

**CONVENTION BETWEEN
THE SWISS CONFEDERATION AND
THE ITALIAN REPUBLIC
FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE REGULATION OF
CERTAIN OTHER QUESTIONS RELATING TO TAXES ON INCOME AND CAPITAL¹.**

Article 1

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

Article 2

1. This Convention shall apply to taxes on income and on capital imposed on behalf of each of the Contracting States, of its political or administrative sub-divisions or local authorities, irrespective of the manner in which they are imposed.

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, payroll taxes, as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply, are:

a. In Italy:

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

(2) the tax on the income of legal entities (imposta sul reddito delle persone giuridiche);

(3) the local income tax (imposta locale sui redditi); even when deducted at source (hereinafter referred to as Italian tax);

b. In Switzerland:

The taxes imposed by the Confederation, the cantons and the municipalities

(1) on income (total income, earned income, income from capital, business income, capital gains and other income);

(2) on capital (total capital, movable and immovable property, business capital, capital and reserves and other items of capital).

4. The Convention shall also apply to any identical or substantially similar taxes which are imposed subsequently to 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 to each other any changes which have been made in their respective taxation laws.

¹ Date of Conclusion: March 9, 1976. Entry into Force: In accordance with Article 30 of the Convention, it entered into force upon the exchange of instruments of ratification on March 27, 1979. The provisions of this Convention have effect as of January 1, 1979.

5. The Convention shall not apply to taxes withheld at source on lottery winnings, and winnings from games of chance and skill, competitions and betting.

Article 3

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

a. the terms "a Contracting State" and "the other Contracting State", mean the Italian Republic or the Swiss Confederation as the context requires;

b. the term "person" comprises an individual, a company, and all other bodies of persons;

c. the term "company" means bodies corporate or entities which are treated as bodies corporate for tax purposes;

d. 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 or an enterprise carried on by a resident of the other Contracting State.

e. the term "international traffic" means any kind of transport by sea-going vessels or aircraft carried out by an enterprise whose place of effective management is in one of the Contracting States; ships or aircraft operated solely between places in the other Contracting State are, however, excluded.

f. the term "national" means:

1) individuals who possess the nationality of one of the Contracting States;

2) legal entities, partnerships and other bodies of persons which are set up in accordance with the law in force in one of the Contracting States.

g. the term "competent authority" means:

(i) in Italy: The Ministry of Finance,

(ii) in Switzerland: the Federal Tax Administration.

2. For the purposes of the application of the Convention by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that State relating to the taxes which are the subject of the Convention.

Article 4

1. For the purpose of this Convention, the term "resident of a Contracting State" means any person who, under the law of that State, is liable to taxation therein by reason of this domicile, habitual abode, place of management or any other similar criterion. The term shall not, however, include any person who is only subject to tax in such a Contracting State with respect to income derived from sources in that State or with respect to property situated in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States the following applies:

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 then he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (centre of vital interests);

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

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

d. if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the 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 of the Contracting State in which its place of effective management is situated. The same shall apply to partnerships set up and organised under the law of one of the Contracting States and bodies of persons assimilated thereto.

4. In the case of individuals who have definitely transferred their residence from one Contracting State to the other Contracting State, tax liability insofar as it depends on residence shall end in the first-mentioned State as of the day on which the transfer of residence is completed. In the other State, tax liability shall, insofar as it depends on residence, begin at the same point in time.

5. The following shall be deemed not to be resident in a Contracting State within the meaning of this Article:

a. a person who, while fulfilling the conditions laid down in paragraphs 1 to 3 is merely the seeming recipient of the income in question whereas the person who actually receives the income -- either directly or indirectly through other individuals or legal entities -- is not deemed to be a resident of that State within the meaning of this Article.

b. an individual who in the Contracting State in which he would be resident in accordance with the preceding provisions, is not subject under the tax law of that State to the taxes generally levied on all the income from the other Contracting State which is generally liable to tax.

Article 5

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. a mine, quarry or other place of extraction of natural resources;
- g. a building site or construction or assembly project which exists for more than twelve months.

3. The term "permanent establishment" shall not be deemed to include:

- a. the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- b. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- c. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d. the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or for collecting information, for the enterprise;
- e. the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4. 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.

6. The mere 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

1. Income from immovable property including income from agricultural and forestry enterprises may be taxed in the Contracting State in which such property is situated.

