

No. 20195

**BRAZIL
and
ITALY**

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (with additional protocol). Signed at Rome on 3 October 1978

*Authentic texts: Portuguese, Italian and English.
Registered by Brazil on 31 July 1981.*

**BRÉSIL
et
ITALIE**

Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu (avec protocole additionnel). Signé à Rome le 3 octobre 1978

*Textes authentiques : portugais, italien et anglais.
Enregistré par le Brésil le 31 juillet 1981.*

CONVENTION¹ BETWEEN THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL AND THE GOVERNMENT OF THE ITALIAN REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Federative Republic of Brazil and the Government of the Italian Republic;

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;

Have agreed 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 imposed on behalf of each Contracting State or of its political or administrative subdivisions or local authorities, irrespective of the manner in which they are levied.

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

a) In the case of Brazil:

- The federal income tax, excluding the tax on excess remittances and on activities of minor importance (hereinafter referred to as “Brazilian tax”);

b) In the case of Italy:

- The individual income tax (*imposta sul reddito delle persone fisiche*);
- The corporate income tax (*imposta sul reddito delle persone giuridiche*);
- The local income tax (*imposta locale sui redditi*), even if they are collected by withholding taxes at the source (hereinafter referred to as “Italian tax”).

3. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify to each other any changes which have been made in their respective taxation laws.

Article 3. GENERAL DEFINITIONS

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

- a) The term “Brazil” means the Federative Republic of Brazil;
- b) The term “Italy” means the Italian Republic;

¹ Came into force on 24 April 1981 by the exchange of the instruments of ratification, which took place at Brasilia, in accordance with article 28 (2).

- c) The term “nationals” means:
- I) All individuals possessing the nationality of a Contracting State;
 - II) All legal persons, partnerships and associations deriving their status as such from the law in force in a Contracting State;
 - d) The terms “a Contracting State” and “the other Contracting State” means Brazil or Italy as the context requires;
 - e) The term “person” comprises an individual, a company and any other body of persons;
 - f) The term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - g) 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;
 - h) The term “international traffic” means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - i) The term “tax” means Brazilian tax or Italian tax, as the context requires;
 - j) The term “competent authority” means:
 - I) In Brazil: the Minister of Finance, the Secretary of Federal Revenue or their authorised representatives;
 - II) In Italy: the Ministry of Finance.

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

Article 4. FISCAL DOMICILE

1. For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his case shall be determined in accordance with the following rules:

- 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 closest (centre of vital interests);
- b) If the Contracting State in which he has his centre of vital interests cannot be determined or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
- c) If he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;

d) If he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

Article 5. PERMANENT ESTABLISHMENT

1. For the purpose of this Convention, the term “permanent establishment” means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

2. The term “permanent establishment” shall include especially:

- a) A place of management;
- b) A branch;
- c) An office;
- d) A factory;
- e) A workshop;
- f) A mine, quarry or other place of extraction of natural resources;
- g) A building site or construction or assembly project, which exists for more than six months.

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

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

4. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State — other than an agent of independent status to whom paragraph 5 applies — shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

However, an insurance company of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State provided that, through a representative other than the persons to whom paragraph 5 below applies, it receives premium or insures risks in that other State.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of independent status, where 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 from immovable property including income from agriculture or forestry may be taxed in the Contracting State in which such property is situated.

2. a) Subject to the provisions of sub-paragraphs *b*) and *c*) the term “immovable property” shall be defined in accordance with the law of the Contracting State in which the property in question is situated;

b) 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 immovable property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources;

c) Ships, boats and aircraft shall not be regarded as immovable property.

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

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional 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. 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 the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred.

4. 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.

5. 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 provision of this Article.

Article 8. SHIPPING AND AIR TRANSPORT

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

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

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

4. The agreement between Brazil and Italy dated the 4th October, 1957, for the avoidance of double taxation on income derived from the exercise of maritime and air navigation¹ shall cease to have effect in relation to any tax for any period for which the present Convention has effect as respects that tax.

Article 9. ASSOCIATED ENTERPRISES

Where

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

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

Article 10. DIVIDENDS

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

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

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

3. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the dividends, being a resident of a Contracting State, has in the other Contracting State, of which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the dividends are taxable in that other Contracting State according to its own law.

4. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founder's shares or other

¹ United Nations, *Treaty Series*, vol. 1286, p. 339.

rights not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident.

5. Where a resident of Italy has a permanent establishment in Brazil, this permanent establishment may be subject to a tax withheld at source in accordance with Brazilian law. However, such a tax cannot exceed 15 per cent of the gross amount of the profits of that permanent establishment determined after the payment of the corporate tax related to such profits.

6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment 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.

7. The tax rate limitations provided for in paragraphs 2 and 5 shall not apply to dividends or profits paid or remitted before the expiration of the third calendar year following the year in which the Convention enters into force.

Article 11. INTEREST

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

2. However, such interest may 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 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraphs 1 and 2, interest arising in a Contracting State and paid to the Government of the other Contracting State, a political or administrative subdivision thereof or any agency (including a financial institution) wholly owned by that Government, or political or administrative subdivision shall be exempt from tax in the first-mentioned Contracting State.

4. 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 other income assimilated to income from money lent by the taxation law of the Contracting State in which the 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, has in the other Contracting State in which the interest arises a permanent establishment with which the debt-claim from which the interest arises is effectively connected. In such a case the interest is taxable in that other Contracting State according to its own law.

6. The limitation established in paragraph 2 shall not apply to interest arising in a Contracting State and paid to a permanent establishment of an enterprise of the other Contracting State which is situated in a third State.

7. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political or administrative subdivision 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.

8. 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, exceed 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 12. ROYALTIES

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

2. However, such royalties may be taxed in the Contracting State in 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:

- a) 25 per cent of the gross amount of royalties arising from the use of, or the right to use trade marks;
- b) 15 per cent in all other cases.

3. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise, a permanent establishment with which the right or property giving rise to the royalties is effectively connected. In such a case, the royalties are taxable in that other Contracting State according to its own law.

4. 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, films or tapes for television or radio broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

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

6. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-

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

7. The tax rate limitation foreseen in paragraph 2 *b* shall not apply to royalties paid up to the expiration of the third calendar year following the year in which the Convention enters into force, when such royalties are paid to a resident of a Contracting State which holds directly or indirectly at least 50 per cent of the voting capital of the company paying such royalties.

Article 13. CAPITAL GAINS

1. Gains from the alienation of immovable property, as defined in paragraph 2 of Article 6, may be taxed in the Contracting State in which the immovable property is situated.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State. However, gains from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

3. Gains from the alienation of any property or right other than those mentioned in paragraphs 1 and 2 may be taxed in both Contracting States.

Article 14. INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar nature shall be taxable only in that State, unless the payment of such activities and services is borne by a permanent establishment situated in the other Contracting State or a company resident therein. In such a case, the income may be taxed in that other State.

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

Article 15. DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, 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 in respect of an employment exercised aboard a ship or aircraft in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16. DIRECTORS' FEES

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

Article 17. ARTISTES AND ATHLETES

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

2. Where income in respect of personal activities as such of an entertainer or athlete accrues not to that entertainer or athlete himself but to another person that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

Article 18. PENSIONS AND ANNUITIES

1. Subject to the provisions of Article 19, pensions and other similar remuneration not exceeding any amount equivalent to US\$ 5,000.00 in a calendar year, alimony not exceeding US\$ 5,000.00 in a calendar year, and annuities arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.

The amount of pensions or alimony which exceeds the above-mentioned limit may be taxed in both Contracting States.

2. As used in this Article:

a) The term "pensions and other similar remuneration" means periodic payments made after retirement in consideration of past employment or by way of compensation for injuries received, in connection with past employment;

b) The term "annuity" means a stated sum payable periodically at stated times during life, or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth (other than services rendered).

Article 19. GOVERNMENT SERVICE

1. a) Remuneration, other than a pension, paid by a Contracting State or a political or administrative subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof 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 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 solely for the purpose of performing the services.

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

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

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration or pensions in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or a political or administrative subdivision or a local authority thereof.

4. Pensions paid out under the Social Security Scheme of a Contracting State to a resident of the other Contracting State shall be taxable only in the last-mentioned State.

Article 20. TEACHERS OR RESEARCHERS

An individual who is, or was immediately before visiting a Contracting State, a resident of the other Contracting State and who, at the invitation of the first-mentioned Contracting State or of a university, college, school, museum or other cultural institution in that first-mentioned Contracting State or under an official programme of cultural exchange, is present in that State for a period not exceeding two years solely for the purpose of teaching, giving lectures or carrying out research at such institution shall be exempt from tax in that State on his remuneration for such activity.

