

No. 9445

**FRANCE
and
ITALY**

Convention for the avoidance of double taxation and to settle certain other questions with respect to direct taxes on income and fortune (with exchange of letters). Signed at Paris on 29 October 1958

Additional Agreement amending and supplementing the above-mentioned Convention (with protocol). Signed at Paris on 6 December 1965

Authentic texts of the Convention and the Additional Agreement : French and Italian.

Authentic text of the exchange of letters: French.

Registered by France on 3 March 1969.

[TRANSLATION - TRADUCTION]

CONVENTION ¹ BETWEEN FRANCE AND ITALY FOR THE
AVOIDANCE OF DOUBLE TAXATION AND TO SETTLE
CERTAIN OTHER QUESTIONS WITH RESPECT TO DI-
RECT TAXES ON INCOME AND FORTUNE

The President of the French Republic and
the President of the Italian Republic,

desirous of avoiding double taxation and of settling certain other questions relating to direct taxes on income and fortune, have decided to conclude a Convention and have for that purpose appointed as their plenipotentiaries:

The President of the French Republic:

His Excellency Mr. Louis Joxe, Ambassador of France, General Secretary of the Ministry of Foreign Affairs

The President of the Italian Republic:

His Excellency Mr. Alberto Rossi Longhi, Ambassador Extraordinary and Plenipotentiary of Italy

who, having communicated to each other their full powers, found in good and due form, have agreed on the following provisions:

Article 1

This Convention shall apply to individuals domiciled in France or in Italy and to French and Italian bodies corporate.

Article 2

Paragraph 1. This Convention shall determine the rules applicable to the following taxes:

A. In France:

- (1) The tax on the income of individuals (proportional tax and progressive surtax) (*l'impôt sur le revenu des personnes physiques [taxe proportionnelle et surtaxe progressive]*);

¹ Came into force on 15 December 1967 by the exchange of the instruments of ratification, which took place at Rome, in accordance with article 29.

- (2) The presumptive tax on certain profits from non-commercial professions (*le versement forfaitaire applicable à certains bénéfiques des professions non commerciales*);
- (3) The tax on the profits of companies and other bodies corporate (*l'impôt sur les bénéfiques des sociétés et autres personnes morales*).

B. In Italy:

- (1) The tax on income from land (*imposta sui redditi dei terreni*);
- (2) The tax on income from buildings (*imposta sui redditi dei fabbricati*);
- (3) The tax on income from movable wealth (*imposta sui redditi di ricchezza mobile*);
- (4) The tax on agricultural income (*imposta sui redditi agrari*);
- (5) The progressive supplementary income tax (*imposta complementare progressiva sul reddito*);
- (6) The company tax (*imposta sulle società*);
- (7) The tax on bonds (*imposta sulle obbligazioni*).

Paragraph 2. This Convention shall also apply to taxes on income levied by provinces, departments, municipalities, chambers of commerce and all other local authorities.

It shall also apply to any other similar taxes imposed after its signature in the territory of either of the Contracting States on income, fortune, or increase to fortune.

Paragraph 3. It is agreed that if the taxation laws of either State are amended in a manner substantially affecting the nature or the character of the taxes referred to in paragraph 1 of this article, the competent authorities of the two States shall agree on such action as may be necessary.

Article 3

In this Convention:

Paragraph 1. The term “France”, used in a geographical sense, means only metropolitan France and the overseas departments (Guadeloupe, Martinique, Guiana and Réunion);

The term “Italy”, used in the same sense, means the territory of the Italian Republic.

Paragraph 2. (a) The fiscal domicile of an individual shall be the place in which he has his “permanent home”, the latter expression being understood to mean the centre of vital interests, i.e. the place with which his personal relations are closest.

Where the domicile of an individual cannot be determined on the basis of the foregoing sub-paragraph, he shall be deemed to be domiciled in that one of the two States in which he principally resides. If he resides for equal periods in each of the two States, he shall be deemed to have his domicile in the Contracting State of which he is a national; if he is a national of both States, or of neither of them, the chief administrative authorities of the two States shall determine the question by agreement.

(b) The fiscal domicile of a body corporate shall be the place in which it has its centre of actual management.

Paragraph 3. Where a taxpayer permanently transfers his domicile from one State to the other, he shall cease to be liable in the first-mentioned State to any taxes applied on the basis of domicile from the date on which the transfer took place. Liability in the other State to such taxation shall begin on that date.

