

**CONVENTION  
FOR THE AVOIDANCE OF DOUBLE TAXATION OF INCOME AND CAPITAL AND  
FOR THE PREVENTION OF FISCAL EVASION AND FRAUD  
BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC  
AND  
AND THE GOVERNMENT OF THE ITALIAN REPUBLIC<sup>1</sup>,**

Have agreed to the following provisions:

*Article 1 - Persons concerned*

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

*Article 2 - Taxes covered*

1. This Convention shall apply to taxes on income and on capital imposed on behalf of a State, of its political or administrative subdivisions or local authorities (in the case of Italy) or territorial authorities (in the case of France), 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 and on total capital, or on elements of income or of capital, 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:

(a) in the case of France:

(i) the income tax (l'imp<sup>o</sup>t sur le revenu);

(ii) the corporation tax (l'imp<sup>o</sup>t sur les soci,t,s);

(iii) the solidarity tax on capital (l'imp<sup>o</sup>t de solidarit, sur la fortune);

(iv) the taxes levied on the total amount of wages or salaries (les taxes assises sur le montant global des salaires);

(v) the business tax (la taxe professionnelle);

including any taxes withheld at source, prepayments (pr,comptes) and advance payments levied with respect to the above-mentioned taxes (hereinafter referred to as "French tax");

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<sup>1</sup> Date of Conclusion: 5 October 1989. - Entry into Force: 1 May 1992. - Effective Date: 1 May 1992 (withholding tax); generally, 1 January 1992 (other taxes)(see Article 31).

(b) in the case of Italy:

- (i) the individual income tax (imposta sul reddito delle persone fisiche);
- (ii) the corporate income tax (imposta sul reddito delle persone giuridiche);
- (iii) the local income tax (imposta locale sui redditi);

even if such taxes are levied by withholding at source (hereinafter referred to as "Italian tax").

4. The Convention shall apply also to any identical or substantially similar taxes which 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 States shall notify each other of important changes which have been made in their respective taxation laws.

### Article 3 - *General definitions*

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

(a) the terms "a State" and "the other State" mean the French Republic or the Italian Republic, as the case may be; the term "both States" means the French Republic and the Italian Republic;

(b) the term "France" means the European and overseas departments of the French Republic, including the territorial seas and in addition those zones over which the French Republic, in accordance with international law, has sovereign rights for the purposes of exploration for and exploitation of the natural resources of the seabed and its subsoil and the above-lying waters;

(c) the term "Italy" means the Italian Republic and includes the territorial sea as well as any area beyond the territorial sea over which Italy, by virtue of its laws and in accordance with customary international law, exercises sovereign rights for the purposes of exploration for and exploitation of the natural resources of the seabed and its subsoil and the above-lying waters;

(d) the term "person" includes an individual, a company and any other body of persons;

(e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(f) the terms "enterprise of a State" and "enterprise of the other State" mean respectively an enterprise carried on by a resident of a State and an enterprise carried on by a resident of the other State;

(g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a State, except when the ship or aircraft is operated solely between places in the other State;

(h) the term "nationals" means:

(i) all individuals possessing the nationality of a State;

(ii) all legal persons, partnerships and associations deriving their status as such from the laws in force in a State;

(i) the term "competent authority" means:

(i) in the case of the French Republic, the Minister of the Budget or his authorised representative;

(ii) in the case of the Italian Republic, the Ministry of Finance.

2. As regards the application of the Convention by a State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

#### Article 4 - Resident

1. For the purposes of this Convention, the term "resident of a 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 or any other criterion of a similar nature. But this term 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 States, then his status shall be determined as follows:

(a) he shall be deemed to be a resident 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 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 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 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 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 States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

This provision shall particularly apply to partnerships and similar bodies formed in a State in accordance with its laws.

## 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:
  - (a) a place of management;
  - (b) a branch;
  - (c) an office;
  - (d) a factory;
  - (e) a workshop;
  - (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
  - (g) a building site or construction or installation project if it lasts more than 12 months.
3. The term "permanent establishment" shall not be deemed to include:
  - (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
  - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
  - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
  - (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.
4. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 5 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a 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 3 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.

5. An enterprise of a State shall not be deemed to have a permanent establishment in the other 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 State controls or is controlled by a company which is a resident of the other 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, including income from agriculture or forestry, may be taxed in the State in which such property is situated.

2. The term "immovable property" shall be defined in accordance with the law of the State in which the property in question is situated. The term shall in any case encompass property accessory to immovable property, livestock and equipment used in agriculture and forestry, as well as rights to which the provisions of general law respecting landed property apply. The term "immovable property" shall moreover be deemed to include 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, boats 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.

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.

#### *Article 7 - Business profits*

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

2. Subject to the provisions of paragraph 3, where an enterprise of a State carries on business in the other State through a permanent establishment situated therein, there shall in each 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 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 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.

