

# **1991 Income and Capital Tax Convention and Final Protocol (English Translation)**

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## **CONVENTION BETWEEN THE GOVERNMENT OF THE ITALIAN REPUBLIC AND THE GOVERNMENT OF THE DEMOCRATIC AND POPULAR REPUBLIC OF ALGERIA FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL AND FOR THE PREVENTION OF TAX EVASION AND TAX FRAUD [TRANSLATION]**

The Government of the Italian Republic and the Government of the Democratic and Popular Republic of Algeria, desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income and on capital, and for the prevention of tax evasion and tax fraud, have agreed to the following provisions:

### **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 and capital imposed on behalf of each Contracting State, its political or administrative subdivisions, or its local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and capital all taxes imposed on total income, total capital or items of income and 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, in particular:

a) for Algeria:

- 1) the tax on industrial and commercial profits;
- 2) the tax on profits derived from non-commercial professions;
- 3) the royalty and tax on earnings relating to prospecting, exploration, utilization, and transportation activities through hydrocarbon pipelines;
- 4) the tax imposed on the income of foreign construction enterprises;
- 5) the tax on income derived from debt-claims, deposits, and security deposits;
- 6) the tax on professional activities;
- 7) the lump sum payment made by employers and those required to pay annuities;
- 8) the tax on wages, salaries, emoluments, pensions, and life annuities;
- 9) the supplementary tax on total income;
- 10) the land tax on building properties;
- 11) the tax on income derived from promotional activities related to immovable property;
- 12) the special tax on capital appreciation;
- 13) the sole tax on private vehicles;
- 14) the fixed tax on the income of sea fishermen, owners of fishing boats, and those carrying on artisan and ship owner work;
- 15) the sole agricultural contribution;
- 16) the joint tax on immovable capital;
- 17) the tax on immovable property for commercial use;
- 18) withholdings at the source applicable to dividends distributed to individuals and corporate bodies whose tax residence or place of business is not in Algeria.

(hereinafter referred to as "Algerian tax")

b) for Italy:

- 1) l'imposta sul reddito delle persone fisiche (individual income tax);
- 2) l'imposta sul reddito delle persone giuridiche (corporate income tax);
- 3) l'imposta locale sui redditi (local income tax), even if assessed through withholdings at the source; (hereinafter referred to as "Italian tax")

4. The Convention shall also apply to any identical or similar taxes which will become effective after the signing date of this Convention, in addition to, or in place of, current taxes. The competent authorities of the Contracting States shall notify each other of substantial changes which have been made in their respective tax laws.

### **Article 3 General Definitions**

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

- a) the term "Algeria" means the Democratic and Popular Republic of Algeria;
- b) the term "Italy" means the Italian Republic;
- c) the terms "a Contracting State" and "the other Contracting State" mean, as required by context, Algeria or Italy;
- 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 Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- 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 Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- h) the term "nationals" means:
  - (i) individuals who are nationals of a Contracting State;
  - (ii) corporate bodies, companies of persons and bodies of persons established in accordance with laws in effect in a Contracting State;
- i) the term "competent authority" means:
  - (i) in Algeria, the Ministry in charge of Finances.
  - (ii) in Italy: the Ministry 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 to which the Convention applies.

### **Article 4 Resident**

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

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

- a) he shall be deemed to be a resident 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 Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (center of vital interests);
- b) if the Contracting State in which he has his center 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 a habitual abode;
- c) if he has a habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
- d) if it is not possible to determine the Contracting State of which the person is a resident using the preceding criteria, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is considered 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 point of sales;
  - g) a mine, a quarry or any other place of extraction of natural resources.
  - h) a building or installation project, or the supervisory activities carried on at such a project, where such activities last more than three months.
3. The term "permanent establishment" shall be deemed not to include:
- a) the use of facilities solely for the purpose of storage or display 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 or display;
  - c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
  - e) the maintenance of a fixed place of business for the enterprise solely for the purpose of carrying on any other activities of a preparatory or auxiliary character.
4. Where a person -- other than an agent of an independent status to whom paragraph 5 applies -- is acting in a Contracting State on behalf of an enterprise of the other Contracting State, it shall be considered a "permanent establishment" in the first-mentioned State if it has and habitually exercises in such State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to purchasing goods or merchandise for the enterprise.
5. An enterprise of one Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that State through a broker, general commission agent, or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
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.

