

1979 Income Tax Convention and Final Protocol (English Translation)

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CONVENTION BETWEEN THE REPUBLIC OF ITALY AND THE REPUBLIC OF TUNISIA FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND THE PREVENTION OF FISCAL EVASION

[TRANSLATION]

The Government of the Republic of Italy and the Government of the Republic of Tunisia, desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income and the prevention of fiscal evasion, have agreed to the following provisions:

Article 1 Personal Scope

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

Article 2 Taxes Covered

1) This Convention shall apply to taxes on income imposed on behalf of a Contracting State, a political subdivision or a local authority thereof, irrespective of the manner in which they are levied.

2) There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amount of salaries as well as taxes on capital appreciation.

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

a) with regard to Italy:

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

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

3) imposta locale sui redditi (local income tax),
including withholding taxes

(referred to hereinafter as "Italian tax");

b) with regard to Tunisia:

1) l'impôt de la patente (tax on business licenses);

2) l'impôt sur les bénéfices des professions non commerciales (tax on profits from non-business professions);

3) l'impôt sur les traitements et salaires (tax on wages and salaries);

4) tax agricole (tax on agriculture);

5) l'impôt sur le revenu des valeurs mobilières (tax on income from movable assets);

6) l'impôt sur le revenu des créances, dépôts, cautionnements et comptes courants (I.R.C.) (tax on income from debt-claims, deposits, guarantees and current accounts);

7) les taxes perçues par les collectivités locales (taxes levied by local authorities);

8) la contribution personnelle d'Etat (national personal tax),
(referred to hereinafter as "Tunisian tax").

4) The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the taxes referred to in paragraph 3. The competent authorities of the Contracting States shall inform each other of any substantial changes made in their respective tax laws.

Article 3 General Definitions

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

a) the terms "a Contracting State" and "the other Contracting State" mean the Tunisian Republic or the Italian Republic, depending on the context;

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

c) the term "company" means any body corporate or any entity which is treated as a body 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 and an enterprise carried on by a resident of the other Contracting State;

e) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise whose effective place of management is situated in a Contracting State, except where the ship or aircraft is operated solely between places situated in the other Contracting State.

f) the term "national" means:

1) any individual possessing the nationality of a Contracting State;
2) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;

g) the term "competent authority" means:

1) in Italy: the Minister of Finance;

2) in Tunisia: the Minister of Finance or an authorized representative.

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

Article 4 Fiscal Domicile

1) For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable for taxation in that State in respect only of income from sources situated in that State.

2) Where by reason of the provisions of paragraph 1, an individual is deemed a resident of both Contracting States, then the question shall be settled as follows:

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

b) if the Contracting State in which such person 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 State in which he has an habitual abode;

c) if such person 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 such person 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. This provision shall apply to bodies of persons as well as companies regarded as bodies of persons founded and organized under the laws of a Contracting State.

Article 5 Permanent Establishment

1) For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2) The term "permanent establishment" includes especially:

a) a place of management;

b) a branch;

c) an office;

d) a factory;

e) a workshop,

f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

g) a building site or construction or installation project lasting longer than six months.

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

a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;

b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, 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 use of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information for the enterprise;

e) the use of a fixed place of business for the enterprise, for the sole purpose of advertising, providing information, performing scientific research or any similar activity of a preparatory or auxiliary character.

4) A person--other than an agent of an independent status to whom paragraph 5 applies--who is acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed a "permanent establishment" in the first-mentioned State if it has and habitually exercises in that State the authority to conclude contracts for the enterprise or on behalf of the enterprise, unless the activity of such person is limited to purchasing goods or merchandise for the enterprise.

5) An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

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

Article 6 Income From Immovable Property

1) Income in respect of immovable property, including income from agriculture and forestry, shall be taxed in the Contracting State in which such property is situated.

2) The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. 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; ships 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, either in the State in which such 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 of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

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

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

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

Article 8 Shipping and Air Transport

1) Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2) If the place of effective management of a shipping enterprise is aboard a ship 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 is a resident.

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

Article 9 Associated Enterprises

Where

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

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

Article 10 Dividends

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

2) However, such dividends may 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 person who receives the dividends is the beneficial owner thereof, the tax so charged may not exceed 15 percent of the gross amount of the dividends.

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

This paragraph shall not affect the taxation of the company in respect of the profits out of which 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 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 case, the dividends shall be taxable in said other Contracting State, according to its own domestic laws.

5) Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company to residents of the first-mentioned State, except 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 to a tax on 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, according to the laws of that State, but if the person who receives the interest is the beneficial owner thereof, the tax so charged may not exceed 12 percent of the gross amount of the interest. The competent

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

3) Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from taxation in said State if:

a) the payer of the interest is the Government of said Contracting State or a local authority thereof; or
b) the interest is paid to the Government of the other Contracting State, to a local authority, an institution or organization therein (including financial institutions) belonging entirely to that Contracting State or a local authority thereof.

4) The term "interest" as used in this Article means income from public funds, bonds and debentures, whether not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, income from debt-claims of all kinds, as well as all other earnings included in income from sums lent under the tax laws of the State in which the income arises.

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

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

7) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which 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 under the laws of each Contracting State and 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.

2) However, such royalties may also be taxed in the Contracting State in which they arise, under the laws of that State, but if the person who receives the royalties is the beneficial owner thereof, then the tax so charged may not exceed:

a) 16 percent of the gross amount of the royalties pertaining to a trade mark or brand name, to cinematograph or television films, or industrial, commercial or scientific equipment;

b) 5 percent of the gross amount of the royalties pertaining to royalties from literary, artistic or scientific works;

c) 12 percent in all other cases.

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

4) The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the income, 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 case, the royalties shall be taxable in said other Contracting State according to its own domestic laws.

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

6) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable under the laws of each Contracting State and in accordance with the other provisions of this Convention.

Article 13 Capital Gains

1) Gains derived by a resident of a Contracting State from the alienation of immovable property as defined in paragraph 2 of Article 6, and situated in the other Contracting State, may be taxed in that other State.

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 total alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State. However, gains from the alienation of ships or aircraft operated in international traffic, or from movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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

Article 14 Independent Personal Services

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

a) if the resident has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities, but only insofar as such income is attributable to such fixed base; or

b) remuneration for his services in that other State are paid by resident of that last-mentioned State and exceed the amount of \$7,000 in the tax year considered.

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

Article 15 Dependent Personal Services

1) Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of 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 in question, and

b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State;

c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3) Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16 Directors' Fees

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

Article 17 Entertainers and Athletes

1) Notwithstanding the provisions of Articles 14 and 15, income derived by entertainers such as theatre, motion picture, radio or television artists, or musicians or athletes in respect of their personal

activities in such capacity, may be taxed in the Contracting State in which such activities are exercised.

2) Where income from activities exercised personally, and in such capacity, by an entertainer or athlete accrues to a person other than the entertainer or athlete himself, it may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

Article 18 Pensions

Pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment may be taxed only in that State.

Article 19 Government Service

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

b) However, such remuneration shall be taxable only in the 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 said State; or

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

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

Article 20 Students

1) Payments which a student or a business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of pursuing his education or training receives for the purpose of his maintenance, education or vocational training shall not be taxed in that State, provided they are from sources situated outside that State or provided they are received as remuneration for an activity carried out in that other State within the limits of a reasonable income to allow him to continue his education or vocational training.

Article 21 Other Income

1) Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2) The provisions of paragraph 1 shall not apply where 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 shall be taxable in that other State according to its own domestic laws.

Article 22 Elimination of Double Taxation

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 items of income which are not taxable in Tunisia, then Italy, in charging income tax as referred to in Article 2 of this Convention, may include in the tax base for said taxes such items of income unless otherwise stated by specific provisions of this Convention.

In such case, Italy shall deduct from the taxes so charged the income tax paid in Tunisia, but the amount of the deduction may not exceed that portion of the Italian tax attributable to said items of income in the portion in which they contribute to the total income.

However, no deduction shall be allowed where the item of income is subjected in Italy to withholding tax at the request of the recipient of the income, in accordance with Italian law.

3) Where a resident of Tunisia receives income which, in accordance with the provisions of this Convention, is taxable in Italy, then Tunisia shall deduct from the tax it charges on the income of the resident an amount equal to the income tax paid in Italy.

However, the amount deducted may not exceed that portion of the income tax, computed before the deduction is given, which is attributable to the taxable income in Italy.

4) Where, under the laws of one of the Contracting States, the taxes to which this Convention applies are not fully or partially levied for a limited period of time, said taxes shall be deemed as being fully paid for the purposes of paragraphs 2 and 3 above, solely with regard to the following:

a) Dividends, interest and royalties, up to the maximum amount allowable, as indicated respectively in Article 10, paragraph 2; Article 11, paragraph 2, and Article 12 paragraph 2; and

b) Profits from enterprises referred to in Article 7, up to a maximum of 25 percent.