#### *Article 8 - Shipping and air transport*

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the 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 State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the 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 group, a joint business or an international operating agency.

#### *Article 9 - Associated enterprises*

Where

(a) an enterprise of a State participates directly or indirectly in the management, control or capital of an enterprise of the other State, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a State and an enterprise of the other 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 State to a resident of the other State may be taxed in that other State.

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

(a) 5% of the gross amount of the dividends if the beneficial owner is a company subject to the corporation tax which holds directly or indirectly, for a period of at least 12 months preceding the date the dividends were declared, at least 10% of the capital of the company paying the dividends;

(b) 15% of the gross amount of the dividends in all other cases.

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

3. (a) A resident of Italy who receives dividends distributed by a company resident in France which would entitle a resident of France receiving such dividends to a tax credit (avoir fiscal) is entitled to a payment from the French Treasury equal to such tax credit, reduced by the withholding at source at the rate provided in paragraph 2(b) if it concerns:

(i) an individual who includes the gross amount of such dividends in his gross income as determined for the purposes of the Italian individual income tax;

(ii) a company, other than those mentioned in paragraph 2(a), which includes the gross amount of such dividends in the taxable base for the purposes of the Italian corporate income tax.

(b) A company resident in Italy, mentioned in paragraph 2(a), or liable to the Italian law applicable to parent companies, which receives dividends from a company resident in France which would entitle a company resident in France receiving such dividends to a tax credit (avoir fiscal), is entitled to a payment from the French Treasury equal to half of such tax credit, reduced by the withholding at source at the rate provided in paragraph 2.

4. (a) A resident of France who receives dividends distributed by a company resident in Italy which would entitle a resident of Italy receiving such dividends to a tax credit (credito d'imposta) is entitled to a payment from the Italian Treasury equal to such tax credit, reduced by the withholding at source at the rate provided in paragraph 2(b), if it concerns:

(i) an individual who includes the gross amount of such dividends in his gross income as determined for the purposes of the French income tax;

(ii) a company, other than those mentioned in paragraph 2(a), which includes the gross amount of such dividends in the taxable base for the purposes of the French corporation tax.

(b) A company resident in France, mentioned in paragraph 2(a), or liable to the French law applicable to parent companies, which receives dividends from a company resident in Italy which would entitle a resident of Italy receiving such dividends to a tax credit (credito d'imposta), is entitled to a payment from the Italian Treasury equal to half of such tax credit, reduced by the withholding at source at the rate provided in paragraph 2.

5. If a resident of Italy who receives dividends distributed by a company which is resident in France is not entitled to the payment by the French Treasury mentioned in paragraph 3(a), he may obtain a refund of the prepayment (pr,compte) reduced by the withholding at source mentioned in paragraph 2, if such prepayment has effectively been paid by the company on account of those dividends. If a company requests a refund of the prepayment, the provisions of paragraph 3(b) shall not apply.

6. If a resident of France who receives dividends distributed by a company which is resident in Italy is not entitled to the payment by the Italian Treasury mentioned in paragraph 4(a), he is entitled to a refund of an amount equal to the "maggiorazione di conguaglio" pertaining to such dividends, reduced by the withholding at source mentioned in paragraph 2, if such "maggiorazione di conguaglio" has effectively been paid by the company on account of those dividends. The refund must be requested within the time limits provided in Italian law by the intermediary of that company which, in such instance, acts in the name and on behalf of the resident of France so requesting. If a company requests a refund of the "maggiorazione di conguaglio", the provisions of paragraph 4(b) shall not apply.

The company making the distribution may pay a resident of France the amount which is refundable at the same time it pays the dividends and deduct such amount from tax due in its first tax return filed after the payment.

A resident of France is entitled to payment of an amount equal to the "maggiorazione de conguaglio" if it is the beneficial owner of the dividends on the date the dividends were declared and, in the instance mentioned in paragraph 2(a), if it has owned the shares for a period of at least 12 months prior to that date.

Where the taxable income of the company making the distribution is later increased, or where reserves or other funds are subsequently taxed, the reduction in tax payable by the company for the tax period during which the adjustment has become final is limited to that portion of the tax pertaining to the dividends subject to the "maggiorazione di conguaglio" and effectively paid to the Treasury.

The provisions of this paragraph shall apply to dividends declared from the date of entry into force of this Convention.

7. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a State, carries on business in the other 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 dividends shall be taxable in that other State in accordance with its domestic legislation.



8. Where the beneficial owner of the dividends is a company resident in a State, and more than half of its capital is owned by one or more persons who are not resident in that State, the provisions of paragraphs 3 and 4 shall apply only on condition that such company furnishes the competent authority of the other State, if so requested by that competent authority, information permitting the authority to determine if the company has acquired the holding in good faith for business reasons or in the normal framework of investment operations and not primarily to benefit from the "avoir fiscal" or the "credito d'imposta".

