance, education and training purposes are not subject to tax under article 20 of the OECD and UN Model.

On the other hand, grants, scholarships and remunerations may also not be subject to tax, following the UN Model. Such rule was also incorporated in the Portuguese treaty network, being present in many of the treaties signed by the Portuguese state.

Qualifying payments under this rule might not be subject to tax in the source state, nor does article 20 subject to tax payments received by students in the study state which are not taxed in the source state.

Hence, double non-taxation situations may occur and be accepted within this legal framework, provided that such payments will fall under the scope of the rule established in Article 20.

Nonetheless, some treaties tend to deviate from the wording of the OECD and UN Model. Deviations regarding this rule are often related to temporal thresholds which limit the duration of the exemption or value thresholds, which limit the amount exempt from tax.

Other treaties tend to offer a more detailed and conceptualized scope, namely through the development of concepts such as student, apprentice, remunerations, type of activity undertaken, while other treaties provide a wider subjective scope which may include not only students and apprentices but also mobility workers.

Taxation of visiting teachers is not directly mentioned in article 20 of the OECD Model nor its Commentaries, being only mentioned in the Commentaries on Article 20 of the UN Model.

According to the Commentaries on Article 20 of the UN Model, the incorporation of a provision dealing with taxation of visiting teachers in the UN Model was discussed though it was not possible to reach a consensus.

Nevertheless, it was agreed that, unlike taxation of students, double non-taxation situations arising within this legal framework are not intended nor accepted, on the contrary, and some states have included a subject to tax clause aimed at tackling these situations.

It was also noted that many states that have adopted in their bilateral treaties a rule addressing taxation of visiting teachers tend to exempt teachers, and sometimes researchers, from taxation within a certain prescribed length, usually for a 2-year period.

Policy issues regarding the drafting of this rule often relate to the same aspects as per the ones previously identified within the context of taxation of students i.e. developing cross-border exchange of knowledge. Hence, visiting teachers who temporarily move to another state in order to undertake an activity of teaching, research or investigation activities may be exempt from tax under certain circumstances.

Deviations to this rule are usually connected to the source of the payments, the extension or reduction of the period under which the payments are exempt, the nature of the institution, limitation of benefits by reference to a certain threshold and even double exemptions.



2. Taxation of students under Article 20 of the OECD and UN Models

Article 20 of the OECD and UN Models is present in all bilateral treaties concluded by the Portuguese state with the underlying policy of encouraging cross-border education exchanges. This thereby ensures that support payments received by students or apprentices in the study state who are or were immediately¹ before moving to the study state a resident of the other contracting state are not taxed in this latter state. This is provided that such payments arise from sources outside of the study state² and are received solely for the purpose of the recipient's maintenance, education and training there³. Hence, by virtue of the present legal framework, students and apprentices shall not be placed in a rather disadvantageous position which would otherwise occur should such qualifying payments be taxed in the state where the studies are undertaken⁴.

2.1. Internal policy

On a purely domestic level, payments received by students or apprentices for the purpose of their maintenance or education are not regarded for tax purposes under Portuguese Tax Law. The

1 The word "immediately" was inserted in the 1977 Model Convention in order to clarify that only those who have switched from the origin state to the study state directly without having being residents of a third state in between may benefit from the exemption; see paragraph 2 of *Model Tax Convention on Income and on Capital: Condensed Version 2017*, OECD, available at <https://www.oecd.org>. Moreover, it simultaneously encompasses individuals who lost their residence in the origin state by virtue of moving to the study state and are not yet deemed to be residents of the study state; see R. Vlasceanu, *Article 20 – Students, Teachers and Professors – Global Tax Treaty Commentaries*, Sec. 2.1.1.1., Global Topics IBFD.

2 Usually, the source state of such payments corresponds to the state where the student or apprentice was a resident prior to moving to the study state, notwithstanding that the payment is exempt provided that it arises from a source outside the study state, thus any other state. However, when the support payment has its origin in the study state, or none of the conditions laid down in the article are met, Article 20 shall not apply and those payments will fall under the scope of other articles of the Convention, notably Article 15 or Article 21. Moreover, if the recipient is a resident of the study state for tax purposes, it shall consist of a purely domestic situation and therefore the Convention will not apply to those payments.

3 See paragraph 3 of *Model Tax Convention on Income and on Capital: Condensed Version 2017*, OECD, available at <https://www.oecd.org>.

4 The taxation of students and apprentices is also regarded in multiple other multilateral instruments and tax treaties; see *US Model Tax Convention on Income* (1981-2016), Treaties & Models IBFD, *German Income and Capital Tax Treaty* (2013), Treaties & Models IBFD, *ASEAN Income Tax Treaty* (1987), Treaties & Models IBFD, *SADC Model Tax Agreement on Income* (2011), Treaties & Models IBFD.

Portuguese system additionally exempts income derived by students in respect of remuneration from work or by virtue of services rendered, up to a certain threshold, provided that the student is still part of a family household and continues to undertake his studies in an approved educational institution. As for grants and scholarships, such payments are not considered to be made by virtue of labor nor service provision relationships, and, in principle, are not subject to income tax⁵.

