

**CONVENTION BETWEEN
SPAIN AND
ITALY
FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON
INCOME AND FOR THE PREVENTION OF FISCAL EVASION¹.**

The Government of Spain and
the Government of Italy,
desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on
income and for the prevention of fiscal evasion, have agreed as follows:

CHAPTER I - Scope of the Convention

Article 1 - Personal scope

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

Article 2 - Taxes covered

1. This Convention shall apply to taxes on income imposed by each Contracting State, or its political or administrative subdivisions and local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation. The existing taxes to which the Convention shall apply are, in particular:

(a) In the case of Italy:

(1) the income tax on individuals (imposta sul reddito delle persone fisiche);

(2) the corporation income tax (imposta sul reddito delle persone giuridiche);

(3) the local income tax (imposta locale sui redditi); even when they are obtained through withholding at the source (hereinafter referred to as "Italian tax").

(b) In the case of Spain:

(1) the income tax on individuals (el impuesto sobre la renta de las personas físicas);

¹ Date of Conclusion: September 8, 1977. Entry into Force: In accordance with Article 28 this Convention entered into force on November 14, 1980, upon the exchange of instruments of ratification. The provisions of the Convention have effect as respects taxes withheld at the source on income derived as from January 1, 1977; and as respects other taxes, to fiscal periods ending on or after January 1, 1977; however the provisions of Article 8 shall apply as from January 1, 1969.

(2) the income tax on companies and other legal entities (el impuesto sobre la renta de sociedades y demas entidades juridicas);

(3) the following prepayments: the tax on rural and on urban land; the tax on earned income; the tax on income from capital and the tax on business and industrial activities and profits;

(4) the "surface royalty" and the tax on company profits, regulated by Law of June 27, 1974, applicable to enterprises engaged in prospecting and exploiting hydrocarbons;

(5) the local taxes on income (hereinafter referred to as "Spanish tax").

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

CHAPTER II - Definitions

Article 3 - General definitions

1. For the purpose of this Convention, unless the context otherwise requires;

(a) the term "Spain" means Spanish State (peninsular Spain, the Balearic and Canary Islands, the Spanish territories in Africa) and the areas adjacent to the territorial waters of Spain within which Spain may, in accordance with Spanish law, exercise rights with respect to the sea-bed and sub-soil and their natural resources;

(b) the term "Italy" means the Italian Republic, and includes the areas beyond the territorial waters of Italy, and mainly the sea-bed and sub-soil adjacent to the peninsular territory and the Italian Islands, to the limit established by the Italian laws for allowing the exploration and exploitation of the natural resources in such areas;

(c) the terms "a Contracting State" and "the other Contracting State", mean, as the context requires, Spain or Italy;

(d) 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 Contracting State, except when the ship or aircraft is operated solely between places situated in the other Contracting State;

(e) the term "person" includes individuals, companies and any other body of persons;

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

(g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean, respectively, an enterprise carried on by a resident of a Contracting State (including the State itself, its political or administrative subdivisions and its local authorities) and an enterprise carried on by a resident of the other Contracting State (including the State itself, its political or administrative subdivisions and its local authorities);

(h) the term "national" means:

(1) any individual possessing the nationality of a Contracting state;

(2) any legal entity, partnership and association established in accordance with the legislation in force in a Contracting State;

(i) the term "competent authority" means:

(1) in the case of Spain: the Minister of Finance, or any other authority duly authorized by the Minister;

(2) in the case of Italy: the Minister of Finance.

2. As regards the application of the Convention by a Contracting 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 which are the subject of this Convention.

Article 4 - *Fiscal domicile*

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other similar criterion. Nevertheless, 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.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be resolved in the following manner:

(a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);

(b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

(c) if he has an habitual abode in both Contracting States or in neither of them, then he shall be deemed to be a resident of the Contracting State in which he is a national;

(d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the matter by mutual agreement.