Article 21. STUDENTS

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

2. The provisions of paragraph 1 shall also apply to remuneration which a student or business apprentice derives from an employment exercised in the Contracting State in which he continues his education or training, provided that such remuneration constitutes earnings strictly necessary for his maintenance.

3. A student at a university, college or school of a Contracting State and who is present in the other Contracting State solely for the purpose of practical training shall be exempt from tax in that other State for a period not exceeding two years, in respect of remuneration received from activities carried out in the last-mentioned State in connection with his studies.

Article 22. INCOME NOT EXPRESSLY MENTIONED

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Convention may be taxed in both Contracting States.

Article 23. METHOD FOR THE ELIMINATION OF DOUBLE TAXATION

1. Where a resident of Brazil derives income which, in accordance with the provisions of this Convention may be taxed in Italy, Brazil shall allow as a deduction from the tax on the income of that person, an amount equal to the income tax paid in Italy.

The deduction shall not, however, exceed that part of the income tax as computed before the deduction is given, which is appropriate to the income which may be taxed in Italy.

For the deduction above mentioned, Italian tax shall always be considered as having been paid at the rate of 25 per cent of the gross amount of dividends paid to a resident of Brazil.

2. If a resident of Italy owns items of income arising in Brazil, Italy in determining its income taxes specified in Article 2 of this Convention, may include in the basis upon which such taxes are imposed the said items of income, unless specific provisions of this Convention otherwise provide.

In such a case, Italy shall deduct from the taxes so calculated the tax on income paid in Brazil, but in an amount not exceeding that proportion of the aforesaid Italian tax which such items of income bear to the entire income.

On the contrary no deduction will be granted if the item of income is subjected in Italy to a final withholding tax by request of the recipient of the said income.

3. Where a company which is a resident of Italy holds at least 25 per cent of the capital of a company which is a resident of Brazil, Italy shall exempt from tax the dividends received by the company which is resident of Italy from the company which is resident of Brazil.

4. For the deduction mentioned in paragraph 2 of this Article Brazilian tax shall always be considered as having been paid at rate of 25 per cent of the gross amount:

- a) Of the dividends as defined in paragraph 4 of Article 10;
- b) Of the interest as defined in paragraph 4 of Article 11; and
- c) Of the royalties as defined in paragraph 4 of Article 12.

5. The value of the shares issued by a corporation 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 subject to income tax in the last-mentioned State.

6. The provisions of paragraphs 1 and 2 shall apply to the determination of the profits of a permanent establishment of a resident of a Contracting State situated in the other Contracting State.

Article 24. NON-DISCRIMINATION

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirements 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.

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

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

3. 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, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State, are or may be subjected.

4. In this Article, the term "taxation" means taxes which are the subject of this Convention.

Article 25. MUTUAL AGREEMENT PROCEDURES

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate 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 not in accordance with the Convention.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purposes of reaching an agreement in the sense of the preceding paragraphs.

Article 26. EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons, authorities or courts other than those concerned with the assessment or collection of the taxes which are the subject of this Convention or the determination of appeals or the prosecution of offences in relation thereto.

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

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

Article 27. DIPLOMATIC AND CONSULAR OFFICIALS

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

Article 28. ENTRY INTO FORCE

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Brasília.

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

- I) As respects taxes withheld at source to amounts paid or remitted on or after January 1st of the calendar year immediately following that in which the Convention enters into force;
- II) As respects other taxes covered by this Convention to [the] taxable year beginning on or after January 1st of the calendar year immediately following that in which the Convention enters into force.

Article 29. TERMINATION

Either Contracting State may terminate this Convention after a period of three years from the date on which this Convention enters into force by giving to the other Contracting State, through diplomatic channels, a written notice of termination, provided that any such notice shall be given only on or before the thirtieth day of June in any calendar year.

In such a case this Convention shall apply for the last time:

- I) As respects taxes withheld at source, to amounts paid or remitted before the expiration of the calendar year in which the notice of termination is given;
- II) As respects other taxes covered by this Convention, to amounts received during the taxable year beginning in the calendar year in which the notice of termination is given.