2.2. Treaty policy and policy drafting

Article 20 has somewhat of a peculiar nature when compared to other articles of the OECD and UN Models. Unlike other articles of the Convention, Article 20 does not allocate taxing rights nor grants exclusive or cumulative taxing rights to neither contracting states. It rather imposes a restriction on the study state, by granting an exemption⁶ in respect of qualifying payments and thus takes precedence over other articles of the Convention⁷. This is particularly noticeable in situations when the student or apprentice becomes a resident of the study state. Despite transitioning to a domestic situation, Article 20 imposes an exemption on the study state regardless of the way its student residents are treated for tax purposes under its domestic law. Identically, the provision will also apply in the case of dual residence.

Furthermore, double non-taxation situations often arise, for it is common for the source state to also provide an exemption in respect of these qualifying payments⁸. Nonetheless, such situations are far from being unintended and therefore create a scenario in which double non-taxation is rather allowed and thus atypical.

Article 20 is subject to different variations and Portuguese treaty practice includes treaty versions of this article that are either drafted in more detail or have their scope extended in order to cover other types of payments (specifically, remunerations⁹, grants, and scholarships, following the Commentary on Article 20 of the UN Model) or sources of those payments. As for

5 Only in respect of grants where an economic advantage deriving from the purpose of the grant is identified; see Nota Informativa da Direcção de Serviços do Imposto sobre o Rendimento das Pessoas Singulares, available at <https://info.portaldasfinancas.gov.pt>.

6 Provided that all conditions in the article are fulfilled. For further information regarding the particularities of Article 20 within the legal framework established by the Convention and its susceptibility of not being considered an allocation rule, see L. De Broe, *Commentary on Article 20*, in K. Vogel, Klaus Vogel on Double Taxation Conventions, 4th edn, p. 1524, paragraph 24 (E. Reimer & A. Rust eds., Kluwer L. Intl. 2015 and C. Staringer & A. Binder, *Students and Business Apprentices According to Art 20 OECD Model Convention*, in the OECD Model-Convention and Its Update 2014, Series on International Tax law, sec. III.B. (M. Lang et al. eds., IBFD 2015), Books IBFD.

7 See R. Vlasceanu, *Article 20 – Students, Teachers and Professors – Global Tax Treaty Commentaries*, Sec. 1.1.1., Global Topics IBFD.

8 Notwithstanding the exemption imposed on the study state by virtue of Article 20, taxation in the source state is not regarded for the purposes of this article. Consequently, there is nothing in the convention nor in the wording of Article 20 that prevents the source state from taxing these support payments. Hence, the source state taxing rights remain unaltered.

9 Many treaties concluded by Portugal tend to exempt not only support payments that have their source outside of the study state but also remunerations. This is particularly relevant in the case of students and apprentices from developing countries who may face difficulties in supporting higher living costs in the study state than in their home state. Portuguese treaty policy is consistent with this premise, and multiple DTC's concluded with developing countries tend to follow this pattern.

the exemption, it is usually limited to two-year period with some exceptions. In addition, some treaties expand their scope to encompass other individuals (i.e. teachers and researchers).

2.2.1. The 1980 UN Model and its influence on the drafting bilateral treaties - Extension of objective scope – grants, scholarships and remuneration

Following the line of the UN Model (1980)¹⁰, several treaties also provide exemptions, reliefs or reductions in respect of grants, scholarships and remuneration from employment during such educational period or training¹¹. Qatar-Portugal Income and Capital Tax Treaty (2012), Saudi Arabia-Portugal Income and Capital Tax Treaty (2016) and Angola-Portugal Income and Capital Tax Treaty (2016) have fully adopted the wording of the former UN Model in order to incorporate a rule that allows students and apprentices the same entitlements available for residents of the study state in respect of grants, scholarships and remunerations from employment. However, many other treaties tend to deviate from this wording by not subjecting the exemption of grants, scholarships and remuneration received by students and apprentices to the extent that those same payments are not subject to tax under the study state's domestic law. This is the case of Brazil-Portugal Income and Capital Tax Treaty (2001), Cape Verde-Portugal Income and Capital Tax Treaty (2000), Netherlands-Portugal Income and Capital Tax Treaty (2000), São Tomé e Príncipe-Portugal Income and Capital Tax Treaty (2016), Tunisia-Portugal Income and Capital Tax Treaty (2000), Norway-Portugal Income and Capital Tax Treaty (1970), this latter only in force until 2012. Despite exempting grants, scholarships and remuneration, these treaties do not clarify how such payments are treated for tax purposes under the domestic law of the study state thus granting the exemption regardless of the tax treatment of these payments therein. As for China-Portugal Income and Capital Tax Treaty (2000) and Ivory Coast-Portugal Income and Capital Tax Treaty (2016), such exemption applies exclusively to grants and scholarships, therefore excluding remunerations. Ivory Coast-Portugal Income and Capital Tax Treaty (2016) also extends the scope of the exemption to payments received by an individual within the context of a technical assistance program developed by one of the contracting states.