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

Article 5 - *Permanent establishment*

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business 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, a quarry or any other place of extraction of natural resources;
 - (g) a building site or installation project lasting more than 12 months.
3. A "permanent establishment" is not deemed to exist when:
 - (a) facilities are used solely for the purpose of storage, display or delivery of merchandise belonging to the enterprise;
 - (b) a stock of merchandise belonging to the enterprise is maintained solely for the purpose of storage, display or delivery;
 - (c) a stock of goods or merchandise belonging to the enterprise is maintained solely for the purpose of processing by another enterprise;
 - (d) a fixed place of business is maintained solely for the purpose of purchasing merchandise or of collecting information, for the enterprise;
 - (e) a fixed place of business is maintained solely for the purpose of carrying on, for the enterprise, publicity, the supply of information, scientific research or any other similar activity of an auxiliary or preparatory character.
4. 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 Contracting State, an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State, unless the activities of such person are limited to the purchasing of merchandise for the enterprise.
5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business through a broker, general commission agent or any other intermediary of an independent status, provided that such persons are acting in the ordinary course of their activities.

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

CHAPTER III - Taxation of income

Article 6 - Income from immovable property

1. Income derived from immovable property including income from agriculture or forestry, may be taxed in the Contracting State in which that property is situated.
2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. Such term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, as well as the rights to which the provisions of common law in respect to landed property apply. Also deemed to be "immovable property" are usufruct of immovable property and the 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 share-cropping and the alienation of immovable property, as well as any other form of exploitation 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 professions.

Article 7 - Business profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on 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. Notwithstanding the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. 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 Contracting State in which the place of effective management of the enterprise is situated.

2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9 - Associated enterprises

Where

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

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

Article 10 - Dividends

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the law of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 15 percent of the gross amount of the dividends. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

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

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein, or performs in that other State independent professional 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 dividends may be taxed in the other Contracting State according to its domestic legislation.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11 - *Interest*

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

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the law of that State but, if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 12 percent of the gross amount of the interest. The competent authorities of the Contracting States shall, by mutual agreement, settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, interest derived from one of the Contracting States shall be exempt from tax in that State, provided that;

(a) the debtor of such interest is the Government of that Contracting State or any of its local authorities; or

(b) the interest is paid to the Government of the other Contracting State, to any of its local entities or to an institution or organization (including financial institutions) belonging wholly to that Contracting State or to any of its local authorities; or

(c) the interest is paid to other institutions or organizations (including financial institutions) based on the financing under agreements concluded between the Governments of the Contracting States.

4. The term "interest" as used in this Article includes income from Government bonds, from bonds whether or not secured by mortgage or carrying a right to participate in the profits, and from 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.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such cases, the interest shall be taxed in that other Contracting State, according to its domestic legislation.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political or administrative subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment 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 interest, having regard to the debt-claim for which 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 Contracting State, due regard being had to the other provisions of this Convention.

Article 12 - *Royalties*

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

2. However, these royalties may be taxed in the Contracting State in which they arise and according to the laws of that State, but if the person receiving the royalties is the beneficial owner thereof, the tax so established may not exceed:

(a) 4 percent of the gross amount of the payments of whatever nature paid for the use of or the right to use copyright of literary, dramatic, musical or artistic work (including royalties referring to motion picture films and to films or video tapes to be used in connection with television);

(b) 8 percent of the gross amount of royalties in other cases. The competent authorities of the Contracting States shall, by mutual agreement, settle the mode of application of these limitations.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trademark, 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.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, or performs in that other State independent professional 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 the other Contracting State, according to its domestic legislation.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political or administrative subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the royalties was incurred, and those royalties are borne by that permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. 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. In such case, the excess part of the payments may be taxed according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13 - *Capital Gains*

1. Gains derived by a resident of a Contracting State from the alienation of immovable property, as defined in Article 6, paragraph 2, may be taxed in the Contracting State in which such property is situated.

2. Gains from the alienation of movable property forming part of the assets of a permanent establishment where an enterprise of a Contracting State has in the other Contracting State, or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in that other State. However, gains from the alienation of ships and aircraft operated in international traffic, as well as movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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

Article 14 - *Professional services*

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar nature shall be taxable only in that State, unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other 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 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of a paid employment shall be taxable only in that State, unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provision of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

(a) the recipient remains 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 Contracting State in which the place of effective management of the enterprise is situated.

