

# **1984 Income and Capital Tax Convention and Final Protocol (English Translation)**

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## **CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF ECUADOR AND THE GOVERNMENT OF THE ITALIAN REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL AND THE PREVENTION OF TAX EVASION**

[TRANSLATION]

The Government of the Republic of Ecuador and the Government of the Italian Republic, Desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income and on capital, and to prevent tax evasion, Have agreed upon the following provisions:

Chapter I. Scope of the Convention

### **Article 1 Personal Scope**

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

### **Article 2 Taxes Covered**

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

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

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

a) In the case of Ecuador:

1. el impuesto sobre la renta (income tax);
2. los impuestos adicionales sobre la renta (additional taxes on income); and
3. el impuesto a los capitales en giro (tax on outstanding capital).

(hereinafter called "Ecuadorian tax")

b) In the case of Italy:

1. imposta sul reddito delle persone fisiche (individual income tax);
2. imposta sul reddito delle persone giuridiche (corporate income tax); and
3. l'imposta locale sui redditi (local income tax).

even if these taxes are levied as withholdings.

(hereinafter called "Italian 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 existing taxes. At the end of each year, the competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

Chapter II. Definitions

### **Article 3 General Definitions**

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

- a) the term "Italy" means the Republic of Italy;
- b) the term "Ecuador" means the Republic of Ecuador;
- c) the terms "a Contracting State" and "the other Contracting State" mean Italy or Ecuador, as the case may be;
- d) the term "person" includes an individual, a company and any other body of persons;
- e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

h) the term "nationals" means:

1. all individuals who are citizens of a Contracting State; and
2. all legal entities, partnerships and associations constituted pursuant to the legislation in force in a Contracting State

i) the term "competent authority" means:

1. In the case of Italy, the Ministry of Finance;
2. In the case of Ecuador, the Ministry of Finance and Public Credit;
2. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

#### **Article 4 Resident**

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

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

- a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either 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 State in which its place of effective management is situated.

#### **Article 5 Permanent Establishment**

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

2. The term "permanent establishment" includes especially:

- a) a place of management;
- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop,
- f) a mine, a quarry or any other place of extraction of natural resources,
- g) a construction or assembly site, which lasts for more than twelve months.

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

- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

e) the maintenance of a fixed place of business solely for the purpose of advertising, providing information, conducting scientific research which is preparatory or auxiliary in nature, provided that these activities are carried out by the enterprise itself.

4. Where a person--other than an agent of an independent status to whom paragraph 5 applies--has the authority to enter into agreements in a Contracting State on behalf of an enterprise from the other Contracting State that enterprise shall be deemed to have a permanent establishment in the first-mentioned State in respect of any activities which that person undertakes for the enterprise unless the activities of such person are limited to the purchase of goods or assets for the same 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.

Chapter III. Taxation of Income

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

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall 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, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

### **Article 7 Business Profits**

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

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

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

### **Article 9 Associated Enterprises**

1. Where

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

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

### **Article 10 Dividends**

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 15 percent of the gross amount of the dividends.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same 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 a trade or business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs 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 cases the dividends shall be taxable in that other Contracting State pursuant to its domestic laws.

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

### **Article 11 Interest**

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

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 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 one of the Contracting States shall be exempt in said State if:

- a) the party paying the interest is the Government of that Contracting State, or one of its local governments;
- b) the interest is paid to the Government of the other Contracting State or to one of its local governments or to an institution or organization (including financial institutions) wholly owned by that Contracting State or one of its local governments.
- c) the interest is paid to other institutions or entities (including financial institutions) in respect of financing agreed upon by them under agreements concluded between the governments of both Contracting States.

4. The term "interest" as used in this Article means proceeds from Public Debt, bonds or obligations, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and loans of any type, as well as any other income which the fiscal legislation of the State where the interest arises deems equivalent to income from amounts loaned.

