

1977 Income and Capital Tax Convention and Final Protocol (English Translation)

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CONVENTION BETWEEN THE ITALIAN REPUBLIC AND THE SOCIALIST REPUBLIC OF ROMANIA FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL AND FOR THE PREVENTION OF TAX EVASION [TRANSLATION]

The Government of the Italian Republic and the Government of the Socialist Republic of Romania, desiring to promote and reinforce the economic relations between the two countries based on the respect of their national sovereignty and independence, equal rights, mutual benefits, and non-interference in domestic affairs, have agreed to conclude a convention for the avoidance of double taxation with respect to taxes on income and on capital, and for the prevention of tax evasion, the provisions of which are as follows:

Article 1 Personal Scope

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

Article 2 Taxes Covered

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

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

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

a) for Italy:

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

b) for Romania:

- 1) the tax on income derived from salaries, from literary, artistic, and scientific works, from contributions to publications and performances, and from providing expert opinions, or from other similar sources;
- 2) the tax on income generated in Romania by non-resident individuals and corporate bodies;
- 3) the tax on the income of mixed companies established with the ownership of Romanian economic organizations and their foreign affiliates, as well as the tax on representative offices of commercial enterprises and foreign economic organizations;
- 4) the tax on income derived from productive activities (from businesses and professional services), as well the tax on income derived from enterprises other than State enterprises;
- 5) the tax on income derived from the lease of buildings and land;
- 6) the tax on income derived from agricultural activities (hereinafter referred to as "Romanian tax").

4. The Convention shall also apply to any identical or similar taxes which will become effective after the signing date of this Convention, in addition to, or in place of, the taxes described in paragraph 3. The competent authorities of the Contracting States shall notify each other of substantial changes which have been made in their respective tax laws.

Article 3 General Definitions

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

- a) the terms "a Contracting State" and "the other Contracting State" mean, as required by context, Italy or Romania;
- b) the term "person" includes an individual, a company, and any other body of persons;

- c) the term "company" means any body corporate, including mixed companies under Romanian law, 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, aircraft, railroad car, or road vehicle operated by an enterprise which has its place of effective management in a Contracting State, except when the ship, aircraft, railroad car, or road vehicle is operated solely between places in the other Contracting State;
 - f) the term "nationals" means:
 - 1) individuals who are nationals (cetatenia) of a Contracting State;
 - 2) corporate bodies, companies of persons, and bodies of persons established in accordance with laws in effect in a Contracting State;
 - g) the term "competent authority" means:
 - 1) in Italy: the Ministry of Finance;
 - 2) in Romania, the Ministry of Finance or its 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 Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, or any other criterion of a similar nature. But this term does not include any person who is liable to tax in the State in respect only of income from sources in that State or capital they own in that State.
2. Where, by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
 - a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (center of vital interests);
 - b) if the Contracting State in which he has his center of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has a habitual abode;
 - c) if he has a habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
 - d) if 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 considered a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated. The same provision shall apply to companies of persons and similar companies founded and organized according to 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, a quarry, or any other place of extraction of natural resources.
 - g) a building or installation project which lasts 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 pursuant to a sales contract;
 - 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 stock of goods or merchandise belonging to the enterprise shown at a trade fair or show, which are sold by the enterprise at the end of such fair or show;
- e) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- f) the maintenance of a fixed place of business for the enterprise solely for the purpose of advertising, providing information, performing scientific research, or analogous activities of a preparatory or auxiliary character.

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

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

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

Article 6 Income From Immovable Property

1. Income derived from immovable property, including income from agriculture or 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 right to work, mineral deposits, sources, and other natural resources. Ships, boats, and aircraft shall not be regarded as immovable property.

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

4. The provisions of paragraphs 1 and 3 shall also apply to the income derived from immovable property 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 International Transportation

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

2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbor of the ship is situated, or, if there is no such home harbor, in the Contracting State of which the operator of the ship is a resident.

3. Profits from the operation of railroad cars or road vehicles in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. The provisions of paragraphs 1 and 3 shall also apply to profits of an enterprise of a Contracting State from participation in a pool, a joint business, or an international operating agency.

Article 9 Associated Enterprises

Where

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

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

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

Article 10 Dividends

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 percent of the gross amount of the dividends.

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

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

3. For the purposes of this Article, the term "dividends" means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares, or other rights, not being debt claims, participating in profits as well as income from other corporate rights, including profits distributed by mixed companies, which are subjected to the same taxation treatment as income from shares by the tax laws of the State in which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the dividends, being a resident of a Contracting State, carries on a commercial or industrial business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the dividends shall be taxable in that other Contracting State in accordance with its domestic laws.