Paragraph 4. 1. The following shall be deemed to be permanent establishments: centres of actual management, factories or workshops, places for the working of mines, mineral deposits or other natural resources, branches, stores, offices, laboratories, and any other fixed places of business in which the business of the enterprise is wholly or partly carried on.

2. The following shall in particular be deemed to be permanent establishments:

- (a) Sites established by an enterprise in one of the two States for the execution of public or private works in that State, where the duration of such works exceeds a total of three months in a period of twelve consecutive months;
- (b) Representations or agencies, where the representative or agent habitually exercises a general authority enabling him to negotiate and conclude contracts on behalf of the enterprise. An agent shall in particular be deemed to have such authority if he regularly withdraws goods or merchandise from a stock for sale or delivery to customers.

3. An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other State because:

- (a) It maintains in the second-mentioned State a warehouse the sole purpose of which is to facilitate the delivery in that State of goods or merchandise covered by sales contracts concluded in the first-mentioned State;
- (b) It has in any form whatsoever an interest in a company or body corporate which is a taxpayer of the second-mentioned State;

- (c) It carries on business in the second-mentioned State through a genuinely independent agent (broker, commission agent or other intermediary) acting in the course of his normal business, or through a legally independent company (e.g. a subsidiary);
- (d) It maintains offices, even if they are fixed places of business, exclusively for the purchase of merchandise for its stocks.

Paragraph 5. So far as concerns the taxation of their profits in accordance with the provisions of article 5, insurance enterprises shall be deemed to have a permanent establishment in one of the two States if they collect premiums in the territory of that State or insure risks situated therein through a representative.

Article 4

Paragraph 1. Income from immovable property, including profits from agricultural and forestry enterprises and profits derived from the alienation of such property, shall be taxable only in the State in which the property is situated.

Paragraph 2. Royalties paid for the use of immovable property, for the exercise of hunting, fishing and other similar rights or for the working of mines, quarries or other natural resources shall be taxable only in the State in which the property to which the royalties relate is situated.

Article 5

Paragraph 1. Where an enterprise operated in one of the Contracting States has a permanent establishment within the meaning of article 3 of this Convention in the other State, income derived from all the operations effected by that establishment and profits arising from the total or partial alienation of assets invested in the said establishment shall be taxable only in the latter State.

Paragraph 2. If the actual amount of the income realized by the permanent establishment cannot be determined exactly and separately from the accounts or from other information, the taxation authorities of the two States shall if necessary agree on the formulation of rules of apportionment for determining the share of the income of the enterprise as a whole which may equitably be attributed to the establishment.

Paragraph 3. The income and profits of the permanent establishment, as defined in paragraph 1 above, shall include, *inter alia*, any profits or advantages which, according to normal commercial practices, would not have been granted to a third party and which are allotted or granted by the permanent establishment in any manner whatsoever, directly or indirectly, either to the enterprise itself or to other establishments of the enterprise, or to its officers, shareholders, partners or other participants or to persons having interests in common with them.

Paragraph 4. In determining the income of the permanent establishment which an enterprise of one of the two States maintains in the other State, account shall be taken of:

- The actual costs and expenses which are borne by the enterprise in the State in which the permanent establishment is situated and which constitute a direct and special charge on the acquisition and maintenance of that income; and
- The portion of the other expenses, including the normal executive and general administrative expenses incurred for the enterprise as a whole at its centre of actual management, normally chargeable against the permanent establishment.

Article 6

Where an enterprise of one of the two States which is controlled by or controls an enterprise of the other State or which is controlled by an enterprise or a group which also controls an enterprise of the other State grants to or imposes upon the enterprise of the other State, in their commercial or financial relations, conditions differing from those which it would normally make with genuinely independent enterprises, all profits which should normally have appeared in the accounts of one of the enterprises but which have in this manner been transferred directly or indirectly to the other enterprise may be incorporated in the taxable profits of the first enterprise. In the absence of precise data permitting the amount of the transferred profits to be determined exactly, the competent authorities of the Contracting States shall if necessary come to an agreement to determine the figure at which such profits should be estimated and to avoid double taxation in the spirit of the Convention.

Article 7

Notwithstanding the provisions of article 5, profits derived from the operation of shipping or air transport enterprises shall be taxable only in the

State in whose territory the centre of actual management of the enterprise is situated, provided that the ships or aircraft fly the flag or possess the nationality of the said State.

Article 8

Paragraph 1. Subject to the provisions of articles 9 and 10 of this Convention, the Contracting States have agreed as follows:

(a) Interest and other income from government securities, bonds or debentures, loans, deposits, deposit accounts and any other debt claims shall be taxable in the State of the payer of such interest and income.

