

CONVENTION

BETWEEN THE GOVERNMENT OF THE REPUBLIC OF AZERBAIJAN AND THE GOVERNMENT OF THE ITALIAN REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL AND THE PREVENTION OF FISCAL EVASION

The Government of the Republic of Azerbaijan and the Government of the Italian Republic,

Desiring to conclude a Convention to avoid double taxation with respect to taxes on income and on capital and to prevent 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 and on capital imposed on behalf of each Contracting State or of its political, administrative, administrative-territorial subdivisions or local authorities, 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, 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 in particular:

(a) in the case of Azerbaijan:

- 1 - the tax on profit of legal persons;
- 2 - the income tax on physical persons;
- 3 - the land tax;
- 4- the tax on property

(hereinafter referred to as "Azerbaijan tax")

(b) in the case of Italy:

- 1 - the personal income tax (l'imposta sul reddito delle persone fisiche);
- 2 - the corporate income tax (l'imposta sul reddito delle persone giuridiche);
- 3 - the regional tax on productive activities (l'imposta regionale sulle attività produttive)

whether or not they are collected by withholding at source

(hereinafter referred to as "Italian Tax").

4. This Convention shall also apply 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. The competent authorities of the Contracting States shall notify each other of any significant change, which have been made in their respective taxation laws.

Chapter II
Definitions

Article 3
GENERAL DEFINITIONS

1. In this Convention, unless the context otherwise requires:

(a) the term "Azerbaijan" means the territory of the Republic of Azerbaijan, including the internal waters of the Republic of Azerbaijan, the Caspian Sea (Lake) sector belonging to the Republic of Azerbaijan, the air space above the Republic of Azerbaijan within which the sovereign rights and jurisdiction of the Republic of Azerbaijan is implemented in respect to subsoil, sea bed and natural resources and any other area which has been or may hereinafter be determined in accordance with international law and legislation of the Republic of Azerbaijan;

(b) the term "Italy" means the Italian Republic and includes any area beyond the territorial waters which is designated as an area within which Italy, in compliance with its legislation and in conformity with the International Law, exercises sovereign rights in respect of the exploration and exploitation of the natural resources of the seabed, the subsoil and the superjacent waters;

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

(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 of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(h) the term "national" means:

(i) any individual possessing the nationality of a Contracting State;

(ii) any legal person, partnership and association deriving its status as such from the laws in force in a Contracting State;

(i) the term "competent authority" means:

(i) in the case of Azerbaijan, the Ministry of Finance and Ministry of Taxes;

(ii) in the case of Italy, the Ministry of Economy and Finance.

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

under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4 RESIDENT

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the law of that State, is liable to tax therein by reason of his domicile, residence, place of registration, place of management, or any other criterion of a similar nature, and also includes that State and any political, administrative and administrative-territorial subdivision or local authority thereof. But this term does not include any person who is liable to tax in that State in respect only of income from sources situated in that State or capital situated therein.

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 only 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 only 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 only 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 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 a resident of both Contracting States, then it shall be deemed to be a resident only of the 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 in which the business of the enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) an installation, structure or vessel or any other place used for the exploration of natural resources;
- (g) a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources.

- (h) a building site or construction or installation project, or supervisory or consultancy activities, connected therewith, but only if such site, project or activities continue for more than twelve months;
- (i) the furnishing of services, including consultancy services, by an enterprise through its employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or connected project) within the country for more than six months.

3. Notwithstanding the preceding provisions of this article, the term "permanent establishment" shall be deemed not 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 of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.

4. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State - other than an agent of an independent status to whom paragraph 5 applies - shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or 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 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. However, if the activities of such agent are carried out wholly or almost wholly for the enterprise he shall not be considered to be an agent of an independent status for the purposes of this paragraph, unless it is shown that the transactions between the agent and the enterprise were made under the agreed conditions which would be made between independent parties.

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 by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term "immovable property" shall be defined in accordance with 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 the right to work, mineral deposits, sources and other natural resources shall also be considered as "immovable property". 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 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 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 embodied 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, derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

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

Article 9
ASSOCIATED ENTERPRISES

1. 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.