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

Article 11 Interest

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

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

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

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

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

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

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

6. Interest shall be deemed to arise in a Contracting State when the payer is the State itself, a political or administrative subdivision, a local authority thereof, or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment 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.

7. Where, by reason of a special relationship between the payer and the payee 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 payee in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 12 Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable in that other State.

2. However, such royalties may be taxed in the Contracting State from which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 10 percent of the gross amount of the royalties.

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

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

4. The provisions of paragraph 1 shall not apply if the recipient of the royalties, being a resident of a Contracting State, carries on commercial or industrial business in the other Contracting State in which

the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the royalties shall be taxable in that other Contracting State in accordance with its domestic laws.

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

6. Where, by reason of a special relationship between the payer and the payee, 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 payee 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 given to the other provisions of this Convention.

Article 13 Fees

1. Fees arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable in that other State.

2. However, such fees may be taxed in the Contracting State from which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the fees, the tax so charged shall not exceed 5 percent of the gross amount of the fees.

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

3. The term "fees" as used in this Article means payments made to a person for services rendered by such person in his capacity as an agent, but shall not include payments made in respect of independent activities described in Article 15, or employment described in Article 16.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the fees, being a resident of a Contracting State, carries on commercial or industrial business in the other Contracting State in which the fees arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the fees are effectively connected with such permanent establishment or fixed base. In such case the fees shall be taxable in that other Contracting State in accordance with its domestic laws.

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

6. Where, by reason of a special relationship between the payer and the payee, or between both of them and some other person, the amount of the fees paid, having regard to the services for which they are paid, exceeds the amount which would have been agreed upon by the payer and the payee 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 14 Capital Gains

1. Gains derived from the alienation of immovable property according to the definition in paragraph 2 of Article 6, shall be taxable in the Contracting State where such property is situated.

2. Gains from the alienation of movable property belonging to 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 movable property indicated in

paragraph 3 of Article 24, shall be taxable only in the Contracting State where the property in question is taxable according to the provisions of that Article.

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 15 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, and accountants.

Article 16 Dependent Personal Services

1. Subject to the provisions of Articles 17, 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, and

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

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

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

Article 17 Directors' Fees

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

Article 18 Artistes and Athletes

1. Notwithstanding the provisions of Articles 15 and 16, income derived as an entertainer, such as a theater, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such shall be taxable in the Contracting State in which such activities are performed.

2. Income derived by an entertainer or athlete who is a resident of a Contracting State as a result of activities carried on in the other Contracting State as a part of cultural exchanges under cultural agreements concluded between the two Contracting States, shall not be taxable in that other Contracting State.

3. 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, 15, and 16, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

Article 19 Pensions

Subject to the provisions of paragraph 2 of Article 20, 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 20 Government Service

1.

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

b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State, and the recipient of remuneration is a resident of that other Contracting State who:

(i) is a national of that State, or

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

2.

a) Pensions paid by, or out of funds created by, a Contracting State, or a political or administrative subdivision or local authority thereof to an individual in respect of services rendered to that State, subdivision or local authority, shall be taxable only in that State.

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

3. The provisions of Articles 16, 17, and 19 shall apply to remuneration or pensions paid in respect of services rendered in connection with an industrial or commercial business carried on by a Contracting State, or a political or administrative subdivision or local authority thereof.

Article 21 Professors, Teachers, and Researchers

The remuneration of professors and other teaching staff who are residents of a Contracting State, and who temporarily reside in the other Contracting State for a period of up to two years for the purpose of teaching or conducting scientific research at a university or other non-profit institute of teaching or scientific research, shall be taxable only in the first-mentioned State.

Article 22

1. Amounts which a student or business apprentice who is or was, immediately before visiting a Contracting State, a resident of the other Contracting State, and who is present in the first-mentioned State solely for the purpose of completing his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

2. Remuneration which a student or business apprentice who is or was, a resident of a Contracting State, receives in respect of employment on a part-time or occasional basis in the other Contracting State for a reasonably justified period of time in relation to pursuing the goals described in paragraph 1, shall not be taxable in that other State.

Article 23 Other Income

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

2. The provisions of paragraph 1 shall not apply to income if the recipient of such income, being a resident of a Contracting State, carries on an industrial or commercial business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or productive 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 Contracting State according to its domestic laws.