2.2.2. Remunerations and thresholds

In respect of remunerations, many treaties subject the exemption of such payments to certain conditions, notably by setting timelines or thresholds on the amount of the payments received in order to limit the exemption to a certain time, or a certain amount received. Furthermore, most tend to establish a link between the remuneration obtained and its ability to be used solely for the purpose of covering maintenance or education costs in the study state.

10 *UN Model Convention on Income and on Capital* (1980), Treaties & Models IBFD.

11 Article 20, paragraph 2 of the 1980 UN Model contained a provision dealing with grants, scholarships and remunerations from employment not covered by paragraph 1. However, in 1999, this paragraph was removed due to lack of consensus between countries, following the Report of the former Group of Experts on International Cooperation in Tax Matters; see paragraph 29 of the International Cooperation in Tax Matters: Report of the Ad Hoc Group of Experts on International Cooperation in Tax Matters on the Work of its 7th Meeting (ST/ESA/250), available at <https://digitallibrary.un.org>.

2.2.2.1. Time and its impact on the exemptions, reliefs or reductions in the study state

Some treaties determine that the exemption shall only be granted within a certain temporal threshold. This is the case of Turkey-Portugal Income and Capital Tax Treaty (2006) and United Kingdom-Portugal Income and Capital Tax Treaty (1968) which grants an exemption for remuneration received during a period not exceeding 183 days, provided that such remuneration is related to the student or trainee's education or training (this benefit is only available for students in the United Kingdom-Portugal Income and Capital Tax Treaty (1968)). Japan reserved its right under Article 20 of the OECD Model to limit the exemption for a business apprentice to a period of one year, which was included in the Japan-Portugal Income and Capital Tax Treaty (2012).

However, some treaties do not set any time limit on the duration of the exemption. Instead, the adopted provisions only refer to the nature of the activity undertaken in the study state and only exempt activities to the extent that it consists of a part-time activity (full-time activity is thus excluded). This is the case of Italy-Portugal Income and Capital Tax Treaty (1982) and Luxembourg-Portugal Income and Capital Tax Treaty (2000). Netherlands-Portugal Income and Capital Tax Treaty (2000) and Spain-Portugal Income and Capital Tax Treaty (1995) set maximum annual thresholds of EUR 5 000 and 7 000 Spanish pesetas respectively (former Spanish currency, prior to the Euro, which requires update), being the Netherlands-Portugal Income and Capital Tax Treaty (2000) silent regarding the nature of the activity (no reference regarding to whether it consists of a full time or a part time one). Norway-Portugal Income and Capital Tax Treaty (1970) – in force until 2012, also imposed no time limit on the exemption.

Both the OECD and UN Models are silent in respect of the timing of the support payments, although it could be interpreted that such exemption shall only be granted while the individual is present in the study state. This is notwithstanding that a strict interpretation of this reading may result in unexpected scope exclusions such as excluding payments from the scope that are made while a student is abroad on a field trip or visiting home¹². In an attempt to clarify which moment determines the entitlement to the exemption, see Japan-Portugal Income and Capital Tax Treaty (2012), Mozambique-Portugal Income and Capital Tax Treaty (2009 Protocol), Romania-Portugal Income and Capital Tax Treaty (1999), Vietnam-Portugal Income and Capital Tax Treaty (2016) and Ivory Coast-Portugal Income and Capital Tax Treaty (2016).

2.2.2.2. Timelines and value thresholds

Nonetheless, there are multiple treaties that not only tend to limit the exemption on the remuneration by reference to a timeline, but also cap the amount of remuneration received thus limiting the value¹³ of the remuneration that is subject to the exemption. Belgium-Portugal Income and Capital Tax Treaty (1970) sets a time limit of 180 days and a maximum value

¹² For further information see J. Wheeler, *Time in Tax Treaties - Global Tax Treaty Commentaries*, Sec. 4.4.4.6.1., Global Topics IBFD.

¹³ Any references to currencies that are no longer in force should have its value updated to the current amount in euros taking into account the inflation rate and cost of living.