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 as well as rights to which the provisions of general law respecting landed property apply. Usufruct of immovable property, as well as 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 deemed to be "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 leasing 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 any enterprise and to income from immovable property used in the performance of professional services.

Article 7

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. Where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall, subject to the provisions of paragraph 3, 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 the determination of 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 must, however, be such that the result shall be in accordance with the principles laid down 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 Article of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

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. Profits from the operation of boats engaged in inland waterways transport shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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

4. The provisions of paragraphs 1 and 2 also apply to gains derived from the participation in a pool, a joint operating organisation or an international shipping, inland waterways or aircraft operating agency.

Article 9

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

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 be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of that State; but where the recipient of the dividends has a right to their enjoyment the tax so charged shall not exceed 15 percent of the gross amount of the dividends. This paragraph shall not affect the taxation of a company with respect to the profits out of which such dividends are paid. The competent authorities of the Contracting States shall agree as to how this paragraph shall be applied.

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 assimilated to income from shares by the taxation law 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 recipient of the dividends being a resident of a Contracting State carries on business activities through a permanent establishment -- which term shall not include a construction site or assembly project within the meaning of Article 5, paragraph 2, letter g -- situated in the other Contracting State of which the company paying the dividends is a resident or performs professional services through a fixed base situated therein. In such a case the dividends may be taxed in the other Contracting State and in accordance with its law.

5. Where a company which is a resident of one of the Contracting States derives profits or income from the other Contracting State, that other State may not tax the dividends paid by the company unless such dividends are paid to a resident of that other State, or a permanent establishment or fixed base situated in that other State, nor subject profits of such company to a tax on undistributed profits even where such dividends or undistributed profits represent in whole or in part profits or income derived from the other State.

Article 11

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

2. However, such interest may be taxed in the Contracting State in which it arises and according to the law of that State, but, where the recipient of the interest has a right to the enjoyment thereof, then the tax so charged may not exceed 12.5 percent of the amount of the interest. The competent authorities shall agree as to how this restriction shall be applied.

3. The term "interest" as used in this Article means income from Government securities, from bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and from debt-claims of every kind, as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the interest, being a resident of a Contracting State, carries on business activities through a permanent establishment -- which term shall not include a construction site or assembly project within the meaning of Article 5, paragraph 2, letter g -- situated in the other Contracting State from which the interest is derived, or performs professional services through a fixed base situated therein. In such a case the interest may be taxed in the other Contracting State and in accordance with its laws.

5. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, one of its political or administrative subdivisions, one of its local authorities or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, owing to a special relationship between the payer and the recipient 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 that case, the excess part of the payment shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

Article 12

1. Royalties 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 royalties may be taxed in the Contracting State in which they arise, and according to the law of that State but, where the recipient of the royalties has a right to their enjoyment, the tax may not exceed 5 percent of the gross amount of the royalties. The competent authorities of the Contracting States shall agree as to how this restriction shall be applied.

3. The term "royalties" as used in this Article means payments of any kind received as consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and television and radio recordings, any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the royalties, being a resident of a Contracting State, carries on business activities through a permanent establishment -- which term shall not include a construction site or assembly project within the meaning of Article 5, paragraph 2, letter g -- situated in the other Contracting State from which the royalties are derived or performs professional services through a fixed base situated therein. In such a case the royalties may be taxed in the other Contracting State and in accordance with its law.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, one of its political or administrative subdivisions, one of its local authorities, or a resident of that State. Where, however, the payer of the royalties, whether or not he is a resident of a Contracting State, has a permanent establishment in a Contracting State with which the consideration for which the royalties are paid is connected and such royalties are borne by the permanent establishment then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, having regard to the reason for which they are 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 that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13

1. Gains from the alienation of immovable property as defined in Article 6, paragraph 2, may be taxed in the Contracting State in which such property is situated.
2. Gains from the alienation of movable property pertaining to a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State. However, gains from the alienation of movable property of the kind referred to in paragraph 3 of Article 22 shall be taxable only in the Contracting State, in which such movable property is taxable in accordance with the said Article.
3. Gains from the alienation of any property other than that mentioned in paragraphs 1 and 2 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.
2. The term "professional services" includes, especially, independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15

1. Subject to the provisions of Articles 16, 18 and 19, wages, salaries 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 in respect of an employment exercised aboard a ship or aircraft in international traffic, or aboard a boat engaged in inland waterways transport, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

4. The taxation of employment income derived by frontier workers shall be determined in accordance with the Swiss-Italian Agreement of October 3, 1974, relating to the taxation of frontier workers and financial compensation for Italian frontier municipalities, of which Articles 1 to 5 shall be deemed to form an integral part of this Convention.