Article 23 Non-Discrimination

1) Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

In particular, nationals of a Contracting State who may be taxed in the other Contracting State shall enjoy the tax waivers, reliefs, deductions and reductions allowed on account of their status and family responsibilities.

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 Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5) The term "taxation" means in this Article taxes of every kind and description.

Article 24 Mutual Agreement Procedure

1) Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or 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 23, to the competent authority 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 endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. The agreement shall be applied irrespective of the deadlines stipulated by the domestic laws 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 cooperate for the purpose of eliminating double taxation in cases not referred to in the Convention.

4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching agreement as indicated in the foregoing paragraphs.

When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

Article 25 Exchange of Information

1) The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention.

Such persons or authorities shall use the information only for such purposes. They may disclose the information 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 State the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

Article 26 Diplomatic Agents and Consular Officers

The provisions of this Convention shall not affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or the provisions of specific agreements.

Article 27 Requests for Refunds

- 1) Taxes levied by withholding in one of the Contracting States shall be refunded at the request of the payer or of the State of which he is a resident where the right to levy such taxes is limited by the provisions of said Convention.
- 2) Requests for refunds, to be submitted within the deadlines established by the laws of the Contracting State required to make such refunds, must be accompanied by an official attestation by the Contracting State of which the taxpayer is a resident, certifying that the conditions required to receive the exemptions or reductions allowed under this Convention have been met.
- 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 24.

Article 28 Entry Into Force

- 1) This Convention shall be ratified and the instruments of ratification shall be exchanged as soon as possible at .
- 2) The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall apply:
 - a) to taxes withheld from income attributed or paid after January 1 of the year following the year in which the instruments of ratification are exchanged;
 - b) to other taxes for tax periods ending on January 1 of the year in which the instruments of ratification are exchanged.
- 3) The Convention between Italy and Tunisia for the avoidance of double taxation on income from the operation of ships and aircraft in international traffic signed at Tunis November 20, 1969 shall terminate and cease to apply to all Italian and Tunisian taxes pertaining to any period to which this Convention shall apply with regard to such taxes, in accordance with paragraph 2 of this Article.

Article 29 Termination

This Convention shall remain in force as long as it is not terminated by a Contracting State. Each Contracting State may terminate the Convention through diplomatic channels with a minimum of six months' notice before the end of each calendar year and after a period of five years from the date of its entry into force. In such case, the Convention shall apply for the last time:

- a) to taxes withheld from income paid no later than December 31 of the year of termination.
- b) to other taxes for tax periods ending no later than December 31 of the same year.

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

Done in duplicate at Tunis, this 16th day of May 1979, in the Italian and French languages, with the latter taking precedence in the event of a dispute.

FOR THE GOVERNMENT OF THE REPUBLIC OF ITALY:

Arnaldo Fortani

FOR THE GOVERNMENT OF THE REPUBLIC OF TUNISIA:

Mohamed Fitouri

FINAL PROTOCOL

At the time of signature of the Convention concluded on this day between the Italian Republic and the Tunisian Republic for the avoidance of double taxation with respect to taxes on income and for the prevention of fiscal evasion, the representatives signing below have agreed to the following additional provisions which are an integral part of the Convention.

It is agreed that:

a) the provisions of Article 4, paragraph 3 shall not preclude taxation of the profits of de facto companies or other associations of persons under the governing law of each Contracting State;

b) with regard to Article 7, paragraph 3, "expenses incurred for the purposes pursued by that permanent establishment" means the expenses directly pertaining to the business of the permanent establishment;

c) the term "royalties" referred to in paragraph 3 of Article 12 includes technical research of an industrial or commercial character;

d) with regard to paragraph 1 of Article 24, the term "irrespective of the recourse provided for by domestic law" means that the beginning of the mutual agreement procedure is not an alternative to the national grievance procedure which must in any event be resorted to initially, where the dispute pertains to an application of the Italian taxes which is not in compliance with the Convention;

e) the provision of paragraph 3 of Article 27 shall not preclude the interpretation according to which the competent authorities of the Contracting States may, by mutual agreement, establish other procedures for the application of tax reductions which may be allowed under the Convention.

Done in duplicate at Tunis, this 16th day of May 1979, in the Italian and French languages, with the latter taking precedence in the event of a dispute.

FOR THE GOVERNMENT OF THE REPUBLIC OF ITALY:

Arnaldo Fortani

FOR THE GOVERNMENT OF THE REPUBLIC OF TUNISIA:

Mohamed Fitouri