9. (a) 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 which is subject to treatment as income from distributions by the laws of the State of which the company making the distribution is a resident.

(b) Also considered dividends paid by a company which is resident in one of the States are the gross payment by the respective Treasury, in France, of the "avoir fiscal" mentioned in paragraph 3 and, in Italy, of the "credito d'imposta" mentioned in paragraph 4, and the gross amount refunded, in France, in respect of the prepayment (pr.compte) mentioned in paragraph 5 and, in Italy, of the "maggiorazione di conguaglio" mentioned in paragraph 6, pertaining to dividends paid by that company.

10. Where a company which is a resident of a State derives profits or income from the other 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 State and paid to a resident of the other State may be taxed in that other State.

2. However, such interest may also be taxed in the State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10% of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest mentioned in paragraph 1 may be taxed only in the State of which the person receiving the interest is a resident, if such person is the beneficial owner thereof and if the interest is paid:

(a) in connection with the sale on credit of industrial, commercial or scientific equipment; or

(b) in connection with the sale on credit of merchandise delivered by one enterprise to another enterprise.

4. Notwithstanding the provisions of paragraph 2, interest arising in one of the States shall be exempt from tax in that State if:

(a) the payer of the interest is that State or one of its political or administrative subdivisions or local authorities (in the case of Italy) or one of its territorial authorities (in the case of France); or

(b) the interest is paid in consideration of a loan granted or guaranteed by the other State or one of its political or administrative subdivisions or local authorities (in the case of Italy) or one of its territorial authorities (in the case of France) or a public body of that other State; or

(c) the interest is paid to other institutions or bodies (including financial institutions) for financing granted by them in the framework of an agreement concluded between the Governments of both States.

5. 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.

6. The provisions of paragraphs 1, 2, 3 and 4 shall not apply if the beneficial owner of the interest, being a resident of a State, carries on business in the other 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 interest may be taxed in that other State in accordance with its domestic legislation.

7. Interest shall be deemed to arise in a State when the payer is that State itself, a political or administrative subdivision or a local authority (in the case of Italy), a territorial authority (in the case of France) or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a State or not, has in a State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

8. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, 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 beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each State, due regard being had to the other provisions of this Convention.

#### Article 12 - *Royalties*

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

2. However, such royalties may also be taxed in the State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 5% of the gross amount of the royalties.

3. Notwithstanding the provisions of paragraphs 1 and 2, royalties arising in a State and paid to a resident of the other State for the use of, or the right to use, a copyright of literary, artistic or scientific work (excluding royalties for computer programmes, cinematograph films and other sound or visual recordings) shall be taxable only in that other State if such resident is the beneficial owner thereof.

4. 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, of computer programmes, of cinematograph films and any other sound or visual recordings, 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.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the royalties, being a resident of a State, carries on business in the other State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the royalties may be taxed in that other State in accordance with its domestic legislation.

6. Royalties shall be deemed to arise in a State when the payer is that State itself, a political or administrative subdivision or local authority (in the case of Italy), a territorial authority (in the case of France) or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a State or not, has in a State a permanent establishment or fixed base in connection with which the contract giving rise to the royalties was concluded, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, 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 beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. The excess part of the payments shall remain taxable according to the laws of each 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 referred to in Article 6, may be taxed in the 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 State has in the other State or of movable property forming part of a fixed base available to a resident of a State in the other State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3 shall be taxable only in the State of which the alienator is a resident.

#### *Article 14 - Independent personal services*

1. Income derived by a resident of a State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational, or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

#### *Article 15 - Dependent personal services*

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other 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 State in respect of an employment exercised in the other 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 derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the State in which the place of effective management of the enterprise is situated; if that State does not levy any tax on such remuneration, that remuneration may be taxed in the State of which the recipient is a resident.

4. Notwithstanding the preceding provisions of this Article, employment income of persons living in the frontier zone of one of the States and working in the frontier zone of the other State shall be taxable only in the State of which such a person is resident.

#### *Article 16 - Company directors and members of administrative or supervisory boards*

1. Directors' fees and other payments derived by a resident of a State who exercises directorial or supervisory functions in a company which is a resident of the other State, or who is a member of the administrative or supervisory board of such a company, may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, such remuneration derived by a person exercising a real and permanent function in a permanent establishment situated in a State other than the State in which the company is resident and borne as such by that permanent establishment may be taxed in that other State.

#### *Article 17 - Artistes and athletes*

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other State, may be taxed in that other State.

Where an entertainer or athlete, being a resident of a State, derives income from the other State for performances that have a connection with his professional standing, such income may be taxed in that other State.