of the amount exempt from tax not exceeding 10 000 Belgium francs (Belgium's former currency before the Euro, requiring an update). France-Portugal Income and Capital Tax Treaty (1971) and Brazil-Portugal Income and Capital Tax Treaty (2001) set one year limit and 10 000 (francs- France's former currency before the Euro, requiring an update- and dollars respectively) as the maximum threshold. Romania-Portugal Income and Capital Tax Treaty (1999), India-Portugal Income and Capital Tax Treaty (2000) and Timor-Portugal Income and Capital Tax Treaty (2012) established an exemption period of two years as time limit though the maximum amount subject to the exemption differs: US 3 000 in case of Romania-Portugal and India-Portugal and US 9 000 in case of Timor-Portugal Income and Capital Tax Treaty (2012). Pakistan-Portugal Income and Capital Tax Treaty (2003) sets a three-year period and exempts up to an annual amount of US 4 000¹⁴ as well as Kuwait-Portugal Income and Capital Tax Treaty (2011), however, this latter does not mention a value, but rather determines that the exemption shall only apply to remuneration from employment not exceeding the Portuguese annual minimum wage (Ad Article 21 (2) of the Protocol). Ethiopia-Portugal Income and Capital Tax Treaty (2014) opts for a four-year period and a maximum value of EUR 6 000. Several treaties opt to extend the exemption period for a maximum of five years, notwithstanding presenting different thresholds regarding the maximum annual amount to be exempt from tax in the study state. Denmark-Portugal Income and Capital Tax Treaty (2002) , EUR 3 000, Vietnam-Portugal Income and Capital Tax Treaty (2016), US 9 000, Tunisia-Portugal Income and Capital Tax Treaty (2000), US 5 000, Sao Tomé e Príncipe-Portugal Income and Capital Tax Treaty (2016), EUR 6 500, Mozambique-Portugal Income and Capital Tax Treaty (2009 Protocol), US 5 400, Cape Verde-Portugal Income and Capital Tax Treaty (2000), EUR 4 750. Kenya-Portugal Income and Capital Tax Treaty (2020), the more recent treaty hereby regarded in the present section establishes the maximum period of 6 years and a threshold of maximum annual amount of EUR 7 500. This reveals that many treaties concluded by Portugal tend to exempt not only support payments that have their source outside of the study state but also remuneration. This is particularly relevant in the case of students and apprentices from developing countries who may face difficulties in supporting higher living costs in the study state than in their home state. Portuguese treaty policy is consistent with this premise and multiple DTC's concluded with developing countries tend to follow this pattern.

2.2.3. Extension of subjective scope mobility workers seeking to acquire professional experience

Some treaties concluded with the Portuguese state have their subjective scope extended in order to cover situations in which an individual who is assigned to a company of one of the contracting states temporarily moves to the other contracting state with the objective of acquiring professional experience. This goes beyond the wording of the OECD and UN Models which, de-

14 Pakistan-Portugal Income and Capital Tax Treaty (2003) specifies in its article qualifying payments should be made by persons residing outside of the study state.

spite not offering a definition of student nor apprentice¹⁵, should nonetheless be interpreted in light of the policy objectives of this article i.e. encourage cross-border educational exchanges, thus individuals who are currently undergoing any type of education or training falling within its scope. In case of students, it may range from primary school up to academic institutions and vocational courses. As for trainees or apprentices, this implies somebody who is in the process of learning and therefore still does not provide all the necessary legal requirements to exercise its job autonomously¹⁶. Notwithstanding the wording of the provision and its underlying objective, Cape Verde-Portugal Income and Capital Tax Treaty (2000), Tunisia-Portugal Income and Capital Tax Treaty (2000) and Germany-Portugal Income and Capital Tax Treaty (1982) extended their subjective scope to individuals temporarily present in the other contracting state with the purpose of acquiring professional experience, thus exempting their income provided that it remains below a certain threshold. Mozambique-Portugal Income and Capital Tax Treaty (1992) also enlarged its subjective scope only to be later removed from the wording of its article following the Mozambique-Portugal 2009 Protocol.

2.2.4. Particular cases

Germany-Portugal Income and Capital Tax Treaty (1982) is a particularly interesting treaty for its extensive wording on the taxation of students. As previously stated, Germany-Portugal Tax Treaty offers a more precise definition of student and apprentice for the purposes of this Article. Additionally, it also sets timeline for the exemption as well as a threshold for the amount of remuneration subject to the exemption, extends its subjective scope in order to cover individuals who intend to acquire professional experience in Germany or Portugal and extends the exemption to grants and scholarships, thus gathering all deviations hereby scrutinized, thereby providing a very clear and broader legal framework within the field of taxation of students and apprentices.

Contrastingly, Macau-Portugal Income and Capital Tax Treaty (1999) has the strictest objective and subjective scope of all treaties. According to its Article, a student or apprentice may only benefit from an exemption in respect of grants and scholarships, to the extent that such payments have their source outside of the study state.

15 Some treaties tend to clarify the definition of student and apprentice in order to avoid complications arising from broader interpretations of the term that may lead to an unintended extension of the scope of the exemption such as Germany-Portugal Income and Capital Tax Treaty (1982), Tunisia-Portugal Income and Capital Tax Treaty (2000), Mozambique-Portugal Income and Capital Tax Treaty (1992 and 2009 Protocol), Cape Verde-Portugal Income and Capital Tax Treaty (2000), Netherlands-Portugal Income and Capital Tax Treaty (2000), Norway-Portugal Income and Capital Tax Treaty (1970) – in force until 2012 and the United States of America-Portugal Income and Capital Tax Treaty (1995). The United States made a reservation to Article 20 specifically to include a definition of business trainee, in accordance with the *US Model Tax Convention on Income*. Estonia-Portugal Income and Capital Tax Treaty (2004) and Latvia-Portugal Income and Capital Tax Treaty (2003) reserved their right to amend the Article in order to refer to any apprentice or trainee, definitions that were included in their bilateral treaties concluded with Portugal.

16 See R. Vlasceanu, *Article 20 – Students, Teachers and Professors – Global Tax Treaty Commentaries*, Sec. 5.1.1.2., Global Topics IBFD.