Article 16

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

Article 17

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

2. Where income derived from the activities of public entertainers or athletes in their capacity as such is enjoyed not by such public entertainers or athletes but by some other person then, notwithstanding the provisions of Articles 7, 14 and 15, such income may be taxed in the Contracting State in which such public entertainer or athlete exercises his activities.

3. Paragraphs 1 and 2 of Articles 10 and 11 shall not apply where the recipient of dividends and interest is a company which is a resident of a Contracting State and holds more than 25 percent of the capital of a company resident in the other Contracting State which pays the dividends or interest in question where the activities of such company relate mainly to the field of public entertainment or athletics and where theatre, motion picture, radio, or television artistes, musicians and athletes are used either directly or indirectly for such purposes.

Article 18

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

Article 19

1. Remuneration, including pensions, paid directly or out of special funds by a Contracting State, a political or administrative subdivision or a local authority thereof, or a legal entity or independent "Anstalt" set up under the public law of that State to an individual who possesses the nationality of that State in respect of present or past services shall be taxed only in the Contracting State from which the remuneration is derived.

2. For the purposes of this Article, the term "legal entity or independent 'Anstalt' set up under public law" means:

a. in Italy:

- (1) the "Ferrovie dello Stato" (FF.SS.);
- (2) the "Amministrazione delle poste e delle telecomunicazioni" (PP.TT.);
- (3) the "Ente nazionale italiano per il turismo" (ENIT);
- (4) the "Istituto nazionale per il Commercio estero" (ICE);

b. in Switzerland:

- (1) the "Schweizerischen Bundesbahnen" (SSB);
- (2) the "Post-, Telephon- und Telegraphen-betriebe" (PPT);
- (3) the "Schweizerische Verkehrszentrale" (SVZ). Other "Anstalten" and legal entities set up under public law may, by agreement between the competent authorities of the Contracting States be included in this list.

Article 20

Payments which a student or business apprentice, who is or was formerly a resident of a Contracting State and who is present in the other Contracting State solely for the purpose of his education or training shall not be taxed in that other State, provided that such payments are made to him from sources outside that other State.

Article 21

1. Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Convention shall, irrespective of where they arise, only be taxable in that State.

2. The provisions of paragraph 1 shall not apply if the recipient of the income being a resident of a Contracting State, carries on business activities through a permanent establishment -- which term shall not include a construction site or assembly project within the meaning of Article 5, paragraph 2, letter g -- situated in the other Contracting State, or performs professional services through a fixed base situated therein. In such a case the income may be taxed in the other Contracting State and in accordance with its law.

Article 22

1. Immovable property within the meaning of Article 6, paragraph 2 may be taxed in the Contracting State in which such property is situated.
2. Movable property pertaining to a permanent establishment of an enterprise or to a fixed base used in the performance of professional services may be taxed in the Contracting State in which such permanent establishment or fixed base is situated.
3. Ships and aircraft operated in international traffic and boats engaged in inland waterways transport, and movable property pertaining to the operation of such ships, aircraft and boats, 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 23

1. A legal entity which is a resident of a Contracting State, and in which persons who are not residents of that State have, directly or indirectly, a substantial interest in the form of a participation, or otherwise, may only claim the tax reductions provided for in Articles 10, 11 and 12 with respect to dividends, interest, and royalties, derived from sources in the other Contracting State, where:
 - a. the interest-bearing debts to persons who are not residents of the first-mentioned State are not higher than six times the equity capital and reserves;
 - b. the interest paid on loans contracted with such persons is not paid at a higher rate than the normal interest rate; the normal interest rate means:
 - (1) in Italy: the legal rate of interest plus three percentage points;
 - (2) in Switzerland: the average interest rate on debentures issued by the Swiss Confederation plus two percentage points;
 - c. not more than 50 percent of the relevant income from sources in the other Contracting State is used to satisfy claims (interest, royalties, development, advertising, initial and travel expenses, depreciation on any kind of business asset including intangible assets, processes, etc.) by persons not resident in the first-mentioned State;
 - d. expenses connected with the relevant income derived from sources in the other Contracting State are met exclusively from such income; and
 - e. the corporation distributes at least 25 percent of the relevant income derived from sources in the other Contracting State. Additional measures already taken, or to be taken by one of the Contracting States, against abuse of the use of tax relief relating to tax withheld at source in the other Contracting State, shall not be prejudiced hereby.