Article 24 Capital

1. Capital represented by immovable property referred to in paragraph 2 of Article 6, may be taxed in the Contracting State in which the property is situated.

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

3. Ships, aircraft, railroad cars, or road vehicles operated in international traffic, and movable property pertaining to their operation, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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

Article 25 Methods for Elimination of Double Taxation

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

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

In such case, Italy must deduct from the taxes calculated in this manner the income tax paid in Romania, but the amount of the deduction may not exceed the amount of Italian tax attributable to

the aforementioned items of income to the extent such items of income contribute to the composition of total income.

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

3. If a resident of Romania receives items of income taxable in Italy, Romania, when calculating its income taxes as specified in Article 2 of this Convention, may include these items of income in the tax base subject to those taxes unless otherwise established by specific provisions of this Convention. In such case, the tax paid in Italy shall be deducted from the tax due in Romania according to its tax laws. The amount so deducted, however, may not exceed the amount of Romanian tax attributable to those items of income.

For the purposes of applying the provisions of this paragraph, profits that state-owned Romanian enterprises pay to the State Budget shall be deemed to be taxes due to Romania.

Article 26 Non-Discrimination

1. Nationals of a Contracting State, whether or not they are residents of 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, nationals of a Contracting State, who are subject to taxation in the other Contracting State, shall benefit from the exemptions, reliefs, allowances, and tax reductions granted for family responsibilities to nationals of that state in the same circumstances.

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

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

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

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

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

5. As used in this Article, the term "taxation" means taxes of every kind and description.

Article 27 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 26, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. The agreement shall be applied whatever the terms stipulated by the domestic laws of the Contracting States.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the application of the Convention. They may also consult with each other to eliminate 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 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 28 Exchange of Information

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

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

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

Article 29 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 30 Reimbursement Procedure

1. Taxes imposed in one of the Contracting States through withholdings at the source shall be reimbursed at the request of the interested party or the State of which such party is a resident if the right to collect such taxes is limited by the provisions of this Convention.

2. Reimbursement claims, which are to be submitted within the time limitations established by laws of the Contracting State required to make such reimbursement, must be accompanied by an official statement of the Contracting State of which the taxpayer is a resident, certifying that the required conditions exist which entitle the taxpayer to apply the exemptions or reductions referred to in this Convention.

3. The competent authorities of the Contracting States shall establish by mutual agreement, and pursuant to the provisions of Article 27 of this Convention, the mode of application of this Article.

Article 31 Entry Into Force

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

2. This Convention shall enter into force on the date the instruments of ratification are exchanged, and its provisions shall apply to income earned during taxation periods which begin on or after January 1 of the calendar year in which this Convention enters into force.

Article 32 Termination

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

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

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

Done in duplicate at Bucharest, this 14th day of January, 1977 in the Italian and Romanian languages, each version being equally authentic.

FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC:

Filippo Maria Pandolfi

FOR THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF ROMANIA:

Florea Dumitrescu

FINAL PROTOCOL

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

It is understood that:

- a) with respect to Article 2, if a tax on capital is instituted in the future in Italy and Romania, the Convention shall apply to such tax. In such case, the provisions of Article 25 shall be applicable for the elimination of double taxation;
- b) the income described in Article 23 shall include income derived from activities involving the qualitative or quantitative control of goods or merchandise, technical support, and employee training, as well as income derived from providing expert opinions, or income derived from providing other services not specifically covered in the Convention;
- c) with respect to paragraph 1 of Article 27, the expression "irrespective of the remedies provided by the domestic law" shall mean that the initiation of the mutual agreement procedure shall not be construed as an alternative to domestic litigation proceedings which, in any event, should be initiated in advance, where the dispute involves the application of Italian taxes which are not in accordance with the Convention;
- d) the provisions of paragraph 3 of Article 30 shall not exclude the interpretation whereby the competent authorities of the Contracting States may, by mutual agreement, establish different procedures for the application of tax reductions granted under the Convention;
- e) at variance with the provisions of paragraph 2 of Article 31, the provisions of paragraph 1 of Article 8 shall apply to income earned in tax periods beginning on or after January 1, 1969;
- f) with reference to Romania, the term "political or administrative subdivision" used in the text of the Convention, shall mean an "administrative-territorial subdivision."

Done in duplicate at Bucharest, this 14th day of January, 1977 in the Italian and Romanian languages, each version being equally authentic.

FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC:

Filippo Maria Pandolfi

FOR THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF ROMANIA:

Florea Dumitrescu