3. Taxation of visiting teachers and professors

Taxation of visiting teachers and professors is not addressed in Article 20 of the OECD¹⁷ and UN Models per se, though the possibility of such a regime is mentioned in the Commentary on Article 20 of the UN Model¹⁸. Similar to the provisions regarding the taxation of students, the underlying policy of a provision dealing with taxation of visiting teachers and professors relies on the same fundamental policy aspects as those foreseen for students. It encourages cross-border cultural exchange and transfer of knowledge by facilitating short-term visits to individuals who temporarily move from one state to the other for the purpose of teaching, research or investigation activities. Nevertheless, in the absence of a provision dealing directly with taxation of visiting teachers and professors, the remuneration received is likely to be subject to Article 14, when the teaching services are to be performed in an independent capacity (and if such a provision is adopted. Alternatively, Article 7 might apply regarding independent services). In the case of a remuneration likely to be qualified as salary, Article 15 should be applicable. Furthermore, Article 19 is also to be considered to the extent that the remuneration is paid by a contracting state. Some treaties specifically refer to Article 19 under their provisions regarding taxation of visiting students by stating that, despite the rules regarding the taxation of visiting teachers and professors, Article 19 is nonetheless applicable, specifically, Germany-Portugal Income and Capital Tax Treaty (1982), Greece-Portugal Income and Capital Tax Treaty (2002), Ireland-Portugal Income and Capital Tax Treaty (1994) and Luxembourg-Portugal Income and Capital Tax Treaty (2000).

3.1. Internal policy aspects

On a domestic level, income derived from teaching and research is either qualified as a salary paid by an employer (public entity or in the private sector) thus within the context of an

¹⁷ Within the OECD context, divergences between OECD member countries made it difficult to achieve a consensus regarding the inclusion of a specific provision dealing with taxation of visiting teachers and professors. Given the lack of agreement, the WP 10 concluded that a specific provision should not be included in the model; see OEEC, Fiscal Committee, Minutes of the 6th Session held in Paris on 25-27 November 1957, doc. FC/M (58) 1 (6 Jan. 1958), available at <https://www.taxtreatieshistory.org>.

¹⁸ See paragraph 10 of the UN United Nations Model Double Taxation Convention between Developed and Developing Countries (2017), Treaties & Models IBFD. *The German Income and Capital Tax Treaty* (2013) also provides an exemption in respect of payments received by visiting teachers and professors.

employment relationship. Alternatively, it could be remuneration obtained by virtue of a service rendered to a certain entity or person, and therefore consisting of income that, in either case, is subject to income tax at a progressive tax rate. Nevertheless, certain payments that are funded through grants and scholarships and paid to an individual with the purpose of conducting higher education studies are exempt, since their contracts do not give rise to employment relationships nor service agreements¹⁹.

3.2. Treaty policy

3.2.1. Limitation of benefits by reference to a certain timeline

The inclusion of a separate provision addressing taxation of visiting teachers and professors is widespread under Portuguese treaty policy, thus granting an exemption of income derived from teaching and research by reference to a certain period of time. Generally, such benefit shall not be granted over a period exceeding 2 years, although in some cases the period is extended to 3 years, which is the case of China-Portugal Income and Capital Tax Treaty (2000) and United Arab Emirates-Portugal Income and Capital Tax Treaty (2012). Morocco-Portugal Income and Capital Tax Treaty (1999) on the other hand reduced its exemption period to a period of 12 months.

3.2.2. Exemption in the teaching state

Typically, the provision dealing with taxation of visiting teachers and professors exempts remuneration obtained by virtue of the teaching, investigation or research activity conducted in the teaching state. Some treaties specifically state that it is in the teaching state that such exemption shall occur. This is the case of Guinea Bissau-Portugal Income and Capital Tax Treaty (2009), Netherlands-Portugal Income and Capital Tax Treaty (1999), India-Portugal Income and Capital Tax Treaty (2000), Indonesia-Portugal Income and Capital Tax Treaty (2006), Ireland-Portugal Income and Capital Tax Treaty (1994), Israel-Portugal Income and Capital Tax Treaty (2008), Kuwait-Portugal Income and Capital Tax Treaty (2011), Latvia-Portugal Income and Capital Tax Treaty (2003), Lithuania-Portugal Income and Capital Tax Treaty (2003), Macau-Portugal Income and Capital Tax Treaty (1999), Montenegro-Portugal Income and Capital Tax Treaty (2017), Pakistan-Portugal Income and Capital Tax Treaty (2003), Poland-Portugal Income and Capital Tax Treaty (1997), Qatar-Portugal Income and Capital Tax Treaty (2012), Kenya-Portugal Income and Capital Tax Treaty (2020), Republic of Moldova-Portugal Income and Capital Tax Treaty (2010), Republic of Uruguay-Portugal Income and Capital Tax Treaty (1997), Romania-Portugal Income and Capital Tax Treaty (1999), Republic of San Marino-Portugal Income and Capital Tax Treaty (2014), São Tomé e Príncipe-Portugal Income and Capital Tax Treaty (2016), Senegal-Portugal Income and Capital Tax Treaty (2014), Oman Sultanate-Portugal Income and Capital Tax Treaty (2016), East Timor-Portugal Income and Capital Tax Treaty (2012), Turkey-Portugal Income and Capital Tax Treaty (2006), Ukraine-Portugal Income and Capital Tax Treaty (2002), Venezuela-Portugal Income and Capital Tax Treaty (1997) and Luxembourg-Portugal Income and Capital