5. The provisions of paragraphs 1 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on a trade or business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such cases the interest is taxable in that other Contracting State pursuant to its 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 or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

## **Article 12 Royalties**

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

2. Nevertheless, these royalties may also be subject to taxation in the Contracting State from which they arise and in accordance with the laws of that State, but if the party receiving the royalties is the beneficial owner, the tax owed thereon may not exceed five percent of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement establish the mode of application of this limitation.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or tapes recorded for television or radio, or a 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 royalties, being a resident of a Contracting State, carries on a trade or 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 cases the royalties shall be taxable in that other Contracting State pursuant to its domestic laws.

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

taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

### **Article 13 Capital Gains**

1. Gains derived from the alienation of immovable property referred to in paragraph 2 of Article 6 shall be taxed in the Contracting State in which it is situated.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State. However, gains derived from the alienation of ships or aircraft operated in international traffic, or of moveable property related to the operation of these ships or aircraft shall only be taxable in the Contracting State where the 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 an independent 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, accountants and auditors.

### **Article 15 Dependent Personal Services**

1. Subject to the provisions of Articles 16, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
  - a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned,
  - b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
  - c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

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

Directors' fees, consultation fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors 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 a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.
3. The provisions of paragraphs 1 and 2 shall not be applicable to compensation and income derived from the service or activity carried out in a Contracting State, if the stay in said State is financed

directly or indirectly, in whole or to a substantial extent, with public funds of the other Contracting State, one of its political or administrative subdivisions, or of its local governments.

### **Article 18 Pensions**

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

### **Article 19 Government Service**

1.
  - a) Remuneration, other than a pension, paid by a Contracting State 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 that State; or
    - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2.
  - a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State, subdivision or authority shall be taxable only in that State.
  - b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

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

Professors or researchers residing temporarily in a Contracting State, during a period of no more than two years, for the purpose of teaching or conducting research at a University, Secondary School, Primary School or other similar institution, and who are or were in the immediately previous period, residents of the other Contracting State, shall be exempt from the tax in the first Contracting State for the compensation arising from the instructional or research activity, provided that said remuneration arises from sources situated outside of that first State.

### **Article 21 Students**

1. Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.
2. Any remuneration which a student or apprentice who is or was in the period immediately preceding his visit to a Contracting State, a resident of the other Contracting State, receives as the result of a dependent activity carried out occasionally and not on a full-time basis in the first Contracting State, for a period which may be reasonably justified in relation to achieving the purpose mentioned in paragraph 1, shall not be taxable in that first State.

### **Article 22 Other Income**

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply where the recipient of the income, a resident of a Contracting State, carries on a trade or business in the other Contracting through a permanent establishment situated therein or provides independent services through a fixed base situated therein, and the right or property on which income is paid is effectively connected to these permanent establishments or fixed base. In such cases, the income may be subject to taxation in the other Contracting State, based on its domestic laws.

Chapter IV. Taxation of Capital

### **Article 23 Capital**

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.
2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other

Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

3. Capital represented by ships and aircraft operated in international traffic and by movable property pertaining to the operation of such ships and aircraft, 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.

Chapter V

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

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

2. When a resident of Italy receives taxable income in Ecuador, when establishing the taxes on the income as referenced by Article 2 of this Convention, Italy may include this income in the taxable base of said taxes, unless specific provisions of this Convention specify otherwise.

In this case, Italy must deduct from the taxes determined in this manner, the tax on income paid in Ecuador, but the amount of the deduction may not exceed the portion of the Italian tax attributable to said income in the proportion in which the same make up in the total income.

Nevertheless, no deduction shall be granted if the income is subject to taxation in Italy through the withholding method at the request of the recipient of the income under Italian law.

3. In the case of the Republic of Ecuador, the tax received by the Italian treasury pursuant to Italian laws shall be deducted from the income tax to be paid on income arising from Italy, pursuant to Ecuadorian laws, but the amount of said deduction may not exceed the portion of the Ecuadorian tax attributable to said income in the proportion in which the same make up the total income.

Chapter VI. Special Provisions

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

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of Article 9, paragraph 7 of Article 11, or paragraph 3 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State. Likewise, the debts of a company from a Contracting State relative to a resident of the other Contracting State are deductible for determining the taxable capital of this company under the same conditions as if they had contracted with a resident of the first 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 provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

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

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

presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall 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.

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.