### **Article 6 Income From Immovable Property**

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State shall be taxed in that other State.
2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or 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 derived from immovable property or an enterprise as well as income from immovable property used for the performance of independent personal services.

### **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. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are actually incurred for the purposes of the permanent establishment, including

executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

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

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

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

### **Article 8 Shipping and Air Transportation**

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 harbor of the ship is situated, or, if there is no such home harbor, 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 of an enterprise of a Contracting State from 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 laws 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 this limitation.

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

3. For the purposes of this Article, the term "dividends" 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 are subjected to the same taxation treatment as income from shares by the tax laws of the State in 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 a commercial or industrial business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the dividends shall be taxable in that other Contracting State in accordance with its domestic laws.

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 the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or 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 only in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 15 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 arising from one of the Contracting States shall be exempt from taxes in that State if:

a) the payer of such interest is the Government of that Contracting State or a local authority thereof; or

b) the interest is paid to the Government of the other Contracting State, or to a local authority thereof, or to an institution or body (including financial institutions) which is wholly owned by that Contracting State or a local authority thereof; or

c) the interest is paid to other institutions or bodies (including financial institutions) as a result of financing provided by such institutions or bodies in connection with agreements concluded between the Governments of the Contracting States.

4. The term "interest" as used in this Article means income from public debt securities and bonds, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and from debt-claims of any kind, as well as any proceeds which can be treated as income on amounts given as loans based on tax laws in the State in which income arises.

5. The provisions of paragraphs 1, 2, and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on a commercial or industrial business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case, the interest may be taxed in that other Contracting State in accordance with its domestic laws.

6. Interest shall be deemed to arise in a Contracting State when the payer is the State itself, a political or administrative subdivision, a local authority thereof, 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 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 Contracting 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 interest paid, 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 recipient 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 shall be taxable in that other State.

2. However, such royalties may be taxed in the Contracting State from 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:

a) 5 percent of the gross amount of the royalties related to copyrights for literary, artistic, or scientific works, with the exclusion of cinematograph films and recordings for radio and television broadcasts;

b) 15 percent in other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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 and recordings for radio and television broadcasts, 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, and 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 commercial or industrial business in the other Contracting 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 shall be taxable in that other Contracting State in accordance with its domestic laws.

5. Royalties shall be deemed to arise in a Contracting State when the payer is the State itself, a political or administrative subdivision, a local authority or a resident of that State. However, when the payer of royalties, whether such person is a resident or not of a Contracting State, has in a Contracting State a permanent establishment for whose needs the contract giving rise to the payment of royalties was concluded, and such royalties are borne by such permanent establishment, the 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 shall remain taxable 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 according to the definition in Article 6, which are situated in the other Contracting State shall be taxable in that other State.

2. Gains from the alienation of immovable property forming part of the business property of a permanent establishment which 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 independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such 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 Contracting State in which the place of effective management of the enterprise is situated.

4. Gains derived from the alienation of shares in the share capital of a company whose capital is primarily formed, either directly or indirectly, from immovable property situated in a Contracting State may be taxed in that State.

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

### **Article 14 Independent Personal Services**

1. Income derived by a resident of a Contracting State in respect of professional services or other similar activities of an independent character shall be taxable only in that State. However, such income shall be taxable in the other Contracting State in the following cases:

b) if the party concerned has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in such case, the income may be taxed in the other State but only so much of it as is attributable to that fixed base, or

c) if his stay in the other Contracting State is for a period or periods equal to or exceeding, in the aggregate, 183 days in a fiscal year.

2. The term "professional services" includes especially independent scientific, literary, 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 an 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 provisions 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 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 Contracting State in which the place of effective management of the enterprise is situated.

### **Article 16 Directors' Fees**

Participation in profits, directors' fees, and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or audit committee 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 a resident of a Contracting State as an entertainer, such as a theater, motion picture, radio, or television artiste, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

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 in the Contracting State in which the activities of the entertainer 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 Government Service**

1.

a) Remuneration other than a pension, paid by a Contracting State, by one of its political or administrative subdivisions or a 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 the individual is a resident of that other Contracting State who:

(i) is a national of that State, or

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

2.

a) Pensions paid by, or out of funds created 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 authority, shall be taxable only in that State.