2. Even where a legal entity, being a resident of Switzerland, in which persons who are not residents of Switzerland have, directly or indirectly, a substantial interest in the form of a participation or otherwise, fulfills the conditions laid down in paragraph 1 it may only claim the reductions on taxes which Italy levies on interest or royalties which it derives from Italian sources if such interest or royalties are subject, in the canton in which such legal entity has its seat, to the cantonal tax on income in the same or similar way as is provided in relation to the Federal Defence Tax. A family foundation resident in Switzerland may not claim the benefit of the reductions of tax imposed by Italy on dividends, interest and royalties if the founder, or the majority of the beneficiaries, are not residents of Switzerland, and more than one third of the relevant income is not, or will not be, paid to residents of Switzerland.

3. The supervision, investigation and corroboration necessitated by the application of paragraphs 1 and 2 shall be carried out by the competent authorities of the Contracting State in which the recipient of the relevant income is resident. If the competent authority of the other Contracting State, from which the income originates, has reasonable grounds to cast doubt on the declarations made by the recipient of such income in his efforts to obtain a tax reduction, and the information contained in those declarations is confirmed by the competent authorities of the first State, then it shall communicate those grounds to the competent authority of the first State; this authority shall then undertake a new investigation and inform the competent authority of the other State of the conclusions reached. In case of disagreement between the competent authorities of the two States, Article 26 shall apply. No reduction will be given until agreement is reached.

Article 24

1. It is agreed that double taxation shall be avoided in accordance with the provisions of the following paragraphs of this Article.

2. Where a resident of Italy derives income which may be taxed in Switzerland, Italy may, in determining its own income taxes -- that is to say the taxes referred to in Article 2 of this Convention -- include such income in the tax base to the extent that this Convention does not expressly otherwise provide. In such a case, Italy shall credit against its tax so calculated, the Swiss income tax paid; the amount so credited may not, however, exceed that part of the Italian tax which, calculated in accordance with the ratio which the said income bears to total income, is appropriate to that income. On the other hand, no credit will be allowed in respect of income on which, at the request of the recipient of the income and in accordance with Italian law, final withholding taxes have been levied.

3. Where a resident of Switzerland derives income or owns capital and such income or capital may, in accordance with the provisions of this Convention be taxed in Italy then, subject to the provisions of paragraph 4 hereof, Switzerland shall exempt such income or capital from tax; it may, however, in calculating the tax on the remaining income or capital of such resident apply the rate of tax appropriate to total income or total capital as if there had been no such exemption.

4. Where a resident of Switzerland derives income which, in accordance with Articles 10, 11 and 12 may be taxed in Italy, Switzerland shall, on request, allow such resident a reduction of tax. This reduction shall consist of:

a. a deduction from the Swiss tax payable on the income of such resident of the tax imposed in Italy in accordance with the provisions of Articles 10, 11 and 12; the amount of such deduction may not, however, exceed that part of Swiss income tax, as computed before the deduction is given, which is imposed on the income which is subject to tax in Italy, or

b. a lump sum reduction of Swiss tax calculated in accordance with the principles laid down at letter a above for computing the allowable deduction, or

c. a partial exemption of such income from Swiss tax, which exemption shall, however, amount at least to the tax deducted at source in Italy from the gross amount of income derived from Italy. The reduction shall, however, consist of a deduction of the tax withheld at source in Italy from the gross amount of income derived from Italy, where the recipient, being a resident of Switzerland is not entitled, by virtue of the provisions of paragraph 4 of Articles 10, 11 and 12, paragraph 3 of Article 17, and Article 23, to benefit from the limitation provided for in paragraph 2 of Articles 10, 11 and 12 on the Italian tax on dividends, interest and royalties. Switzerland shall determine the type of reduction and the relevant procedure in accordance with the provisions regarding the application of international conventions of the Confederation for the avoidance of double taxation.

Article 25

1. The nationals of a Contracting State, even when not resident in one of the Contracting States, shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. In particular, the nationals of a Contracting State who are subject to tax in the other Contracting State shall be granted the same exemptions, deductions, allowances and reductions for taxation purposes on account of family responsibilities which under similar circumstances are granted to nationals of that other Contracting State.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of the other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family charges which it grants to its own residents.