However, if the payer has permanent establishments as defined in article 3 in both States and one of those establishments, in the course of its own activity, contracts a loan or receives a deposit, the tax shall be levied by the State in whose territory the establishment is situated;

(b) Dividends distributed by a company having its fiscal domicile in one of the two States shall be taxable in that State;

(c) Income from partnerships shall according to its nature be taxable under the provisions of this Convention and in conformity with the laws of each State.

Paragraph 2. For the purposes of sub-paragraph (b) above, the term “dividends” means income from shares, “jouissance” shares, founders’ shares and other like corporate rights, and income from shares in private limited companies.

Article 9

Paragraph 1. The State of domicile shall retain the right to tax the income referred to in article 8 in conformity with its general legislation, but the double taxation resulting therefrom shall be avoided in the following manner:

(a) 1. If the interest and other income are paid by a payer domiciled in Italy, France shall deduct from its proportional tax the taxes actually collected in Italy on the interest and income.

2. If the interest and other income are paid by a payer domiciled in France, Italy shall deduct from its tax on income from movable capital the proportional tax actually collected in France on the interest and income.

(b) 1. If the dividends are distributed by a company domiciled in Italy to individuals or partnerships domiciled in France, France shall deduct from the progressive surtax applicable to the said individuals or to members of the said partnerships the supplementary income tax actually collected in Italy on the dividends.

2. If the dividends are distributed by a company domiciled in France to a company or other body corporate domiciled in Italy, France shall, on production of proof determined by agreement between the taxation authorities of the two States, waive its proportional tax.

(c) 1. Where the recipient of the income referred to in article 8, paragraph 1 (c), is domiciled in France, Italy shall waive its progressive supplementary income tax and France shall deduct from its proportional tax, if collected, the taxes actually collected in Italy on the income.

2. Where the recipient of the income is domiciled in Italy, France shall waive its progressive surtax and Italy shall deduct from the amount of its tax on income from movable wealth, if collected, the taxes actually collected in France on the same income.

If the taxation laws of either Contracting State are subsequently amended in a manner affecting the application of provisions (a), (b) and (c) above, either State may submit a request to the other, through the diplomatic channel, for the provisional termination of such application. In that case, the application of the provision in question shall cease on 1 January of the year following the year in which the request is made, and both States shall enter into consultation immediately to agree on the necessary adjustments in that provision.

Paragraph 2. All other income which under the provisions of this Convention is taxable exclusively by one of the two States shall be exempt from taxation in the other State.

Article 10

1. Companies domiciled in Italy which have a permanent establishment in France and which are liable there to the tax on income from movable capital under article 109-2 of the General Tax Code shall pay the tax in accordance with the provisions of that article.

The fraction of the distributed profits actually liable to the French proportional tax may not, however, exceed one quarter of the income taxable under article 109-2 aforesaid, which income may not itself exceed the amount of the industrial or commercial profits realized by the French permanent establishment as determined for the assessment of the company tax in accordance with the provisions of this Convention.

Where the company is able to show proof, in a manner agreed to by the chief administrative authorities of the two States, that more than three quarters of its total shares, founders' shares and corporate rights are owned by persons domiciled in Italy, the fraction of the distributed profits liable to the French tax under the foregoing sub-paragraph shall be reduced accordingly.

2. A company having its fiscal domicile in Italy shall not be liable in France to the proportional tax on income from movable capital by reason of its participation in the management or in the capital of a company having its fiscal domicile in France or because of any other relationship with that company.

Article 11

Paragraph 1. Royalties and other payments received by a taxpayer of one of the Contracting States for the concession to a taxpayer of the other State of the use of intangible movable property such as patents, designs or models, secret processes and formulae, trade-marks and similar rights, copyrights and rights of reproduction, rights to the use of industrial, commercial or scientific equipment, and rental rights in cinematograph films, shall be taxable only in the State in which the recipient has his domicile, provided that the said recipient has no permanent establishment of his enterprise in the other State.

In the latter case the royalties shall be taxable only in that other State. This rule shall remain applicable if the permanent establishment is replaced by an interest in a company. Where any difficulty arises, the taxation administrations of the two States shall agree on such action as may be necessary.

Paragraph 2. Notwithstanding the provisions of paragraph 1 above, the royalties, payments and fees referred to therein shall be taxable only in the State in whose territory the paying enterprise is situated, if and to the extent that such royalties, payments and fees exceed the intrinsic and normal value of the property for which they are paid.