Article 16 - Directors' fees

Directors' fees, attendance fees and any other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or supervisory board of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17 - Artistes and athletes

1. Notwithstanding the provisions of Articles 14 and 15, income derived by professional entertainers, such as theatre, motion picture, radio or television artistes, or musicians, as well as athletes, from their personal activities as such may be taxed in the Contracting State in which such activities are exercised.

2. Where income in respect of personal activities exercised by an artiste or an athlete as such accrues not to the artiste or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the artiste or athlete are exercised.

Article 18 - *Pensions*

Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

Article 19 - *Governmental functions*

1. (a) Remuneration, other than pensions, paid by a Contracting State or a political or administrative subdivision or local authority thereof to an individual in respect of services rendered to that State, subdivision or local authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and if the beneficiary of the remuneration is a resident of that State who:

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Pensions paid by, or out of funds created by, a Contracting State or a political or administrative subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or local authority shall be taxable only in that State.

(b) However, such pensions shall be taxable only in the other Contracting State, if the individual is a resident, and a national, of that State.

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 commercial or industrial activity carried on by a Contracting State, a political or administrative subdivision or a local authority thereof.

Article 20 - *Teachers and students*

1. A resident of a Contracting State who, at the invitation of a university, college or other establishment for higher education or scientific research in the other Contracting State, visits that other Contracting State solely for the purpose of teaching or scientific research at such institution, for a period not exceeding two years, shall not be taxed in that other State on his remuneration for such teaching or research activities.

2. Payments which a student or business apprentice who is or was, immediately before visiting a Contracting State, a resident of the other Contracting 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 21 - *Other income*

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.
2. The provision of paragraph 1 shall not apply if the recipient of such income, being a resident of a Contracting State, carries on commercial or industrial activities in the other Contracting State through a permanent establishment situated therein, or performs in that other State professional 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, this income may be taxed in that other Contracting State, according to its domestic legislation.

CHAPTER IV - Provisions for elimination of double taxation

Article 22

1. It is agreed that double taxation shall be avoided in accordance with the following paragraphs of this Article.
2. In the case of Italy: Where a resident of Italy derives income which may be taxed in Spain, Italy may, in calculating its taxes on income as mentioned in Article 2 of this Convention, include that income in such taxable base, unless this Convention provides otherwise. In that case, Italy shall deduct, from the taxes so calculated, the income tax paid in Spain, but the amount of such deduction may not exceed that part of the Italian tax which is appropriate to that income in the ratio that such income bears to total income. Nevertheless, no deduction shall be granted if the income is taxable in Italy by means of a withholding of tax which is final, if so requested by the beneficiary and according to Italian law.
3. In the case of Spain: Where a resident of Spain derives income which, in accordance with this Convention, may be taxed in Italy, Spain shall allow, as a deduction from the tax on the income of that resident, an amount equal to the tax paid in Italy. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is appropriate to the income derived from Italy and such deduction from the Spanish tax shall apply to both the general taxes as well as the prepayments.
4. Where in accordance with any provision of the Convention income derived by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income of such resident and in accordance with its own legislation, take into account the exempted income.

CHAPTER V - Special provisions

Article 23 - Non-discrimination

1. The nationals of a Contracting State, whether or not residents of one of the Contracting States, shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting 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.
3. Except where the provisions of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting 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.
4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subject 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 the first-mentioned State are or may be subjected.
5. The term "tax" in this Article means taxes of any kind and description.

Article 24 - Mutual agreement procedure

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or may result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic laws of these States, present his case to competent authority of the Contracting State of which he is a resident. This proceeding may not be used after a period of 2 years from the notification of the tax or collection of the tax at source has elapsed.
2. This competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with this Convention.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

Article 25 - Exchange of information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention, insofar as the taxation thereunder is not contrary to the Convention, as well as for preventing fiscal evasion. The exchange of information is not restricted by Article 1. Any information by a Contracting 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 this information only for such purposes. They may disclose the information in public court proceedings or in judicial sentences.