3. With the exception of the cases referred to in Article 9, Article 11, paragraph 6 and Article 12, paragraph 6, interest, royalties and other remuneration which an enterprise of a Contracting State pays to a resident of the other Contracting State may be deducted in calculating the taxable profits of such enterprise under the same conditions as payments made to a resident of the first-mentioned State. Correspondingly, debts owed by an enterprise of a Contracting State to a resident of the other Contracting State may be deducted in calculating the taxable capital of such enterprise under the same conditions as debts owed to persons resident in 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. In this Article the term "taxation" means taxes of every kind and description.

Article 26

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention he may, notwithstanding the remedies provided by the domestic laws of those States, present his case to the competent authorities of the Contracting State of which he is a resident, or, where his case relates to Article 25, paragraph 1, to the competent authorities of the Contracting State of which he is a national. Such case must be submitted within three years of the first notification of the action which results in taxation not in accordance with this Convention.

2. The competent authorities shall endeavour, if the objection appears to them to be justified and if they are not themselves able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authorities of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Convention. This mutual agreement procedure shall be applied notwithstanding the time limits laid down by the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of 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 purposes of application of this Article. A mixed commission composed of members appointed by the competent authorities shall have the authority to settle by mutual agreements any disputes arising as to the application and interpretation of the Convention. This mixed commission shall meet alternately in each Contracting State as often as so required by the competent authorities. A member of the commission of the Contracting State in whose territory the meeting takes place shall take the chair.

Article 27

1. The competent authorities of the Contracting States may exchange such information (being information which is available under their respective taxation laws in the normal course of their administration) as is necessary for the carrying out of this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment, collection of, or proceedings or prosecutions relating to the taxes which are the subject of this Convention. No information shall be exchanged which would disclose any trade, banking, industrial or professional secret or any trade process.

2. In no case may the provisions of this Article be construed so as to impose on one of the Contracting States the obligation to carry out administrative measures at variance with its regulations and practice or which would be contrary to the sovereignty, security, public policy or general interest or to supply particulars which are not procurable under the law of its own State or the State making such application.

Article 28

1. Nothing in this Convention shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.
2. Insofar as, due to fiscal privileges granted to diplomatic or consular officials under international conventions, income or capital is not subject to tax in the receiving State, the sending State shall have the right to tax such income or capital in accordance with its own law.
3. For the purposes of the application of the Convention, members of a diplomatic or consular mission of a Contracting State in the other Contracting State or in a third State, shall be deemed to be residents of the sending State, if they are nationals of the sending State and if they are subject therein to taxes on income and capital in the same manner as residents of that State.
4. The Convention shall not apply to international organisations, the organs or officials thereof nor to members of a diplomatic or consular mission of a third State, who are present in a Contracting State but are not treated in either Contracting State as residents for the purposes of taxes on income and capital.

Article 29

1. Taxes withheld at the source in either Contracting State shall, at the request of the taxpayer or the State in which he is resident, be refunded to the extent that the right to levy such taxes is limited by this Convention.
2. Requests for refunds shall be submitted within the time limits laid down in the law of the Contracting State obliged to make such refund and must contain an official certificate issued by the Contracting State in which the taxpayer is resident stating that the conditions for claiming the reliefs under this Convention have been fulfilled.
3. Where shares which are issued by a company resident in Italy are held in trust by banks and financial institutions resident in Switzerland but in fact belong to persons resident there any request for a refund of tax may be made by the actual owner of the shares. Where the person who has the right of enjoyment of the dividends is a person other than the actual owner of the shares on which such dividends are paid then such request for a refund of tax may be made by the person who has the right of enjoyment; in such a case, a refund shall be made where both such persons are resident in Switzerland. Requests for refund must be accompanied by a certificate from the above-mentioned banks or financial institutions relating to the resident of the owner of the shares or the person with the right of enjoyment thereto as well as to the tax deducted at source from the dividends in Italy. Where a request for a refund of tax is made by the above-mentioned banks or financial institutions on behalf of the actual owner of the shares then such bank or financial institution must supply, with respect to each dividend distributing company, all necessary information concerning the owner of the shares and the amount of dividend derived by each owner as well as a certificate stating that such owner is a resident of Switzerland. In both cases the request for a refund of tax must be accompanied by a certificate from the Swiss tax authorities stating that the conditions laid down in this paragraph as well as those laid down in paragraph 2 above have been fulfilled.
4. The competent authorities of the Contracting States shall settle by mutual agreement in accordance with Article 26 the manner in which this Article shall be applied.