In individual cases in which the application of the preceding sub-paragraph appears to be appropriate, the taxation authorities of the two States shall determine by agreement the fraction of the total royalties, payments and fees which may be deemed normal.

Paragraph 3. The provisions of paragraphs 1 and 2 of this article shall also apply to profits from the alienation of the property in question.

Article 12

Salaries, wages or similar remuneration and pensions paid by one of the Contracting States or one of its local authorities to individuals resident in the other State in respect of present or past administrative or military services shall be taxable only in the first-mentioned State.

However, this provision shall not apply if the recipient of the remuneration is a national of the other State.

Article 13

Paragraph 1. Subject to the provisions of articles 12 and 14 of this Convention, salaries, wages and other similar remuneration shall be taxable only in the State in whose territory the personal activity from which the income is derived is carried on.

Paragraph 2. However, an individual having his domicile in one of the two States shall be exempt from taxation in the other State in respect of remuneration for personal services performed therein:

1. If he was present in that other State for a period or periods not exceeding in the aggregate 183 days in a period of twelve consecutive months, and
2. If the services were performed for the account of an individual or body corporate domiciled in the first-mentioned State or of an establishment situated therein, and
3. If the remuneration was not paid as such from the proceeds of a gainful activity taxable in the other State.

Paragraph 3. Remuneration for personal services performed on board ships or aircraft shall be taxable only in the State in which the centre of actual management of the shipping or air transport enterprise is situated.

Article 14

Directors' percentages, attendance fees and similar payments received by members of the boards of directors or supervisory boards of joint stock companies or co-operative societies or by the managers of private limited companies shall be taxable only in the Contracting State in which the company or society paying them is domiciled.

Normal remuneration actually received by such persons in any other capacity shall be taxable, according to its nature, under article 13 or article 16 of this Convention.

Article 15

Pensions other than those referred to in article 12 of this Convention and annuities shall be taxable only in the State in which the payer is domiciled.

Article 16

Paragraph 1. Income from professions and, in general, all earned income other than that for which rules are specially laid down by the provisions of this Convention shall be taxable only in the State in which the personal activity is carried on.

A personal activity shall be deemed to be carried on in one of the two States only to the extent that the taxpayer uses a fixed base regularly available to him in that State.

Paragraph 2. For the purposes of paragraph 1 above, the term "profession" includes, in particular, scientific, artistic, literary, educational or pedagogic activities and the activities of physicians, lawyers, architects and engineers.

However, the rules laid down in article 13, paragraph 1, shall apply to theatre, radio, television, and motion picture artists and to athletes when they are employed by an enterprise or organization of any kind for fixed remuneration.

Article 17

Remuneration received by professors and teachers of one of the States for instruction given during a period of residence not exceeding two years at a university or other higher educational institution situated in the other State shall not be taxable in the latter State.

Article 18

Students and apprentices of one of the two Contracting States staying in the other State for the sole purpose of study or training shall be exempt from taxation in the latter State in respect of remittances received by them from the first-mentioned State.

Article 19

Taxes levied on income of all kinds other than those referred to in the foregoing articles shall be collected only in the State in which the recipient is domiciled.

Article 20

In cases in which under the provisions of this Convention income is to be exempted by one of the two States, exemption shall be granted if and to the extent that the income is taxable in the other State.

Article 21

Taxes on fortune or increase to fortune shall be treated in accordance with the following provisions:

(1) Where the fortune consists of:

- (a) Immovable property and accessories thereto;
- (b) Commercial or industrial enterprises, including shipping and air transport enterprises,

the tax shall be levied in the State in which the income derived from the fortune is taxable in accordance with the foregoing articles.

(2) Where the fortune consists of securities or debt-claims of any kind, the tax shall be levied in the State in which the owner of such securities or debt-claims is domiciled.

However, securities and debt-claims forming part of the capital actually invested in a permanent establishment situated in one of the two Contracting States shall be taxable in that State.

(3) All other forms of fortune shall be taxable in the State of domicile.

(4) For the purposes of this article, taxes imposed separately on certain elements of fortune, such as the Italian tax on bonds, shall not be deemed to be taxes on fortune. The same shall apply to the Italian company tax, which, as a whole, has the characteristics of a tax on income.

Article 22

Notwithstanding any other provisions of this Convention, graduated taxes may be calculated in each State, whether or not the taxpayer has his domicile in that State, at the rate applicable to the total income or fortune taxable under the taxation laws of that State.