19 See Article 4 of the Lei 40/2004 de 18 de Agosto and Section 1.1. of this working paper

Tax Treaty (2000). Apart from Luxembourg-Portugal, bilateral treaties usually remain silent regarding taxation of such payments in the origin state and provide no allocation of taxing rights. Hence, the origin state's taxing rights usually remain unaltered and are not dealt within the context of this Article. Nonetheless, Luxembourg-Portugal Income and Capital Tax Treaty (2000) specifically indicates that those payments are subject to tax in the origin state.

3.2.3. Exemption only in case of foreign remuneration

Some treaties clarify that the remuneration obtained must be sourced outside of the teaching state in order to qualify for the exemption there, such as South Africa-Portugal Income and Capital Tax Treaty (2008), Germany-Portugal Income and Capital Tax Treaty (1982), Greece-Portugal Income and Capital Tax Treaty (2002), Morocco-Portugal Income and Capital Tax Treaty (1999), Russia-Portugal Income and Capital Tax Treaty (2002) and Ukraine-Portugal Income and Capital Tax Treaty (2002).

In order to avoid double non-taxation situations²⁰, a subject-to-tax clause might be included to ensure that income derived from teaching or research and investigation activities in the teaching state is only exempt only to the extent that such income is subject to tax in the origin state, like in Poland-Portugal Income and Capital Tax Treaty (1997).

3.2.4. Exemption in both states

Other bilateral treaties provide a rather generous approach, by exempting income derived from teaching in both states. These include Brazil-Portugal Income and Capital Tax Treaty (2001), Cape Verde-Portugal Income and Capital Tax Treaty (2000), United States of America-Portugal Income and Capital Tax Treaty (1995), Mexico-Portugal Income and Capital Tax Treaty (2000), Mozambique-Portugal Income and Capital Tax Treaty (1992) and France-Portugal Income and Capital Tax Treaty (1971), with the latter exempting income derived in the teaching state in both states. Spain-Portugal Income and Capital Tax Treaty (1995) goes further by specifically stating that such income shall be exempt in the teaching state to the extent that it is not taxed under the rules of the origin state.

However, some treaties remain silent regarding the source of the payments received by visiting students and professors thereby only mentioning that such income is exempt, which is the case of Angola-Portugal Income and Capital Tax Treaty (2019), Barbados-Portugal Income and Capital Tax Treaty (2014), Bahrein-Portugal Income and Capital Tax Treaty (2016), Cyprus-Portugal Income and Capital Tax Treaty (2013), South Korea-Portugal Income and Capital Tax Treaty (1997), Ivory Coast-Portugal Income and Capital Tax Treaty (2016), Croatia-Portugal Income and Capital Tax Treaty (2015), United Arab Emirates-Portugal Income and Capital Tax Treaty (2012), Spain-Portugal Income and Capital Tax Treaty (1995), Estonia-Portugal Income and Capital Tax

20 As previously stated in Section 1.2., double non-taxations situations arising within the context of the taxation of students and apprentices do not create a major problem. However, it does not appear to be the same case when considering taxation of visiting teachers and professors, and many bilateral treaties include provisions aimed specifically at avoiding double non-taxation through the inclusion of subject to tax clauses or by offering a more precise definition of residency for these individuals, thus imposing limits on the benefits.

Treaty (2004) and Ethiopia-Portugal Income and Capital Tax Treaty (2014). Only Netherlands-Portugal Income and Capital Tax Treaty (2000) exempts income derived in the origin state.

3.2.5. Limitation of benefits according to the nature of institution

Many treaties contain provisions aimed at tackling abuse situations within the field of taxation of visiting teachers and professors. Some treaties opt to do so by limiting the scope of the exemption to income derived from teaching, research or investigation activities provided that such activities are conducted in approved institutions in the teaching state, as it is in Pakistan-Portugal Income and Capital Tax Treaty (2003) and India-Portugal Income and Capital Tax Treaty (2000). Pakistan-Portugal offers a definition of approved institutions. Alternatively, other treaties tend to exempt only to the extent that the institution where the teaching, research or investigation activities conducted correspond to a non-profit organization or undertaken within the context of a cultural exchange program. This is the case of Bulgaria-Portugal Income and Capital Tax Treaty (1996), China-Portugal Income and Capital Tax Treaty (2000), Cuba-Portugal Income and Capital Tax Treaty (2001), Slovenia-Portugal Income and Capital Tax Treaty (2004), Guinea Bissau-Portugal Income and Capital Tax Treaty (2009), Netherlands-Portugal Income and Capital Tax Treaty (1999), Indonesia-Portugal Income and Capital Tax Treaty (2006), Montenegro-Portugal Income and Capital Tax Treaty (2017), Poland-Portugal Income and Capital Tax Treaty (1997), Qatar-Portugal Income and Capital Tax Treaty (2012), Kenya-Portugal Income and Capital Tax Treaty (2020), Republic of Moldova-Portugal Income and Capital Tax Treaty (2010), Republic of Uruguay-Portugal Income and Capital Tax Treaty (1997), Romania-Portugal Income and Capital Tax Treaty (1999), Republic of San Marino-Portugal Income and Capital Tax Treaty (2014), São Tomé e Príncipe-Portugal Income and Capital Tax Treaty (2016), Senegal-Portugal Income and Capital Tax Treaty (2014), East Timor-Portugal Income and Capital Tax Treaty (2012), Turkey-Portugal Income and Capital Tax Treaty (2006), Ukraine-Portugal Income and Capital Tax Treaty (2002), Venezuela-Portugal Income and Capital Tax Treaty (1997) and Spain-Portugal Income and Capital Tax Treaty (1995). This latter also exempts in case the income derived is paid by the state.