2. Where income mentioned in paragraph 1 accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the State in which it arises.
3. Notwithstanding the provisions of paragraph 1, remuneration or profits, and wages, salaries and other similar income of an entertainer or athlete, being a resident of a State, arising from his personal activities as such exercised in the other State shall be taxed only in the first-mentioned State if those activities in the other State are financed to a significant extent by public funds of that first-mentioned State, one of its political or administrative subdivisions or local authorities (in the case of Italy) or territorial authorities (in the case of France), or one of its public legal entities.
4. Notwithstanding the provisions of paragraph 2, where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed only in the other State if that other person is financed to a significant extent by public funds of that other State, one of its political or administrative subdivisions or local authorities (in the case of Italy) or territorial authorities (in the case of France), or one of its public legal entities.

#### *Article 18 - Pensions*

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a State in consideration of past employment shall be taxable only in that State.
2. Notwithstanding the provisions of paragraph 1, pensions and other amounts paid under the social security legislation of a State may be taxed in that State.

#### Article 19 - *Government service*

1. (a) Remuneration, other than a pension, paid by a State or one of its political or administrative subdivisions or local authorities (in the case of Italy) or territorial authorities (in the case of France) to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.  
  
(b) However, such remuneration shall be taxable only in the State in which the services are rendered if the recipient of the remuneration is a resident of that State who:
  - (i) is a national of that State not being a national of the other State; or
  - (ii) not being a national of the other State, was a resident of the first-mentioned State before rendering the services there.
2. (a) Any pension paid by, or out of funds created by, a State or one of its political or administrative subdivisions or local authorities (in the case of Italy) or territorial authorities (in the case of France) to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.  
  
(b) However, such pension shall be taxable only in the other State if the recipient is a resident of that State and if he is a national of that State not being a national of the State from which the pension arises.
3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions paid in respect of services rendered in connection with a business carried on by a State or one of its political or administrative subdivisions or local authorities (in the case of Italy) or territorial authorities (in the case of France).

#### Article 20 - *Teachers and researchers*

1. Remuneration which a teacher or researcher who is or was immediately before visiting a State a resident of the other State and who is present in the first-mentioned State solely for the purpose of teaching or conducting research receives in respect of such activities shall not be taxed in that State for a period which may not exceed two years.
2. The provisions of paragraph 1 shall not apply to remuneration received in respect of research undertaken not in the public interest but principally to realise a particular advantage benefitting one or more specific persons.

#### Article 21 - *Students*

Payments which a student or business apprentice who is or was immediately before visiting a State a resident of the other State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

## Article 22 - *Other income*

1. Items of income of a resident of a State, wherever arising, not dealt with in the other Articles of this Convention shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply if the recipient of the income, being a resident of a State, carries on business in the other State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the items of income which are not dealt with in the other Articles of this Convention may be taxed in that other State in accordance with its domestic legislation.

## Article 23 - *Capital*

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a State and situated in the other State, may be taxed in that other State.
2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a State has in the other State or by movable property pertaining to a fixed base available to a resident of a State in the other State for the purpose of performing independent personal services, may be taxed in that other State.
3. Capital represented by ships and aircraft operated in international traffic and by movable property pertaining to the operation of such ships and aircraft may be taxed in the State in which the place of effective management of the enterprise is situated.
4. All other elements of capital of a resident of a State shall be taxable only in that State.

## Article 24 - *Provisions for elimination of double taxation*

Double taxation shall be avoided as follows:

1. In the case of France:

(a) Profits and other positive income which arise in Italy and which are taxable there in accordance with the provisions of the Convention shall also be taxable in France if derived by a resident of France. The Italian tax is not deductible in calculating taxable income in France. The recipient is, however, entitled to a tax credit against the French tax in the base of which such income is included. Such tax credit shall be equal to: - for income mentioned in Articles 10, 11, 12, 16 and 17 and Section 8 of the Protocol to the Convention, the amount of tax paid in Italy in accordance with the provisions of those Articles. It may not, however, exceed the amount of French tax attributable to such income; - for all other income, the amount of French tax attributable thereto. This provision also applies to the remuneration referred to in Article 8, paragraph 3 of Article 13 and Article 19.

(b) Residents of France owning capital taxable in Italy in accordance with the provisions of paragraphs 1 to 3 of Article 23 and paragraphs (a) and (b) of Section 11 of the Protocol to the Convention shall also be taxable in France with reference to that capital. The French tax shall be calculated by deducting a tax credit equal to the amount of capital tax paid in Italy. This credit may not, however, exceed the French tax attributable to capital taxable in Italy.

2. In the case of Italy:

Where a resident of Italy derives items of income which may be taxed in France, Italy, in calculating the income taxes mentioned in Article 2 of this Convention, may include in the taxable base for such taxes those items of income, unless specific provisions of this Convention provide otherwise.