2. Where a Contracting State includes in the profits of an enterprise of that State -and taxes accordingly- profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, than that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. Any such adjustment shall be made only in accordance with the mutual agreement procedure as provided for in Article 26 of this Convention.

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 10 per cent 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 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 taxation treatment as income from shares by the taxation 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 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 a case the dividends are taxable in that other Contracting State according to its own law.

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 laws of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 10 per cent 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 mentioned in paragraph 1 shall be taxable only in the Contracting State where the beneficial owner of the interest is a resident if one of the following requirements is fulfilled:

- a) the payer or the recipient of the interest is, or the loan in respect of which the interest is paid is guaranteed by, the Contracting State itself, a political, an administrative, administrative-territorial subdivision or a local authority thereof or the Central Bank of a Contracting State;
- b) the interest is paid in respect of the loan which has been approved by the Government in the Contracting State where the payer of the interest is resident;

c) the interest is paid with respect of an indebtedness arising on the sale on credit of any industrial, commercial or scientific equipment to an enterprise of the other Contracting State.

4. 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 laws of the State in which the income arises.

5. The provisions of paragraphs from 1 to 3 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 a case, the interest is taxable in that other Contracting State according to its own law.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political or administrative, administrative-territorial 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 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, 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 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 taxed in that other State if such resident is the beneficial owner of the royalties.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State the tax so charged shall not exceed:

- (a) 5 per cent of the gross amount of the royalties in respect of payments for the use of, or the right to use, computer software or 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,
- (b) 10 per cent of the gross amount of the royalties in all 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, or tapes for television or broadcasting, computer software, 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 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 a case, the royalties are taxable in that other Contracting State according to its own laws.

5. Royalties shall be deemed to arise in a Contracting State when the payer is 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 or a fixed base in connection with which the liability to pay the royalties was incurred, 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.

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 that 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 from the alienation of immovable property, as defined in paragraph 2 of Article 6, 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 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 derived by a resident of a Contracting State from the alienation of shares or other corporate rights in company the assets of which consist mainly of immovable property situated in the other Contracting State may be taxed in that other State.

4. Gains, derived by an enterprise of a Contracting State 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 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 an individual who is a resident of a Contracting State in respect of professional or other similar services of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:

- a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in the other State; or
- b) if he stays in the other Contracting State for a period or periods exceeding in the aggregate 183 days in any 12-month period commencing or ending in the fiscal year concerned; in that case only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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 and 20, 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 any twelve month period commencing or ending 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 by an enterprise of a Contracting State may be taxed in that State.

Article 16

DIRECTORS' FEES

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 any similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17

ARTISTES AND SPORTSMEN

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, 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 a sportsman in his capacity as such accrues not to the entertainer or sportsman 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 sportsman are exercised.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply to income derived from activities performed in a Contracting State by artistes or sportsmen if the visit to that State is substantially supported by public funds of the other Contracting State or a political, administrative, administrative-territorial subdivisions or local authority thereof. In such a case the income shall be taxable only in the State of which the artiste or sportsman is a resident.

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 Contracting State in consideration of past employment shall be taxable only in that State.

2. If a resident of a Contracting State becomes a resident of the other Contracting State, payments received by such resident on the cessation of his employment in the first-mentioned State as severance payments (indemnities) or similar lump sum payments shall be taxable only in that first mentioned Contracting State. In this paragraph, the expression "severance payments (indemnities)" includes any payment made in consequence of the termination of any office or employment of a person.

Article 19

GOVERNMENT SERVICE

1. a) Remuneration, other than a pension, paid by a Contracting State or a political or administrative, administrative-territorial subdivision or a local authority thereof to any 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 other Contracting State if the services are rendered in that State and the individual 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) Any pension paid by, or out of funds created by, a Contracting State or a political or administrative, administrative-territorial subdivision or a local authority thereof to any 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 Contracting State if the individual is a national of, and a resident of, that State.

3. The provisions of Articles 15, 16 and 18 shall apply to remunerations or pensions in respect of services rendered in connection with business carried on by one of the Contracting States or a political or administrative, administrative-territorial subdivision or a local authority thereof.