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

3. The provisions of Articles 15, 16, and 18 shall apply to remuneration or pensions paid in respect of services rendered in connection with an industrial or commercial business carried on by a Contracting State, or a political or administrative subdivision or local authority thereof.

### **Article 20 Professors and Researchers**

The remuneration which a professor or researcher who is or was, immediately before visiting a Contracting State, a resident of the other Contracting State, and who temporarily resides in the first-mentioned Contracting State for the sole purpose of teaching or conducting scientific research, receives in respect of such activities, shall be taxable only in the first-mentioned State for a period of up to two years.

### **Article 21 Students**

1. Amounts 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 completing 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.

2. With respect to scholarships and remuneration from employment to which paragraph 1 does not apply, a student or business apprentice described in paragraph 1 shall also have the right, for the length of his studies or training, to benefit from the same exemptions, reliefs, or tax reductions granted to residents of the State in which he is present.

### **Article 22 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 provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on an industrial or commercial business in the other Contracting State through a permanent establishment situated therein, and the right or productive property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the items of income shall be taxable in that other Contracting State according to its domestic laws.

### **Article 23 Capital**

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in the other State.

2. Capital represented by movable property belonging to a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, or by movable property pertaining to a fixed base owned by a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, shall be taxable in that other State.

3. Capital represented by ships and aircraft operated in international traffic, and movable property pertaining to their operation, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

### **Article 24 Methods for Elimination of Double Taxation**

1. It is hereby agreed that double taxation shall be eliminated according to the following paragraphs of this Article.

2. If a resident of Algeria receives income or owns capital which, according to the provisions of this Convention, is taxable in Italy, Algeria shall deduct:

a) from the tax imposed on the income of the resident, an amount corresponding to the tax on income paid in Italy;

b) from the tax imposed on the capital of such resident, an amount corresponding to the tax on capital paid in Italy.

However, the amount deducted in either case may not exceed the amount of tax on income or tax on capital, calculated before the deduction, which corresponds, depending on circumstances, to income or capital taxable in Italy.

3. If a resident of Italy receives items of income taxable in Algeria, Italy, when calculating its income taxes as specified in Article 2 of this Convention, may include these items of income in the tax base subject to those taxes unless otherwise established by specific provisions of this Convention.

In such case, Italy must deduct from the taxes calculated in this manner the income tax paid in Algeria, but the amount of the deduction may not exceed the amount of Italian tax attributable to the aforementioned items of income to the extent such items of income contribute to the composition of total income.

However, no deduction shall be allowed where the item of income is subjected in Italy to taxation through the withholding of taxes at the source at the request of the recipient of that income on the basis of Italian laws.

4. Where, according to the laws of a Contracting State, and for the purposes of economic development, the taxes to which this Convention applies are not imposed in whole or in part for a limited period, these taxes shall be deemed to be fully paid for the purposes of the application of paragraphs 2 and 3.

### **Article 25 Non-Discrimination**

1. Nationals of a Contracting State 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. Notwithstanding the provisions of Article 1, this provisions shall also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably 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 which it grants to its own residents in consideration of their situation or family responsibilities.

3. Subject to the application of the provisions of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, 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.

Similarly, the debts of an enterprise of a Contracting State relating to residents of the other Contracting State shall, for the purposes of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been incurred in relation 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 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 the first-mentioned State are or may be subjected.

5. Notwithstanding the provisions of Article 2, the provisions of this Article shall apply to taxes of every kind and description.

#### **Article 26 Mutual Agreement Procedure**

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of the Contracting State of which he is a national. The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavor, 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 the Convention.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the 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.

5. The competent authorities of both Contracting States shall arrange for the exchange of information, documents, and experience on their tax systems and on the organization of their respective tax services.

#### **Article 27 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, and for preventing tax evasion and tax fraud. The exchange of information is not restricted by Article 1. Any information received 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 the information only for such purposes. They may disclose the information at public court proceedings or at trials.