In such case Italy must deduct the income tax paid in France from the taxes so calculated, but the amount of the deduction may not exceed that part of the Italian tax attributable to those items of income in the ratio of those items to the total income.

However, no deduction shall be granted if the item of income is subject to tax in Italy by way of a final withholding at source by request of the recipient of the income in accordance with Italian law.

*Article 25 - Non-discrimination*

1. Nationals of a State, whether or not they are residents of one of the States, shall not be subjected in the other 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. (a) The taxation on a permanent establishment which an enterprise of a State has in the other State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a State to grant to residents of the other State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

(b) Where a permanent establishment situated in a State receives dividends, interest or royalties arising in the other State and pertaining to property or rights effectively connected with its activities, such income may be taxed in the State in which it arises in accordance with the respective provisions of paragraph 2(b) of Article 10, paragraph 2 of Article 11 and paragraph 2 of Article 12. The State in which the permanent establishment is situated shall eliminate double taxation in accordance with the conditions provided in paragraph 1(a) or paragraph 2 of Article 24, disregarding the last clause. This provision shall apply wherever the enterprise of which the permanent establishment is a part has its place of management.

3. Except where the provisions of Article 9, paragraph 8 of Article 11 or paragraph 7 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a State to a resident of the other State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.



Similarly, any debts owed by an enterprise of a State to a resident of the other State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. Enterprises of a State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other State, shall not be subjected in the first-mentioned 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. The provisions of this Article shall apply to taxes of every kind and description.

#### *Article 26 - Mutual agreement procedure*

The provisions of Article 26 of the Tax Convention of 29 October 1958, the text of which is as follows, shall remain in force:

##### "Article 26

"1. The tax authorities of the two Contracting States may by mutual agreement make such regulations as may be necessary for carrying out the provisions of this Convention.

"2. Where difficulties or doubts arise in carrying out any of the provisions of this Convention, the tax authorities of the two Contracting States shall come to an agreement with a view to interpreting the said provisions of the Convention.

"3. Where a taxpayer of one of the Contracting States shows proof that taxes assessed or likely to be assessed against him have resulted or will result in double taxation prohibited by the Convention, he may, without prejudice to the exercise of his rights of complaint and appeal in either State, submit to the tax authorities of the State in which he has his domicile a written application for the review of the said taxes. Such application must be lodged within six months from the date of notification or collection at source of the second tax. If the application is upheld by the tax authorities to which it is submitted, the latter shall come to an understanding with the tax authorities of the other State with a view to the avoidance of the double taxation.

"4. If it appears that agreement would be facilitated by negotiations, such negotiations shall be entrusted to a Mixed Commission composed of representatives of the two States appointed by the highest administrative authorities thereof."

#### *Article 27 - Exchange of information*

1. The competent authorities of the States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention, as well as to prevent tax evasion and fraud. The exchange of information is not restricted by Article 1.

Any information received by a State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other State;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other 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*).

#### *Article 28 - Assistance in collection*

The provisions of Article 25 of the Tax Convention of 29 October 1958, the text of which is as follows, shall remain in force:

##### "Article 25

"1. The Contracting States undertake to support and assist each other in the collection of the taxes dealt with in this Convention, and in the collection of interest, costs, supplementary taxes and surcharges.

"2. The tax authorities of the State requested to support and assist the other State shall effect collection in accordance with the rules governing the collection of similar tax debts of their own. Tax debts to be collected shall not be regarded as privileged debts in the requested State.

"3. Legal proceedings shall be initiated and enforcement measures taken on production of an official copy of the enforceable order and, where appropriate, the final decision.

"4. Where tax debts are still subject to appeal, the creditor State, in order to protect its rights, may request the other State to serve an execution or collection order on the debtor. Appeals against the claims for which enforcement has in this manner been sought shall lie only to the competent tribunal of the applicant State."

#### *Article 29 - Diplomatic and consular officers*

1. Nothing in this Convention shall affect the fiscal privileges of the members of diplomatic missions and their personal servants, the members of consular posts, as well as the members of permanent delegations to international organisations under the general rules of international law or under the provisions of special agreements.

2. The Convention shall not apply to international organisations, their bodies or officials, nor to persons who are members of a diplomatic mission or consular post or a permanent delegation of a third State, when they are in the territory of a State and are not treated as residents of either State with respect to taxes on income or capital.

#### *Article 30 - Territorial extension*

1. This Convention may be extended, either in its entirety or with any necessary modifications, to the overseas territories and other territorial authorities of the French Republic which impose taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed between the States in notes to be exchanged through diplomatic channels or in any other manner in accordance with their constitutional procedures.