Article 23

The provisions of this Convention shall not restrict any rights or advantages accorded to taxpayers under the laws of either of the Contracting States in respect of the taxes enumerated in article 2 of this Convention.

Article 24

Paragraph 1. The taxation authorities of the two Contracting States shall exchange all information in their possession or available to them which may be necessary to ensure the application of the provisions of this Convention and to prevent tax fraud or apply the rules for the prevention of tax evasion in respect of the taxes dealt with in this Convention.

Paragraph 2. All information so exchanged shall be kept secret and shall be disclosed to no persons, apart from the taxpayer or his agent, other than those concerned with the assessment and collection of the taxes dealt with in this Convention and with claims and appeals relating to such taxes.

Paragraph 3. The provisions of this article shall not have the effect of obliging the taxation authorities of one of the two States to communicate either information which, because of its nature, cannot be obtained under the laws of that State or those of the other State, or information which they regard as liable to disclose a manufacturing process, to divulge an industrial, commercial or professional secret or to be contrary to public policy. Nor shall they be

regarded as obliging the taxation authorities of one of the two States to take measures at variance with the regulations or practices of that State.

Paragraph 4. Information shall be exchanged as a matter of routine or on application in connexion with particular cases. The competent authorities of the two States shall agree on the list of classes of information to be communicated as a matter of routine.

Article 25

Paragraph 1. The Contracting States undertake to lend each other support and assistance in the collection of the taxes dealt with in this Convention and in the collection of interest, costs, supplementary taxes and surcharges.

Paragraph 2. The taxation authorities of the State requested to lend support and assistance to the other State shall effect recovery in accordance with the rules governing the recovery of similar tax debts of their own. Tax debts to be recovered shall not be regarded as privileged debts in the requested State.

Paragraph 3. Legal proceedings shall be initiated and enforcement measures taken on production of an official copy of the enforceable order and, where appropriate, the final decision.

Paragraph 4. Where tax debts are still subject to appeal, the creditor State, in order to protect its rights, may request the other State to serve an execution or collection order on the debtor. Appeals against the claims for which enforcement has in this manner been sought shall lie only to the competent tribunal of the applicant State.

Article 26

Paragraph 1. The taxation authorities of the two Contracting States may by common accord make such regulations as may be necessary for carrying out the provisions of this Convention.

Paragraph 2. Where difficulties or doubts arise in carrying out any of the provisions of this Convention, the taxation authorities of the two Contracting States shall come to an understanding with a view to interpreting the said provisions in the spirit of the Convention.

Paragraph 3. Where a taxpayer of one of the Contracting States shows proof that taxes assessed or proposed to be assessed against him have resulted or will result in double taxation prohibited by the Convention, he may, without prejudice to the exercise of his rights of complaint and appeal in either State, submit to the taxation authorities of the State in which he has his domicile a written application for the review of the said taxes. Such application must be lodged within six months from the date of notification or collection at source of the second tax. If the application is upheld by the taxation authorities to which it is submitted, the latter shall come to an understanding with the taxation authorities of the other State with a view to the avoidance of the double taxation.

Paragraph 4. If it appears that agreement would be facilitated by negotiations, such negotiations shall be entrusted to a Mixed Commission composed of representatives of the two States appointed by the chief administrative thereof.

Article 27

The taxation authorities referred to in this Convention are, in the case of France, the Ministry of Finance (Department of the Director-General of Taxes), and in the case of Italy, the Ministry of Finance (Department of the Director-General of Direct Taxes).

Article 28

The effects of this Convention may be extended, with such changes as may be deemed necessary by the two States, to Algeria and to the territories for whose diplomatic representation the French Republic is responsible, provided that the territory concerned levies taxes similar to those referred to in article 2 of this Convention.

The conditions and procedure for such extension shall be established by exchange of diplomatic notes between the two States.

At any time after the expiry of a period of one year from the entry into force of an extension notified in conformity with the provisions of the preceding paragraph, each of the Contracting States may, by giving six months' notice through the diplomatic channel, terminate the application of this Convention to any territory to which it has been extended with effect from the end of the calendar year. The Convention shall apply for the last time to that territory in accordance with the provisions of article 30 below.

Except as otherwise expressly agreed between the two States, the denunciation of this Convention in accordance with article 20 shall terminate its application to any territory to which it has been extended in accordance with the terms of this article.

Article 29

Paragraph 1. This Convention is drawn up in the French and Italian languages, both texts being equally authentic. It shall be ratified and the instruments of ratification shall be exchanged at Rome as soon as possible.