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

(a) to carry out administrative measures contrary to the laws or administrative practice of that or of the other Contracting State;

(b) to supply information which is not obtained under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public order.

Article 26 - Diplomatic and consular officials

1. Nothing in this Convention shall affect the fiscal privileges of diplomatic or consular officials, under the general rules of international law or under the provisions of special agreements.

Article 27 - Request for refund

1. Whenever the provisions of this Convention limit the right to collect such taxes, taxes collected by a Contracting State by means of withholding at the source shall be refunded at the request of the interested party or of the State of which he is a resident.

2. Applications for a refund, together with an official statement issued by the Contracting State of which the taxpayer is a resident certifying the existence of the conditions which are necessary to benefit from the exemptions or reliefs established in this Convention, must be filed within the time limits established by the law of the Contracting State which is obliged to effect such a refund.

3. The competent authorities of the Contracting States shall settle, by mutual agreement, and according to the provision of Article 24, the modes of application of this Article. By mutual agreement, however, they may establish other proceedings for the application of the tax limits provided for in this Convention.

CHAPTER VI - Final provisions

Article 28 - Entry into force

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

2. This Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

(a) in respect to taxes withheld at source on income paid on or after January 1, 1977;

(b) in respect to other taxes, the fiscal periods ending on or after January 1, 1977.

3. The provisions of the Spanish-Italian Convention on the taxation of corporations of November 28, 1927 shall cease to apply after the entry into force of this Convention.

Article 29 - Termination

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

(a) with respect to taxes withheld at source, on income paid on or after the first of January of the year next following the year in which the notice of termination was given;

(b) with respect to the other taxes, for taxation periods ending after the first of January next following that in which the notice of termination was given.

In witness whereof the Plenipotentiaries of the two States have signed this Convention and have affixed thereto their seals.

Done at Rome, the 8th day of September 1977, in two original copies, in the Spanish, Italian and French languages, the three texts being equally authentic, but in case of doubt the French text shall prevail.

PROTOCOL

At the moment of signing the Convention for the avoidance of double taxation with respect to taxes on income and for the prevention of fiscal evasion, concluded today between Spain and Italy, the undersigned plenipotentiaries agree upon the following additional provisions, which are an integral part of the Convention:

It is agreed that:

(a) Ad Article 6 of this Convention, the provisions established at the proceedings of the second meeting (Rome, from May 29 to June 3, 1957) of the joint Italian-Spanish Committee, whose notes were exchanged between Italy and Spain on March 28, 1958 and which constitute the appendices to the Italian-Spanish cultural agreement of August 11, 1955, are reconfirmed. In particular the fiscal exemptions in the said agreements, including the ones in favour of the St. Clement (Albornoz) College at Bologna, shall have full effect, as from the dates mentioned therein.

(b) Ad Article 7, paragraph 3, "expenses which are incurred for the purpose of the permanent establishment" shall mean the expenses falling directly on the activities of the permanent establishment.

(c) Ad Article 12, the term "royalties" includes payments received as consideration for technical and economic research of an industrial or commercial nature.

(d) Ad Article 24, paragraph 1, the expression "irrespective of the remedies provided by domestic law" means that the start of the mutual agreement procedure is not an alternative with respect to the national contentious procedure, which is the one having priority when the conflict refers to an application of the taxes not in accordance with the Convention.

(e) Ad Article 27, the applications for refund, in accordance with this Convention, made by a resident of a Contracting State, in relation to the taxes due before this Convention entered into force, may be filed within the next two years following the date of the entry into force of this Convention.

(f) Notwithstanding the provisions of Article 28, paragraph 2, the provisions of Article 8 shall apply to taxes due after January 1, 1969.

Done at Rome, the 8th day of September, 1977, in two original copies, in the Spanish, Italian and French languages the three texts being equally authentic but, in case of doubt the French text shall prevail.