2. Unless otherwise agreed by both States, the termination of the Convention by one of them under Article 32 shall also terminate, in the manner provided for in that Article, the application of the Convention to any territory or territorial authority to which it has been extended under this Article.

#### *Article 31 - Entry into force*

1. Each of the States shall notify the other of the completion of the procedures required by its laws for the entry into force of this Convention. It shall enter into force on the first day of the second month following that in which the later of such notifications has taken place.

2. Its provisions shall apply for the first time:

(a) with respect to taxes levied by withholding at source, to amounts credited or taxable from the date of entry into force of the Convention;

(b) with respect to other taxes on income, to income realized during the calendar year in which the Convention enters into force or pertaining to the accounting period beginning during that year;

(c) with respect to taxes on capital, to capital owned on 1 January of the calendar year during which the Convention enters into force.

3. With the exception of the provisions of Articles 25 and 26, the Tax Convention of 29 October 1958 between France and Italy for the avoidance of double taxation and to regulate certain other questions concerning direct taxes on income and capital as well as the Amendment to that Convention and the Protocol of 6 December 1965 shall cease to apply to any French or Italian tax to which this Convention applies.

*Article 32 - Termination*

1. This Convention shall remain in force indefinitely. However, either State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the fifth year following its entry into force.

2. In such event, the Convention shall apply for the last time:

(a) with respect to taxes levied by withholding at source, to amounts credited or taxable with respect to the calendar year for the end of which notice of termination has been given;

(b) with respect to other taxes on income, to income realized during the calendar year for the end of which notice of termination has been given or pertaining to the accounting period which ends during that year;

(c) with respect to taxes on capital, to capital owned on 1 January of the calendar year for the end of which notice of termination has been given.

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

Done at Venice on 5 October 1989, in duplicate in the French and Italian languages, both texts being equally authentic.

For the Government of the French Republic:

P. B,r,govoy

For the Government of the Italian Republic:

R. Formica

## **PROTOCOL**

At the moment of signing the Convention concluded today between the Government of the French Republic and the Government of the Italian Republic for the avoidance of double taxation with respect to taxes on income and on capital and for the prevention of tax evasion and fraud, the undersigned have agreed to the following provisions which shall form an integral part of the Convention.

1. It is understood that the taxes levied on the total amount of salaries and the business tax mentioned in paragraph 3(a)(iv) and (v) of Article 2 shall be subject to the provisions concerning the profits of enterprises (Article 7 or 8, as the case may be) or income from independent professional services (Article 14). The taxes levied on the total amount of salaries shall not apply to the salaries of persons mentioned in paragraph (b) of Section 10 of this Protocol.

2. With respect to paragraph 1(g) of Article 3, the term "international traffic" shall also mean any transport effected by container where such transport is only complementary to transport effected in international traffic.

3. With respect to Article 6, income from stocks, shares or participations in a company or legal entity owning immovable property in a State, which in accordance with the laws of that State is subject to the same tax regime as income from immovable property, shall be taxable in that State.

### 4. Article 7

(a) With respect to paragraphs 1 and 2, where an enterprise of a State sells goods or merchandise or carries on business in the other State through a permanent establishment situated therein, the profits of such permanent establishment shall not be calculated on the basis of the total amount received by the enterprise but solely on the basis of the remuneration attributable to the actual activities of the permanent establishment pertaining to such sales or such business.

In the case of contracts, especially contracts for studies, for the supply, installation or construction of equipment for industrial, commercial or scientific enterprises or public works, where the enterprise has a permanent establishment, the profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but solely on the basis of the portion of the contract which is effectively executed by such permanent establishment in the State in which it is situated. The profits pertaining to the portion of the contract which is executed in the State in which the place of effective management is situated shall be taxable only in that State.

(b) With respect to paragraph 3, the term "expenses which are incurred for the purposes of the permanent establishment" means expenses directly pertaining to the activity of that permanent establishment.

(c) If the laws of a State authorise companies resident in that State to determine their taxable profits on the basis of consolidated accounts which include especially the profits of subsidiaries resident in the other State, the provisions of this Convention, and particularly those of Article 7, shall not prevent the application of those laws.

5. With respect to Article 9, it is understood that where a State includes in the profits of an enterprise of that State - and taxes accordingly - profits which would have accrued to the enterprise of the other State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits if that other State deems such adjustment to be appropriate. In determining such adjustment, the competent authorities of the States shall consult each other, maintaining due regard for the other provisions of this Convention.

6. With respect to Article 11, it is understood that:

(a) Paragraph 1 shall apply to all interest arising in a State if the recipient is a resident of the other State, even if such interest is not actually paid.

(b) The interest mentioned in paragraph 1 and paid on any type of loan granted by one banking establishment to another shall be exempt from tax in the State in which it arises to the extent it is exempt from tax in that State by virtue of the domestic legislation of that State in force on the date of signature of this Convention.