Paragraph 2. The Convention shall enter into force on the exchange of the instruments of ratification, and its provisions shall apply for the first time:

- (1) To taxes levied by deduction at the source on income of the kinds referred to in article 8 of this Convention which is paid after the expiry of a period of three months from the date of exchange of the instruments of ratification, where the provisions of this Convention specify that such taxes shall not be deducted;
- (2) To other taxes on income, in respect of the taxation of income accruing during the calendar year in which the exchange of the instruments of ratification takes place or during the fiscal years ended in the course of that year.

Article 30

This Convention shall remain in force so long as it is not denounced by one of the Contracting States.

Either State may, by giving six month's notice through the diplomatic channel, denounce it with effect from the end of the fifth calendar year following the year of ratification or any calendar year thereafter.

In that event, the Convention shall apply for the last time:

- (1) In respect of income of the kinds referred to in article 8 which under the provisions of this Convention is not to be taxed at the source, to income paid not later than 31 December of the calendar year at the end of which the Convention ceases to have effect;
- (2) In respect of other income, to the taxation of income accruing during the year at the end of which the Convention ceases to have effect or during the fiscal years ended in the course of that year.

Article 31

The provisions of the Convention¹ between France and Italy for the Avoidance of Double Taxation and the Settlement of Other Fiscal Questions, signed on 16 June 1930, shall apply for the last time:

- (1) To taxes levied by deduction at the source on income of the kinds referred to in article 29 (2) (1) of this Convention paid not later than the expiry of the period of three months provided for in that article;
- (2) To other taxes on income, in respect of the taxation of income accruing during the calendar year preceding the year in which the instruments of ratification are exchanged or during the fiscal years ended in the course of that year.

IN WITNESS WHEREOF, the plenipotentiaries of the two States have signed this Convention and have thereto affixed their seals.

DONE at Paris on 29 October 1958.

For the President
of the French Republic:

Louis JOXE

For the President
of the Italian Republic:

Alberto ROSSI LONGHI

¹ League of Nations, *Treaty Series*, Vol. CXLIV, p. 115.

EXCHANGE OF LETTERS

I

EMBASSY OF ITALY

Paris, 29 October 1958

Sir,

On proceeding to sign the Convention negotiated between our two countries for the avoidance of double taxation and the establishment of principles for reciprocal administrative and legal assistance with respect to taxes on income and fortune, I have the honour, with reference to article 3, paragraph 5, of the Convention, to inform you that the High Contracting Parties have agreed on the following interpretation of this provision:

It is understood that an enterprise of one of the two States having a representative approved by the authorities of the other State shall be deemed to have a permanent establishment in the latter State only if such representative does not confine himself to the performance of administrative functions but engages in activities which, in view of their nature and extent, are sufficient to allow the enterprise to be regarded as carrying on, through such representative, normal business activities in the other country.

This principle shall, for the purposes of the taxation of Italian insurance companies operating in France, be applied with effect from 1955 (profits for the year 1955 or for fiscal years ended in 1955).

I should be grateful if you would signify your Government's agreement to the above interpretation.

Accept, Sir, etc.

Alberto ROSSI LONGHI

His Excellency Mr. Maurice Couve de Murville
Minister for Foreign Affairs
Paris

II

29 Octobre 1958

Sir,

By letter of today's date, you were good enough to inform me as follows:

[See letter I]

I have the honour to inform you that I am in agreement with the above communication.

Accept, Sir, etc.

Louis JOXE

His Excellency Mr. Alberto Rossi Longhi
Ambassador of Italy

ADDITIONAL AGREEMENT¹ AMENDING AND SUPPLEMENTING THE CONVENTION CONCLUDED ON 29 OCTOBER 1958 BETWEEN FRANCE AND ITALY FOR THE AVOIDANCE OF DOUBLE TAXATION AND TO SETTLE CERTAIN OTHER QUESTIONS WITH RESPECT TO DIRECT TAXES ON INCOME AND FORTUNE

The President of the French Republic and

The President of the Italian Republic,

Desirous of amending and supplementing the provisions of the Convention between France and Italy for the Avoidance of Double Taxation and to settle certain other Questions with respect to Direct Taxes on Income and Fortune, signed at Paris on 19 October 1958,

Have decided to conclude an Additional Agreement to that Convention and have for that purpose appointed as their plenipotentiaries:

The President of the French Republic:

Mr. Gilbert de Chambrun, Minister Plenipotentiary, Director for Administrative Agreements and Consular Affairs in the Ministry of Foreign Affairs;

The President of the Italian Republic:

His Excellency Mr. Giovanni Fornari, Ambassador Extraordinary and Plenipotentiary of Italy to France;

who, having exchanged their full powers, found in good and due form, have agreed on the following provisions:

Article 1

Article 2, paragraph 1, of the Convention of 29 October 1958 shall be replaced by the following provisions:

“ This Convention shall determine the rules applicable to the following taxes:

¹ Came into force on 15 December 1967 by the exchange of the instruments of ratification which took place at Rome, in accordance with article 12.