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

### **Article 27 Exchange of Information**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws 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 28 Diplomatic Agents and Consular Officers**

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

### **Article 29 Refund Requests**

1. The taxes collected in a Contracting State by means of withholding shall be reimbursed at the request of the interested party when the right to levy the taxes is limited by the provisions of this Convention.

2. Requests for refunds to be submitted within the terms set forth by the laws of the Contracting State which is obligated to make said refund, must be accompanied by an official statement by the Contracting State where the taxpayer is a resident, certifying that the conditions required in order to benefit from exemptions or the reductions specified in this Convention are met.

3. The competent authorities of the Contracting States shall establish by mutual agreement, pursuant to the provisions of Article 26 of this Convention, the methods for application of this Article.

Chapter VII. Final Provisions

### **Article 30 Entry Into Force**

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

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

a) In matters regarding the taxes levied by means of withholding, on the amounts paid or credited as of January 1 of the year in which the instruments of ratification are exchanged.

b) In matters regarding other taxes on income and taxable capital for each fiscal period which begins as from January 1 of the year in which the instruments of ratification are exchanged.

3. Requests for refunds or tax credits which this Convention allows with respect to all the taxes paid by the residents of one of the Contracting States relative to tax periods which begin as from January 1

of the year in which the instruments of ratification are exchanged, and through the date of the entry into force of this Convention, may be submitted within two years of the entry into force of this Convention, or from the date on which the tax was levied, if later.

### **Article 31 Termination**

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

In such event, the Convention shall cease to have effect:

- a) In regards to taxes levied by means of withholding, on the amounts paid or credited as from January 1 of the calendar year following the calendar year in which notice of the termination was given;
- b) In regards to other taxes on income and capital, on taxes applicable for each final period beginning as from January 1 of the calendar year following the calendar year in which notice of termination was given

Done in duplicate in Quito, this twenty-third day of May Nineteen hundred eighty-four, in the Spanish and Italian languages, each version being equally authentic

#### **FOR THE GOVERNMENT OF THE REPUBLIC OF ECUADOR:**

*Luis Valencia Rodriguez*  
*Minister of Foreign Affairs*

#### **FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC:**

*Bernardo Osio*  
*Ambassador*

### **PROTOCOL**

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

At the time of the signature of the Convention between the Government of the Republic of Ecuador and the Government of the Italian Republic for the avoidance of double taxation with respect to taxes on income and on capital, and the prevention of tax evasion, the undersigned have agreed to the following provisions which constitute an integral part of said Convention.

It is specified:

- a) that in reference to the term "resident" as used in this Convention, inasmuch as it refers to the Republic of Ecuador, this term is synonymous with "domiciled person".
- b) that in reference to Article 2, Paragraph 3, if in the future a tax on capital is instituted in the Republic of Italy, the Convention shall also apply to said new tax, and double taxation shall be avoided pursuant to the provisions of Article 24.
- c) that, in reference to Article 7, paragraph 3, the expression "expenses incurred for the purposes of the permanent establishment" means the expenses directly related to the business of the permanent establishment.
- d) that, in reference to paragraph 1 of Article 26, the expression "irrespective of the remedies provided by the domestic law" means that the amicable procedure is not an alternative for the domestic settlement procedure which, in all cases, must be initiated first when the dispute deals with application of taxes which do not comply with the Convention.
- e) the provision of paragraph 3 of Article 29 does not prevent the competent authorities of the Contracting States from being able to establish, by mutual agreement, other procedures for applying the tax reductions specified by this Convention.
- f) the remuneration paid to an individual in respect of services rendered to the Italian State Railroads (FF.SS), to the Italian State Postal Service (PP.TT), to the Italian Foreign Trade Institute (ICE) and the Italian Tourism Bureau (ENIT) are included in the provisions relative to public servants and, as a result, in paragraphs 1 and 2 of Article 19 of the Convention.

Done in duplicate in Quito, this twenty-third day of May Nineteen hundred eighty-four, in the Spanish and Italian languages, each version being equally authentic.

#### **FOR THE GOVERNMENT OF THE REPUBLIC OF ECUADOR:**

*Luis Valencia Rodriguez*  
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#### **FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC:**

*Bernardo Osio*  
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