Article 20

PROFESSORS AND TEACHERS

A professor or teacher who makes a temporary visit to a Contracting State for a period not exceeding two years for the purpose of teaching or conducting research at a university, college, school or other educational institution, and who is, or immediately before such visit was, a resident of the other Contracting State, shall be exempt from tax in the first-mentioned Contracting State in respect of remuneration for such teaching or research.

Article 21

STUDENTS

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 Contracting 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 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 business in the other Contracting 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 are taxable in that other Contracting State according to its own laws.

Chapter IV

Taxation of Capital

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 that other State.
2. Capital represented by movable 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 by 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 may be taxed in that other State.
3. Capital represented by ships and aircraft operated in international traffic by an enterprise of a Contracting State or by movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.
4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Chapter V

Methods for Elimination of Double Taxation

Article 24

ELIMINATION OF DOUBLE TAXATION

1. It is agreed that double taxation shall be avoided in accordance with the following paragraphs of this Article.
2. In the case of Azerbaijan:

In the case of Azerbaijan, double taxation shall be avoided as follows:

Where a resident of Azerbaijan derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Italy, the tax on this income paid in Italy shall be deducted from the tax collected from this person in Azerbaijan in respect of the such

income and capital. Such deduction shall not, however, exceed the tax amount computed for such income or capital according to the legislation and taxation rules of Azerbaijan.

3. In the case of Italy:

If a resident of Italy owns items of income which are taxable in Azerbaijan, Italy, in determining its income taxes specified in Article 2 of this Convention, may include in the basis upon which such taxes are imposed the said items of income, unless specific provisions of this Convention otherwise provide.

In such a case, Italy shall deduct from the taxes so calculated the income tax paid in Azerbaijan, but in an amount not exceeding that proportion of the aforesaid Italian tax which such items of income bear to the entire income.

However, no deduction will be granted if the item of income is subjected in Italy to a final withholding tax by request of the recipient of the said income in accordance with the Italian law.

Chapter VI

Special Provisions

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, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, 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 on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 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. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting 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 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 Contracting 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, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

6. However, the provisions mentioned in the previous paragraphs of this Article will not limit the application of the domestic provisions for the prevention of the fiscal evasion and tax avoidance. This provision shall in any case include the limitations of the deduction of expenses and other negative elements deriving from transactions between enterprises of a Contracting State and enterprises situated in the other Contracting State.

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 three 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. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

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. 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 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.

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 concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political, administrative, administrative-territorial subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention, as well as to prevent fiscal evasion. The exchange of information is not restricted by Articles 1 and 2. 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) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in the first sentence. 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 Contracting States the obligation:

(a) to carry out administrative measures at variance with the laws or the 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, 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

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

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

Article 29

REFUNDS

1. Taxes withheld at the source in a Contracting State will be refunded by request of the taxpayer or of the State of which he is a resident if the right to collect the said taxes is affected by the provisions of this Convention.

2. Claims for refund, that shall be produced within the time limit fixed by the law of the Contracting State which is obliged to carry out the refund, shall be accompanied by an official certificate of the Contracting State of which the taxpayer is a resident certifying the existence of the conditions required for being entitled to the application of the allowances provided for by this Convention.

3. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this Article, in accordance with the provisions of Article 26 of this Convention.

Article 30

LIMITATION OF BENEFITS

1. Notwithstanding any other provision of this Convention, a resident of a Contracting State shall

not receive the benefit of any reduction in or exemption from taxes provided for in this Convention by the other Contracting State if the main purpose or one of the main purposes of the creation or existence of such resident or any person connected with such resident is to obtain the benefits under this Convention that would not otherwise be available.

2. Nothing in this Convention shall affect the application of the domestic provisions to prevent fiscal evasion and tax avoidance concerning the limitation of expenses and any deductions arising from transactions between enterprises of a Contracting State and enterprises situated in the other Contracting State, if the main purpose or one of the main purposes of the creation of such enterprises or of the transactions undertaken between them, is to obtain the benefits under this Convention, that would not otherwise be available.

Chapter VII

Final Provisions

Article 31

ENTRY INTO FORCE

1. Each of the Contracting States shall notify in written form the other through diplomatic channels of the completion of the necessary internal state procedures.