Where changes are made in the above-mentioned domestic legislation, the competent authorities shall enter into negotiations as soon as possible in order to take such changes into account.

7. With respect to paragraph 4 of Article 12, remuneration for technical services, including analyses or studies of a scientific, geological or technical nature, for engineering work including plans pertaining thereto, or for consultation or supervisory services shall be considered profits of an enterprise to which the provisions of Article 7 shall apply, or as income from an independent profession to which the provisions of Article 14 shall apply, as the case may be.

8. (a) With respect to Article 13, gains from the alienation of stocks, shares or participations in a company or another legal entity owning immovable property situated in a State, which in accordance with the laws of that State shall be subject to the same tax regime as gains from the alienation of immovable property, shall be taxable in that State. For the purposes of this provision, immovable property used by that company or legal entity for its own industrial, commercial or agricultural exploitation or for performing non-commercial activities shall not be taken into consideration.

(b) Notwithstanding the provisions of paragraph 4 of Article 13, gains from the alienation of stocks or shares other than those mentioned in paragraph (a) forming part of a substantial participation in the capital of a company which is a resident of a State shall be taxable in that State in accordance with the provisions of its domestic legislation. A substantial participation shall be deemed to exist when the alienator, alone or with related persons, owns directly or indirectly stocks or shares which together carry the right to 25% or more of the profits of the company.

9. With respect to paragraph 4 of Article 15, frontier zones shall be understood to mean those areas in Italy and those departments in France which are adjacent to the border.

10. With respect to Article 19, it is understood that:

(a) The competent authorities of the States may by mutual agreement apply the provisions of paragraphs 1 and 2 of this Article to employees of organisations of a public nature.

(b) Paragraphs 1 and 2 shall also apply to remuneration and pensions paid to persons carrying on their activities for cultural institutions and teaching establishments mentioned in the Cultural Convention between the Government of the French Republic and the Government of the Italian Republic signed at

Paris on 4 November 1949 and completed by exchanges of letters of 9 November and 6 December 1954 and 17 May 1965. Notwithstanding Article 31, this provision shall apply to remuneration and pensions for which the time limit fixed by the domestic legislation of both States expires after 31 December 1987.

11. With respect to Article 23:

(a) Capital formed by stocks or shares in a company or other legal entity the assets of which consist principally of immovable property or rights thereto shall be taxable in the State in which such property is situated.

For the purposes of this provision, immovable property used by that company or legal entity for its own industrial, commercial or agricultural exploitation or for performing non-commercial activities shall not be taken into consideration.

(b) Notwithstanding any provision to the contrary in Article 23, for the purposes of the French solidarity tax on capital of an individual who is resident in France and who is an Italian national not being a French national, property situated outside France which he owns on 1 January of each of the five years following that in which he becomes a resident of France shall not be part of the tax base pertaining to each of those five years.

If such individual loses his status as resident of France for a period of at least three years and again becomes a resident of France, property situated outside France which is owned by that person on 1 January of each of the five years following that in which he again becomes a resident of France shall not be part of the tax base pertaining to each of those five years.

(c) It is understood that if a tax on capital is introduced in the Italian Republic, the competent authorities of the two States shall consult together if necessary to make the necessary amendments to this Convention.

12. With respect to Article 25:

Nothing in paragraph 3 shall be interpreted as preventing France from applying the provisions of Article 212 of the Code Général des Impôts with respect to interest paid by a French company to a foreign parent company.

13. With respect to Article 29 and notwithstanding the provisions of Article 4, any individual who is a member of a diplomatic mission, consular post or a permanent delegation of a State which is situated in the other State or in a third State shall be considered, for the purposes of this Convention, as a resident of the sending State, provided that:

(a) in accordance with international law, he is not subject to tax in the receiving State on income from sources outside that State or for capital situated outside that State, and

(b) he is subject in the sending State to the same obligations with respect to taxes on total world-wide income or world-wide capital as residents of that State.

14. (a) The competent authorities of the States shall regulate as necessary the means of application of the Convention.

(b) With respect to the formalities which must be satisfied by residents of a State in order to obtain in the other State the reductions or exemptions from tax and other advantages provided by the Convention, it is understood that:

(i) Taxes levied in a State by withholding at source shall be reimbursed upon request of the interested party or the State of which he is a resident where the right to levy such taxes is limited or removed by the provisions of the Convention.

Requests for reimbursement, which shall be presented within the time limit established by the laws of the State which is required to make such reimbursement, must be accompanied by an official statement of the State of which the taxpayer is a resident certifying that the conditions to be met in order to benefit from the exemptions or reductions provided in the Convention have been satisfied.