Article 30

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Berne as soon as possible.
2. This Convention enter into force upon the exchange of instruments of ratification and its provisions shall apply for the first time:
 - a. to taxes withheld at source on income which becomes payable on or after January 1, 1979;
 - b. to other taxes relating to tax periods ending on or after January 1, 1979.
3. Requests for refunds of tax under this Convention in respect of taxes payable by a resident of one of the Contracting States for periods beginning between January 1, 1979 and the entry into force of the Convention may be made within two years from the date of entry into force of the Convention.
4. The Convention signed in Rome on December 31, 1958 between Switzerland and Italy for the avoidance of double taxation with respect to income from shipping, aircraft and inland waterways enterprises shall be terminated and shall cease to apply to taxes to which this Convention applies in accordance with paragraph 2 thereof.

Article 31

This Convention, of which the agreement referred to in Article 15, paragraph 4 above forms an integral part, shall remain in force until denounced by one of the Contracting States. Either Contracting State may as from the year 1984 denounce the Convention through diplomatic channels by giving notice of termination at least six months before the end of any calendar year. In such event the Convention shall apply for the last time:

- a. to taxes withheld at source on income which becomes payable on or before December 31 of the year in which notice of termination is given;
- b. to other taxes which relate to tax periods ending on or before December 31 of the same year.

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

Done in duplicate at Rome this ninth day of March 1976 in the Italian language.

For the Swiss Confederation:
Hans-Conrad Cramer

For the Italian Republic:
Cesidio Quazzaroni

PROTOCOL

At the signing of the Convention concluded today between the Swiss Confederation and the Italian Republic for the avoidance of double taxation and the regulation of certain other questions relating to taxes on income and capital the undersigned plenipotentiaries have agreed on the following provisions which shall constitute an integral part of the Convention:

It is agreed:

a. that, in connection with the provisions of Article 2, where a tax on capital is subsequently introduced in Italy the Convention shall also apply to such tax;

b. that Article 19, paragraph 1, shall apply to Italian teachers working in Switzerland referred to in Number 1 of the Exchange of Letters of November 27/December 18, 1973 between Switzerland and Italy and that Swiss teachers working in Swiss schools in Italy which are wholly or partly supported by Swiss public funds shall be exempt from Italian taxes in respect of their salaries; the above provisions shall apply to salaries paid on or after January 1, 1973 and shall have the effect of making the Exchange of Notes of November 27/December 18, 1973 inapplicable;

c. Notwithstanding Article 30, the provisions of Article 19 shall apply to taxes relating to tax periods beginning on or after January 1, 1974; requests for refunds of tax may be made within two years from the date of entry into force of the Convention. The above provisions shall also apply to remuneration received by Italian citizens who exercise their activities in Switzerland as employees of one of the following organizations:

- ACLI (Associazione Cristiana lavoratori italiani)
- INCA (Istituto Nazionale Confederale di Assistenza)
- ITAL (Istituto Tutela ed Assistenza ai Lavoratori)
- INAS (Istituto Nazionale di Assistenza Sociale)
- ENCAL (Ente Nazionale Confederale Assistenza Lavoratori)
- ENAS (Ente Nazionale di Assistenza Sociale)
- ENASCO (Ente Nazionale di Assistenza Sociale per gli Esercenti Attivita Commerciali)
- ENPAC (Ente Nazionale per l'Assistenza ai Coltivatori).

d. that the Swiss tax on capital levied in accordance with the Convention shall be set off against any tax on capital subsequently introduced in Italy in the manner provided for in Article 24, paragraph 2;

e. that the expression "notwithstanding the remedies provided by the domestic law" in Article 26, paragraph 1 shall be construed as meaning that the remedies provided by domestic law cannot be replaced by the commencement of the mutual agreement procedure and that the commencement of such a procedure is in any case recommended where a dispute involves an application of Italian tax which is not in accordance with the Convention;

f. that Article 29, paragraph 4 may be construed as meaning that the competent authorities of the Contracting States may mutually agree upon a different procedure for application of the tax reliefs available under the Convention.

Done in duplicate at Rome this ninth day of March, 1976 in the Italian language.

For the Swiss Confederation:
Hans-Conrad Cramer

For the Government of the Italian Republic:
Cesidio Quazzaroni