IN WITNESS THEREOF the undersigned, duly authorized thereto, have signed the present Convention.

DONE in duplicate at Rome the day of October 3rd 1978 in the Portuguese, Italian and English languages, all texts being equally authentic, except in the case of doubt when the English text shall prevail.

For the Government
of Brazil:

[Signed — Signé]¹

For the Government
of Italy:

[Signed — Signé]²

¹ Signed by Mario Gibson Barboza — Signé par Mario Gibson Barboza.

² Signed by Franco Maria Malfatti — Signé par Franco Maria Malfatti.

ADDITIONAL PROTOCOL TO THE CONVENTION BETWEEN THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL AND THE REPUBLIC OF ITALY FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

At the signing of the Convention concluded today between the Government of the Federative Republic of Brazil and the Republic of Italy for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed upon the following additional provisions which will form an integral part of the said Convention.

It is understood that:

1. *With reference to Article 2*

Irrespective of the taxes mentioned in paragraph 2, the Convention shall also apply to any future tax on income imposed by, or on behalf of, any political or administrative subdivision or local authority.

2. *With reference to Article 7, paragraph 3*

The expression “expenses which are incurred for the purposes of the permanent establishment” means the expenses directly connected with the activity of the permanent establishment.

3. *With reference to Article 10, paragraph 4*

In the case of Brazil the term “dividends” also includes any distribution in respect of certificates of an investment-trust which is a resident of Brazil.

4. *With reference to Article 11*

The commissions paid by a resident of Brazil to a bank or financial institution in connection with services rendered by such bank or financial institution are considered to be interest and subject to the provisions of Article 11.

5. *With reference to Article 12, paragraph 4*

The expression “for information concerning industrial, commercial or scientific experience” mentioned in paragraph 4 of Article 12 includes income derived from the rendering of technical assistance and technical services.

6. *With reference to Article 14*

The provisions of Article 14 shall apply even if the activities are exercised by a partnership or a civil company (*sociedade civil*).

7. *With reference to Article 24, paragraph 2*

The provisions of paragraph 5 of Article 10 are not in conflict with the provisions of paragraph 2 of Article 24.

8. *With reference to Article 24, paragraph 3*

a) The provisions of the Brazilian law which do not allow that royalties as defined in paragraph 4 of Article 12, paid by a company resident of Brazil to a resident of Italy which holds at least 50 per cent of the voting capital of that company, be deductible at the moment of the determination of the taxable income of the company resident of Brazil, are not in conflict with the provisions of paragraph 3 of Article 24 of the present Convention;

b) In the event that Brazil, after the signature of the present Convention, would allow, either by internal law or by a tax Convention, that royalties as defined

in paragraph 4 of article 12 paid by an enterprise which is a resident of Brazil to an enterprise which is a resident of a third State not located in Latin America, and which holds at least 50 per cent of the capital of the enterprise which is a resident of Brazil, be deductible at the moment of the determination of the taxable profits of this enterprise, an equal deduction will be automatically applicable, under similar conditions, to an enterprise which is a resident of Brazil paying royalties to an enterprise which is a resident of Italy.

9. For the determination of the income tax payable by a resident of a Contracting State in respect of income derived from the other Contracting State, the first-mentioned State shall not consider in any event that such an income is higher than the gross amount of the income which arises in the other Contracting State.

10. Taxes withheld at the source in a Contracting State may be refunded by request of the taxpayer if the right to collect the said taxes is affected by the provisions of this Convention.

Claims for refund, that shall be produced within the time limit fixed by the law of the Contracting State which is obliged to carry out the refund, shall be accompanied by an official certificate of the Contracting State of which the taxpayer is a resident certifying the existence of the conditions required for being entitled to the application of the allowances provided for by this Convention.

The competent authorities of the Contracting States may settle the mode of application of this item, in accordance with the provisions of Article 25 of this Convention.

IN WITNESS THEREOF the undersigned, duly authorized thereto, have signed the present Protocol.

DONE in duplicate at Rome the day of October 3rd 1978 in the Portuguese, Italian and English languages, all texts being equally authentic, except in the case of doubt when the English text shall prevail.

For the Government
of Brazil:

[Signed — Signé]¹

For the Government
of Italy:

[Signed — Signé]²

¹ Signed by Mario Gibson Barboza — Signé par Mario Gibson Barboza.

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