2. The Convention shall enter into force thirty days after the date of the receipt of the later of the notifications and its provisions shall have effect in both Contracting States:

a) in respect of taxes withheld at source - for amounts paid or credited on or after the first day of January of the calendar year next following that in which the Convention enters into force;

b) in respect of other taxes - for amounts of taxes charged during period beginning on the first day of January of the calendar year next following that in which the Convention enters into force.

Article 32

TERMINATION

This Convention shall conclude for indefinite period, but either Contracting State may terminate the Convention, through diplomatic channels, by giving written notice of termination in 5 calendar years after it has effect at least six months before the end of any calendar year. In such case, the Convention shall cease to have effect:

a) in respect of taxes withheld at source - for amounts paid or credited on or after the first day of January of the calendar year next following that in which the notice of termination of Convention is given;

b) in respect of other taxes – for amounts of taxes charged during period beginning on the first day of January of the calendar year next following that in which the notice of termination of Convention is given.

IN WITNESS WHEREOF the Plenipotentiaries of the two Contracting States, duly authorized thereto, have signed this Convention.

DONE in duplicate in Baku on July “ ” 2004, in the Azerbaijani, Italian and English languages, each text being equally authentic. In the case of divergence on interpretation or application the English text shall prevail.

For the Government
of the Republic of Azerbaijan

For the Government
of the Italian Republic

ADDITIONAL PROTOCOL

to the Convention between the Government of the Republic of Azerbaijan and the Government of the Italian Republic for the avoidance of double taxation with respect to taxes on income and on capital and the prevention of fiscal evasion.

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

It is understood that:

1. With reference to Article 2, paragraph 3, subparagraph b), if Italy will introduce in the future a tax on capital, this Convention shall apply to such tax, and double taxation shall be avoided according to the provisions of Article 24 of the Convention.
2. With reference to Article 3, paragraph 1, subparagraph d), in the case of Azerbaijan, a partnership or a joint venture deriving its status from Azerbaijan law, which is treated as a taxable unit under the law of Azerbaijan, shall be treated as a person for the purpose of this Convention.
3. With reference to paragraph 3 of Article 7, the term "expenses which are incurred for the purposes of the permanent establishment" means the expenses directly connected with the activity of the permanent establishment.
4. With reference to Article 8, profits from the operation of ships or aircraft in international traffic shall include:
 - (a) profits from the rental on a bareboat basis of ships or aircraft used in international traffic, and
 - (b) profits from the use, maintenance or rental of containers in international traffic (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise;
where such rental or such use, maintenance or rental, as the case may be, is incidental to the operation of ships or aircraft in international traffic.
5. With reference to paragraph 4 of Article 10, paragraph 5 of Article 11, paragraph 4 of Article 12 and paragraph 2 of Article 22, the last sentence contained therein shall not be construed as being contrary to the principles embodied in Articles 7 and 14 of this Convention.
6. With reference to Article 18, the provisions of paragraph 1 shall not apply if the recipient of the income is not subject to tax in respect of such income in the State of which he is a resident and according to the laws of that State. In such a case, such income may be taxed in the State where they arise.
7. With reference to paragraphs 1 and 2 of Article 19, remuneration paid to an individual in respect of services rendered to the Italian Foreign Trade Institution (I.C.E.) and to the Bank of Italy as well as to the corresponding Azerbaijan Institution, are covered by the provisions concerning government service.

8. With reference to Article 23, the provisions of paragraph 4 shall not apply if the resident of a Contracting State is not subject to tax in respect of such elements of capital in that State of which he is a resident and according to the laws of that State. In such a case, such elements of capital may be taxed in the other Contracting State.

9. The provisions of paragraph 3 of Article 29 shall not prevent the competent authorities of the Contracting States from the carrying out, by mutual agreement, of other practices for the application of the limitations provided for in this Convention.

10. Nothing in this Convention shall prevent either Contracting State from applying its domestic tax laws in order to prevent fiscal evasion and tax avoidance.

IN WITNESS WHEREOF the Plenipotentiaries of the two Contracting States, duly authorized thereto, have signed this Convention.

DONE in duplicate in Baku on July “ ” 2004, in the Azerbaijan i, Italian and English languages, each text being equally authentic. In the case of divergence on interpretation or application the English text shall prevail.

For the Government
of the Republic of Azerbaijan

For the Government
of the Italian Republic