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 at variance with the laws and administrative practice of that or of the other Contracting 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 Contracting State;
- c) to supply information which would disclose any trade, industrial, or professional secret or trade process, or information, the disclosure of which would be contrary to public policy or ordre public.

### **Article 28 Diplomatic Agents and Consular Officers**

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

### **Article 29 Entry Into Force**

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

2. This Convention shall enter into force on the date the instruments of ratification have been exchanged, and its provisions shall apply, for the first time:

- a) to taxes imposed at the source on income attributed or payable on or after January 1 of the year following the year in which the instruments of ratification are exchanged
- b) other taxes for tax periods which begin on or after January 1 of the year following the year in which the instruments of ratification are exchanged;

3. Nothing in this Convention shall affect any more favorable provisions stipulated by other specific Conventions in effect between the Contracting States.

### **Article 30 Termination**

1. This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year starting the fifth year following the date the Convention enters into force.

In this case, the Convention shall cease to apply:

- a) to taxes imposed through withholdings at the source, for income attributed or payable no later than December 31 of the reporting year.
- b) to other taxes, for tax periods ending no later than December 31 of the same year.

In witness whereof the undersigned, duly authorized to that effect have signed this Convention.

Done in duplicate at Algiers, this 3rd day of February 1991, in the Arabic, Italian, and French languages, each version being equally authentic.

### **PROTOCOL**

At the time of signing the Convention concluded on the date hereof between the Government of the Italian Republic and the Government of the Democratic and Popular Republic of Algeria for the avoidance of double taxation with respect to taxes on income and capital and for the prevention of tax evasion and tax fraud, the undersigned agreed to the following provisions which shall form an integral part of the Convention:

a) with respect to paragraph 3 of Article 7, it is understood that no deduction is allowed for amounts paid, if necessary, by a permanent establishment to the headquarters of the enterprise or to its other offices for royalties, compensation or other payments in respect of usage licenses, patents or other rights, and for fees (other than the reimbursement of actual expenses) for services rendered or for management activities or, with the exception of banking enterprises, for interest on loans made to the permanent establishment.

Similarly, to determine the profits of a permanent establishment, no allowance shall be made, among the expenses incurred by the headquarters of the establishment or by its other offices, for royalties, compensation or other similar payments in respect of usage licenses, patents or other rights, or for fees (other than the reimbursement of actual expenses) for services rendered or for management activities or, with the exception of banking enterprises, for interest on loans made to the headquarters of the enterprise or to its other offices.

b) The competent authorities of both Contracting States shall endeavor to settle, by mutual agreement, the problem of the double taxation of profits resulting from Article 9 of the Convention, in line with the provisions of Article 26 concerning the mutual agreement procedure.

c) With respect to paragraph 1 of Article 26, the term "irrespective of the remedies provided by the domestic law" shall mean that the mutual agreement procedure shall not jeopardize domestic litigation

proceedings which must constitute the first recourse when the dispute involves the application of taxes which are not in accordance with the Convention.

d) All taxes collected by a Contracting State through withholdings at the source shall be reimbursed, at the request of the party concerned, to the extent such taxes exceed the limit stipulated by the provisions of this Convention regarding these taxes. Reimbursement claims, which are to be submitted within the time limitations established by laws of the Contracting State required to make such reimbursement, must be accompanied by an official statement of the Contracting State of which the taxpayer is a resident, certifying that the required conditions exist which entitle the taxpayer to apply the exemptions or reductions referred to in this Convention.

Nothing in this provision shall prevent the competent authorities of the Contracting States to establish, by mutual agreement, other procedures for the application of tax exemptions or reductions granted under the Convention.

e) Notwithstanding the provisions of Article 7 of the Convention, Italian enterprises that conclude construction contracts in Algeria may benefit from the income tax treatment applied to the income of foreign construction enterprises stipulated by Algerian laws, under the same conditions as other foreign enterprises.

In practice, these enterprises shall provide notice of their option to use this tax treatment to the Algerian Tax Administration prior to beginning work, and shall attach a copy of the contract.

In witness whereof the undersigned, duly authorized to that effect have signed this Protocol.

Done in duplicate at Algiers, this 3rd day of February 1991, in the Arabic, Italian, and French languages, each version being equally authentic.