A. In France:

- (1) The tax on the income of individuals (*l'impôt sur le revenu des personnes physiques*);
- (2) The complementary tax (*taxe complémentaire*);
- (3) The tax on the profits of companies and other bodies corporate (*l'impôt sur le bénéfice des sociétés et autres personnes morales*).

B. In Italy:

- (1) The tax on income from buildings (*imposta sui redditi dei fabbricati*);
- (2) The tax on income from land (*imposta sui redditi dei terreni*);
- (3) The tax on agricultural income (*imposta sui redditi agrari*);
- (4) The tax on income from movable wealth (*imposta sui redditi di ricchezza mobile*);
- (5) The progressive supplementary income tax (*imposta complementare progressiva sul reddito*);
- (6) The company tax, in so far as it applies to income and not to capital (*imposta sulle società per quanto riguarda la componente reddito e non la componente patrimonio*);
- (7) The tax deducted on profits distributed by companies (*ritenuta d'imposta sugli utili distribuiti dalle società*).

Article 2

Article 8 of the Convention of 29 October 1958 shall be replaced by the following provisions:

“ *Paragraph 1.* Dividends paid by a company which is domiciled in one of the Contracting States to a person domiciled in the other Contracting State may be taxed in that other State.

“ *Paragraph 2.* However, such dividends may be taxed in the Contracting State in which the company paying the dividends is domiciled, and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

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

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

“ *Paragraph 3.* The term ‘ dividends ’ as used in this article means income from shares, *jouissance* shares or *jouissance* rights, mining shares, founders’ shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation law of the State in which the company making the distribution has its domicile.

“ *Paragraph 4.* The provisions of paragraphs 1 and 2 shall not apply if the recipient of the dividends, being domiciled in a Contracting State, has in the other Contracting State, in which the company paying the dividends is domiciled, a permanent establishment. In such a case, the provisions of article 5 shall apply. ”

Article 3

Article 9 of the Convention of 29 October 1958 shall be replaced by the following provisions:

“ *Paragraph 1.* Interest arising in a Contracting State and paid to a person domiciled in the other Contracting State may be taxed in that other State.

“ *Paragraph 2.* However, such interest may be taxed in the Contracting State in which it arises, and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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

“ *Paragraph 4.* The provisions of paragraphs 1 and 2 shall not apply if the recipient of the interest, being domiciled in a Contracting State, has in the other Contracting State in which the interest arises a permanent establishment. In such a case, the provisions of article 5 shall apply.

“ *Paragraph 5.* Interest shall be deemed to arise in a Contracting State where the payer is that State itself, an administrative subdivision, a local authority or a person domiciled in that State.

“ *Paragraph 6.* Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this article shall apply only to the last mentioned amount.

“ In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention. ”

Article 4

An article 9 *bis*, reading as follows, shall be inserted in the Convention of 29 October 1958:

“ Income from partnerships shall according to its nature be taxable under the provisions of this Convention and in conformity with the laws of each State. ”

Article 5

Article 10 of the Convention of 29 October 1958 shall be amended as follows:

1. The words “ French proportional tax ” in paragraph 1 (second subparagraph) of the article and the words “ proportional tax on income from movable capital ” in paragraph 2 of the article shall be replaced by the words “ tax deducted at the source on the income of individuals ”.

2. The following shall be added at the end of paragraph 2 of the article: “ but profits distributed by the last-mentioned company and liable to the tax deducted at the source on the income of individuals shall, where the case arises, be increased, for the purpose of assessing the tax, by any profits or advantages which the first-mentioned company may have indirectly derived from the other company in the manner referred to in articles 5 and 6 of this Convention. ”

Article 6

Article 21 of the Convention of 29 October 1958 shall be deleted.

Article 7

Article 22 of the Convention of 29 October 1958 shall be replaced by the following provisions:

“ It is agreed that double taxation shall be avoided in the following manner:

“ (1) A Contracting State shall not include in the bases upon which the taxes on income referred to in article 2 are imposed any income which is taxable only in the other Contracting State under the terms of this Convention, but each State shall retain the right to calculate the tax on the income which is taxable in that State at a rate corresponding to the total income taxable under its law.