Other treaties only exempt payments which are funded directly out of grants and scholarships, such as Indonesia-Portugal Income and Capital Tax Treaty (2006), Senegal-Portugal Income and Capital Tax Treaty (2014) and Venezuela-Portugal Income and Capital Tax Treaty (1997). Venezuela-Portugal Income and Capital Tax Treaty (1997) only exempts these type of payments if the grant or scholarship is tax exempt under the domestic law of the teaching state.

3.2.6. Limitation of benefits according to the purpose of the investigation

Even though cross-border cultural exchange and knowledge exchange is broadly endorsed under Portuguese treaty practice, not all activities undertaken for the purpose of knowledge and cultural exchange benefit from the exemption. It is not uncommon for states to limit the scope of the exemption by referencing to the underlying objective of activity undertaken, thereby ensuring that only activities carried out in the public interesting may benefit from the exemption, as opposed to those carried out for private benefit. This is the case of South Africa-Portugal

Income and Capital Tax Treaty (2008), Germany-Portugal Income and Capital Tax Treaty (1982), China-Portugal Income and Capital Tax Treaty (2000), Ivory Coast-Portugal Income and Capital Tax Treaty (2016), Croatia-Portugal Income and Capital Tax Treaty (2015), Cuba-Portugal Income and Capital Tax Treaty (2001), Slovenia-Portugal Income and Capital Tax Treaty (2004), United States of America-Portugal Income and Capital Tax Treaty (1995), Estonia-Portugal Income and Capital Tax Treaty (2004), Ethiopia-Portugal Income and Capital Tax Treaty (2014), Estonia-Portugal Income and Capital Tax Treaty (2004), Greece-Portugal Income and Capital Tax Treaty (2002), Netherlands-Portugal Income and Capital Tax Treaty (2000), India-Portugal Income and Capital Tax Treaty (2000), Ireland-Portugal Income and Capital Tax Treaty (1994), Israel-Portugal Income and Capital Tax Treaty (2008), Latvia-Portugal Income and Capital Tax Treaty (2003), Lithuania-Portugal Income and Capital Tax Treaty (2003), Macau-Portugal Income and Capital Tax Treaty (1999), Morocco-Portugal Income and Capital Tax Treaty (1999), Mexico-Portugal Income and Capital Tax Treaty (2000), Pakistan-Portugal Income and Capital Tax Treaty (2003), Poland-Portugal Income and Capital Tax Treaty (1997), Qatar-Portugal Income and Capital Tax Treaty (2012), Kenya-Portugal Income and Capital Tax Treaty (2020), Romania-Portugal Income and Capital Tax Treaty (1999), Russia-Portugal Income and Capital Tax Treaty (2002) and Oman Sultanate-Portugal Income and Capital Tax Treaty (2016).

3.2.7. Restrictions on the subjective scope

Most treaties tend to focus more on the nature of the activity i.e. teaching, research and investigation as opposed to the profile of the individual.

Nonetheless, some treaties are specific regarding the profile of the beneficiary of the exemption, and may exclude from its scope any person carrying out a teaching, research or investigation activity that is not a teacher, professor, researcher or other recognized academic title. Consequently, only people who conduct their activity in its capacity as teachers, researchers or other academic titles may benefit from the exemption. Such provisions may be found in France-Portugal Income and Capital Tax Treaty (1971), Greece-Portugal Income and Capital Tax Treaty (2002), Netherlands-Portugal Income and Capital Tax Treaty (2000), India-Portugal Income and Capital Tax Treaty (2000), Ireland-Portugal Income and Capital Tax Treaty (1994), Luxembourg-Portugal Income and Capital Tax Treaty (2000) and Russia-Portugal Income and Capital Tax Treaty (2002).