(ii) Banks and financial institutions situated in France, agents (d,positaires) or administrators of shares issued by a company resident in Italy and belonging to persons resident in France, acting on behalf of such persons, may directly request application of the provisions of paragraphs 2 to 6 of Article 10. Such request must include, for each issuing company, all useful indications allowing identification of the actual owners of the shares and the amounts of dividends received by each of them. Upon presenting such request, banks and financial institutions must state that the actual owners of the shares are persons resident in France. The request must include a certificate of approval of the French tax administration. The competent authorities of the States shall settle by mutual agreement the practical means of application of this sub-paragraph.

(iii) Banks and financial institutions situated in one of the States, agents (d,positaires) or administrators of negotiable bonds issued by a company or body resident in the other State and belonging to persons resident in the first-mentioned State, acting on behalf of such persons, may directly request application of the provisions of paragraphs 2 to 4 of Article 11. Such request must include, for each issuing company or body, all useful indications allowing identification of the actual owners of the bonds and the amounts of interest received by each of them. Upon presenting such request, banks and financial institutions must state that the actual owners of the bonds are persons resident in the State in which they are situated. The request must include a certificate of approval of the tax administration of that State. The competent authorities of the States shall settle by mutual agreement the practical means of application of this sub-paragraph.

(c) The provisions of paragraph (b) shall not exclude the interpretation under which the competent authorities of both States may by mutual agreement establish other procedures for applying the tax reductions granted under the Convention.



15. In the cases where, in accordance with the provisions of this Convention, income must be exempted by one of the States, the exemption shall be granted if and to the extent such income is taxable in the other State.

16. Contributions paid by or for an individual who is a resident of a State or who resides there temporarily to a retirement fund approved by the competent authorities of the other State of which such person was formerly a resident shall be treated for tax purposes in the first-mentioned State in the same manner as contributions paid to a retirement fund recognized by the competent authorities of that State, if such authorities accept the approval granted in the other State by such retirement fund.

17. If the clauses of this Convention become incompatible with the provisions decreed by the bodies of the European Communities, both States shall, after consultation between their competent authorities, settle by mutual agreement, through diplomatic channels, the means and conditions under which such clauses shall cease to apply.

In witness whereof the undersigned have signed this Protocol.

Done at Venice on 5 October 1989, in duplicate in the French and Italian languages, both texts being equally authentic.

For the Government of the French Republic:  
P. B,r,govoy

For the Government of the Italian Republic:  
R. Formica

## EXCHANGE OF LETTERS

Mr. Rino Formica,  
Minister of Finance

5 October 1989

Dear Minister,

At the moment of signing the new Convention between the Government of the French Republic and the Government of the Italian Republic for the avoidance of double taxation with respect to taxes on income and on capital and for the prevention of tax evasion and fraud, which replaces the Convention signed at Paris on 29 October 1958 as modified and extended by the Protocol signed at Paris on 6 December 1965, it seems necessary that I make the following proposals in order to regulate any litigation pertaining to the application of that last-mentioned Convention.

The Convention of 29 October 1958 provides that royalties and other similar payments, in the sense of paragraph 1 of Article 11, shall be taxable only in the State in which the recipient is domiciled. However, this rule does not apply where the recipient has a permanent establishment in the other State. In this latter instance, the royalties are taxable only in that other State. For the purposes of sub-paragraph 2 of paragraph 1 of Article 11, this rule shall remain applicable if a shareholding in a company is substituted for a permanent establishment.

I propose to confirm the interpretation of this rule agreed to by the competent authorities of our two countries at the meeting of the Mixed Commission at Rome from 8 to 11 July 1968. According to that interpretation, the rule provided in sub-paragraph 2 of paragraph 1 of Article 11 shall only apply where an already existing permanent establishment is transformed into a partnership (in the case of Italy) or a company not liable to the corporation tax (in the case of France), in which the person who owns the permanent establishment holds, directly or indirectly, the majority of the rights.

Any taxation which is not final on 1 January 1989 shall be regulated, as necessary, in accordance with this interpretation.

I would appreciate your informing me of your Government's agreement to this proposal. In that case, I would suggest that this letter and your confirmation be considered as forming an agreement between our two Governments.

Please accept, Minister, the assurance of my highest consideration.

Pierre B,r,govoy, Minister of State, Minister of the Economy, Finance and the Budget

Mr. Pierre B,r,govoy,  
Minister of State,  
Minister of the Economy, Finance and the Budget

5 October 1989

Dear Minister,

I refer to your letter of today which reads as follows:

[See I]

In response to your letter, I have the honour to communicate to you that its provisions have been accepted by the Government of the Italian Republic and that your letter and this confirmation shall be considered as forming an agreement between our two Governments.

Please accept, Minister, the assurance of my highest consideration. Rino Formica Minister of Finance