“ (2) With regard to the dividends referred to in article 8 and the interest referred to in article 9, the State of domicile shall deduct from the tax payable on such dividends or interest the tax actually collected in the other State on the same income in the manner established by those articles.

“ In Italy, however, such a deduction shall be made only where such dividends or interest are subject to the tax on income from movable wealth. If the aforesaid tax is not applicable under Italian law, the deduction shall be made only where the tax on such dividends or interest exceeds 20% and shall then relate only to the part of that tax in excess of the aforesaid rate. ”

Article 8

An article 22 *bis*, reading as follows, shall be inserted after article 22 of the Convention of 29 October 1958:

“ *Paragraph 1.* The 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.

“ *Paragraph 2.* The term ‘ nationals ’ means:

- (a) All individuals possessing the nationality of a Contracting State;
- (b) All legal persons, partnerships and associations deriving their status as such from the law in force in a Contracting State.

“ *Paragraph 3.* Stateless persons shall not be subjected in a 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 State in the same circumstances are or may be subjected.

“ *Paragraph 4.* 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 constructed as obliging a Contracting State to grant to persons domiciled in 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 persons domiciled in its own territory.

“ *Paragraph 5.* Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more persons domiciled in the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

“ *Paragraph 6.* In this article the term ‘ taxation ’ means taxes of every kind and description.

“ *Paragraph 7.* The provisions of paragraphs 4 and 5 of this article shall not be construed as modifying the application in Italy of the company tax which remains payable in conformity with Italian law. ”

Article 9

The first paragraph of article 28 of the Convention of 29 October 1958 shall be amended to read as follows:

“ This Convention may be extended either in its entirety or with any necessary modifications to French overseas territories which impose taxes substantially similar in character to those to which the Convention applies ”

Article 10

Article 29, paragraph 2, of the Convention of 29 October 1958 shall be amended to read as follows:

“ The Convention shall enter into force on the exchange of the instruments of ratification, and its provisions shall apply for the first time to taxes due on income relating either to the calendar year in which the exchange of the instruments of ratification takes place or to the fiscal years beginning in the course of that year. .

In the case of taxes levied by deduction at the source on the dividends and interest referred to in articles 8 and 9, however, they shall apply for the first time to income paid after the expiry of a period of three months from the date of exchange of the instruments of ratification. ”

Article 11

The third paragraph of article 30 of the Convention of 29 October 1958 shall be amended to read as follows:

“ In that event, the Convention shall apply for the last time to taxes due on income relating either to the calendar year at the end of which the Convention ceases to have effect or to fiscal years ended in the course of that year.

“ In the case of taxes levied by deduction at the source on the dividends and interest referred to in articles 8 and 9, it shall apply for the last time to income paid not later than 31 December of the calendar year at the end of which the Convention ceases to have effect. ”

Article 12

This Additional Agreement is drawn up in the French and Italian languages, both texts being equally authentic.

It shall form an integral part of the Convention of 29 October 1958. It shall be ratified and its provisions shall enter into force on the exchange of the instruments of ratification, which shall take place at Rome, as soon as possible, simultaneously with the exchange of the instruments of ratification of the Convention of 29 October 1958.

In WITNESS WHEREOF the plenipotentiaries of the two States have signed this Additional Agreement and have thereto affixed their seals.

DONE at Paris on 6 December 1965.

Gilbert DE CHAMBRUN

Giovanni FORNARI

PROTOCOL

On proceeding to sign the present Additional Agreement, concluded this day between France and Italy, to amend and supplement the Convention signed on 29 October 1958, the plenipotentiaries of the two States have agreed on the following provisions, which shall form an integral part of the said Convention:

I. The two Contracting States reserve the right, in accordance with the provisions of their respective internal laws, to consider as immovable property, in applying article 4 of the Convention, the corporate rights owned by partners or shareholders in firms or companies whose sole effective purpose is either to construct or purchase buildings or groups of buildings with a view to dividing them into smaller units to be allocated to their members as owners or occupiers or to manage such buildings or groups of buildings so divided.

II. If one of the two High Contracting Parties makes changes in its taxation laws, the provisions of the Convention shall be readjusted, in the spirit of the Convention, by agreement between the two States.

Such amending or supplementary agreements shall be the subject of an exchange of notes through the diplomatic channel.