3.2.8. Exemption conditioned to prior invitation by the institution

Some countries impose that, in order to qualify for the exemption, and in addition to other conditions that have already been hereby subject to analysis in the previous sections, visiting teachers and professors require an invitation made by the institution where the teaching, research or investigation activity is to be undertaken, thus referring to this condition in their provisions regarding taxation of visiting teachers and professors. Hence, the exemption shall only be granted provided that the activity is carried out solely under invitation made by the institution. This is the example of Brazil-Portugal Income and Capital Tax Treaty (2001), Germany-Portugal Income and Capital Tax Treaty (1982), South Korea-Portugal Income and Capital

Tax Treaty (1997), United States of America-Portugal Income and Capital Tax Treaty (1995), Ethiopia-Portugal Income and Capital Tax Treaty (2014), Kuwait-Portugal Income and Capital Tax Treaty (2011), Morocco-Portugal Income and Capital Tax Treaty (1999), Mexico-Portugal Income and Capital Tax Treaty (2000), Mozambique-Portugal Income and Capital Tax Treaty (1992), Montenegro-Portugal Income and Capital Tax Treaty (2017) and Oman Sultanate-Portugal Income and Capital Tax Treaty (2016).

3.2.9. Residency issues

Similar to the provision regarding students and trainees, most treaties concluded by the Portuguese state have adopted the same wording in their provisions regarding taxation of visiting teachers and professors. Hence, it is common that benefits contained in the Article only apply to individuals who are or were resident of the origin immediately before moving to the visiting state. Treaties adopting this expression are South Africa-Portugal Income and Capital Tax Treaty (2008), Angola-Portugal Income and Capital Tax Treaty (2019), Germany-Portugal Income and Capital Tax Treaty (1982), Barbados-Portugal Income and Capital Tax Treaty (2014), Bahrain-Portugal Income and Capital Tax Treaty (2016), Brazil-Portugal Income and Capital Tax Treaty (2001), Bulgaria-Portugal Income and Capital Tax Treaty (1996), Cape Verde-Portugal Income and Capital Tax Treaty (2000), China-Portugal Income and Capital Tax Treaty (2000), Cyprus-Portugal Income and Capital Tax Treaty (2013), South Korea-Portugal Income and Capital Tax Treaty (1997), Ivory Coast-Portugal Income and Capital Tax Treaty (2016), Croatia-Portugal Income and Capital Tax Treaty (2015), Cuba-Portugal Income and Capital Tax Treaty (2001), United Arab Emirates-Portugal Income and Capital Tax Treaty (2012), Slovenia-Portugal Income and Capital Tax Treaty (2004), Spain-Portugal Income and Capital Tax Treaty (1995), United States of America-Portugal Income and Capital Tax Treaty (1995), Estonia-Portugal Income and Capital Tax Treaty (2004), Ethiopia-Portugal Income and Capital Tax Treaty (2014), Greece-Portugal Income and Capital Tax Treaty (2002), Guinea Bissau-Portugal Income and Capital Tax Treaty (2009), Netherlands-Portugal Income and Capital Tax Treaty (1999), Indonesia-Portugal Income and Capital Tax Treaty (2006), Ireland-Portugal Income and Capital Tax Treaty (1994), Israel-Portugal Income and Capital Tax Treaty (2008), Kuwait-Portugal Income and Capital Tax Treaty (2011), Latvia-Portugal Income and Capital Tax Treaty (2003), Lithuania-Portugal Income and Capital Tax Treaty (2003), Macau-Portugal Income and Capital Tax Treaty (1999), Morocco-Portugal Income and Capital Tax Treaty (1999), Mozambique-Portugal Income and Capital Tax Treaty (1992), Montenegro-Portugal Income and Capital Tax Treaty (2017), Pakistan-Portugal Income and Capital Tax Treaty (2003), Poland-Portugal Income and Capital Tax Treaty (1997), Qatar-Portugal Income and Capital Tax Treaty (2012), Kenya-Portugal Income and Capital Tax Treaty (2020), Republic of Moldova-Portugal Income and Capital Tax Treaty (2010), Republic of Uruguay-Portugal Income and Capital Tax Treaty (1997), Russia-Portugal Income and Capital Tax Treaty (2002), Republic of San Marino-Portugal Income and Capital Tax Treaty (2014), São Tomé e Príncipe-Portugal Income and Capital Tax Treaty (2016), Senegal-Portugal Income and Capital Tax Treaty (2014), Oman Sultanate-Portugal Income and Capital Tax Treaty (2016), East Timor-

Portugal Income and Capital Tax Treaty (2012), Turkey-Portugal Income and Capital Tax Treaty (2006), Ukraine-Portugal Income and Capital Tax Treaty (2002), Venezuela-Portugal Income and Capital Tax Treaty (1997) and India-Portugal Income and Capital Tax Treaty (2000). India-Portugal goes further by providing a detailed timeline under which a person is resident of a Contracting State for the purpose of the article.

3.2.10. Limitation to one single benefit

Finally, both United States of America-Portugal Income and Capital Tax Treaty (1995) and Ireland-Portugal Income and Capital Tax Treaty (1994) state that an individual may only be entitled once to the benefits. Interestingly, both these treaties happen to have been concluded within the same timeline.



CIDEFF

CIDEFF WORKING PAPERS

GOVERNANÇA FISCAL | TAX GOVERNANCE

Students, teachers and professors – Article 20 of the OECD and UN Models
An Overview of the Portuguese Tax Treaty Network