

No. 22496

**FINLAND
and
ITALY**

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital (with protocol). Signed at Helsinki on 12 June 1981

*Authentic texts: Finnish, Italian and English.
Registered by Finland on 6 December 1983.*

**FINLANDE
et
ITALIE**

Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu et la fortune (avec protocole). Signée à Helsinki le 12 juin 1981

*Textes authentiques : finnois, italien et anglais.
Enregistrée par la Finlande le 6 décembre 1983.*

CONVENTION¹ BETWEEN FINLAND AND ITALY FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of Finland and the Government of Italy,

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

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 and on capital imposed on behalf of a Contracting State or of its political or administrative subdivisions, public communities or local authorities, irrespective of the manner in which they are levied.

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

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

a) In Finland:

- 1) The state income and capital tax (*tulo- ja varallisuusvero*);
- 2) The communal tax (*kunnallisvero*);
- 3) The church tax (*kirkollisvero*);
- 4) The sailors' tax (*merimiesvero*); and
- 5) The tax withheld at source from non-residents' income (*lähdevero*); (hereinafter referred to as "Finnish tax");

b) In Italy:

- 1) The personal income tax (*l'imposta sul reddito delle persone fisiche*);
 - 2) The corporate income tax (*l'imposta sul reddito delle persone giuridiche*);
 - 3) The local income tax (*l'imposta locale sui redditi*);
- even if they are collected by withholding taxes at the source (hereinafter referred to as "Italian tax").

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition

¹ Came into force on 23 October 1983, i.e., 30 days after the date of the latter of the notifications (effected on 23 September 1983) by which the Contracting Parties informed each other of the completion of the required constitutional procedures, in accordance with article 28 (1) and (2).

to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

Article 3. GENERAL DEFINITIONS

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

a) The term "Finland" means the Republic of Finland and, when used in a geographical sense, means the territory of the Republic of Finland, and any area adjacent to the territorial waters of the Republic of Finland within which, under the laws of Finland, the rights of Finland with respect to the exploration and exploitation of the natural resources of the sea bed and its subsoil may be exercised;

b) The term "Italy" means the Republic of Italy and includes any area beyond the territorial waters of Italy which, in accordance with the laws of Italy concerning the exploration and exploitation of natural resources, may be designated as an area within which the rights of Italy with respect to the sea bed and subsoil and their natural resources may be exercised;

c) The terms "a Contracting State" and "the other Contracting State" mean Finland or Italy, as the context requires;

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

e) The term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

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

g) The term "national" means

(i) Any individual possessing the nationality of a Contracting State;

(ii) Any legal person, partnership and association deriving its status as such from the law in force in a 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 "competent authority" means:

(i) In the case of Finland, the Ministry of Finance or its authorised representative;

(ii) In the case of Italy, the Ministry of Finance.

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

Article 4. FISCAL DOMICILE

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the 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. However, this term does not include any person who

is liable to taxation in that Contracting State in respect only of income from sources in that State or capital situated therein.

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

- a) He shall be deemed to be a resident of the State in which he has a permanent home available to him. If he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- b) If the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- c) If he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- d) If he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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

Article 5. PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of 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, a quarry or other place of extraction of natural resources;
- g) A building site or construction or assembly project which exists for more than twelve months.

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

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

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

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry and rights to which the provisions of general law respecting landed property apply. Usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources shall also be considered as immovable property. 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. Where the ownership of shares or other corporate rights in a company entitles the owner of such shares or corporate rights to the enjoyment of immovable property owned by the company, the income from the direct use, letting, or use in any other form of such right of enjoyment may be taxed in the Contracting State in which the immovable property is situated.

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

6. The provisions of paragraph 4 shall also apply to the income from a right of enjoyment referred to in that paragraph of an enterprise and to income from such right of enjoyment used for the performance of independent personal services.

Article 7. BUSINESS PROFITS

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

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected

to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

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

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

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

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

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

Article 8. SHIPPING AND AIR TRANSPORT

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

2. If the place of effective management of a shipping enterprise is aboard a ship, 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 an international operating agency.

Article 9. ASSOCIATED ENTERPRISES

Where

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

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

Article 10. DIVIDENDS

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

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

- a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly more than 50 per cent of the capital of the company paying the dividends;
- b) 15 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

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

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the taxation law of the State of which the company making the distribution is a resident.

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

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

Article 11. INTEREST

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

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the law 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. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State if:

- a) The payer of the interest is the Government of that Contracting State, or a

political or an administrative subdivision, or a public community, or a local authority thereof; or

- b) The interest is paid to the Government of the other Contracting State, or a political or an administrative subdivision, or a public community, or a local authority thereof or any agency or instrumentality (including a financial institution) wholly owned by that other Contracting State, or political or administrative subdivision, or public community or local authority thereof; or
- c) The interest is paid to any other agency or instrumentality (including a financial institution) in relation to loans made in application of an agreement concluded between the Governments of the Contracting States.

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 all other income assimilated from money lent by the taxation law of the State in which the income arises.

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

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

7. Where, by reason of a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the 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, royalties of the kind referred to in sub-paragraphs b) and c) of paragraph 3 may also be taxed in the Contracting State in which they arise and according to the law of that State, but if the recipient is the beneficial owner of such royalties the tax so charged shall not exceed 5 per cent of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration:

- a) For the use of, or the right to use, any copyright of literary, artistic or scientific work;
- b) For the use of, or the right to use, cinematograph films, and films or tapes for television or radio broadcasting, or any patent, trade mark, design or model, plan, secret formula or process, or any industrial, commercial, or scientific equipment;
- c) For information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the royalties are taxable in that other Contracting State according to its own law.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political or an administrative subdivision, a public community, 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 or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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

Article 13. CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains derived by a resident of a Contracting State from the alienation of shares or other corporate rights referred to in paragraph 4 of Article 6 may be taxed in the Contracting State in which the immovable property owned by the company is situated.

3. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

4. Gains from the alienation of ships or aircraft operated in international

traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14. INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.

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

Article 15. DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- a) The recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned, 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 other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or any other similar organ 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 a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself

but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

Article 18. PENSIONS

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

2. Subject to the provisions of paragraph 2 of article 19, pensions and other payments made under the social security legislation of a Contracting State may be taxed in that State. This provision shall apply only to nationals of that State.

Article 19. GOVERNMENT SERVICE

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

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

- (i) Is a national of that State; or
- (ii) Did not become a resident of that State solely for the purpose of rendering the services.

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

b) However, such pension shall be taxable only in the Contracting State of which the individual is a resident if he is national of that State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State, or a political or an administrative subdivision, a public community or a local authority thereof.

Article 20. STUDENTS

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

Article 21. OTHER INCOME

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

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated

therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the items of income are taxable in that other Contracting State according to its own law.

Article 22. CAPITAL

1. Capital represented by immovable property referred to in paragraph 2 of Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by shares or other corporate rights referred to in paragraph 4 of Article 6 may be taxed in the Contracting State in which the immovable property owned by the company is situated.

3. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

4. Capital represented by 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.

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

Article 23. ELIMINATION OF DOUBLE TAXATION

1. In the case of Italy, double taxation shall be eliminated as follows:

If a resident of Italy owns items of income which are taxable in Finland, 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 Finnish tax paid on income, but in an amount not exceeding that proportion of the aforesaid Italian tax which such items of income bear to the entire income.

However, 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 in accordance with Italian law.

2. In the case of Finland, double taxation shall be eliminated as follows:

a) Where a resident of Finland derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Italy, Finland shall, where the provisions of sub-paragraph b) are not applicable, allow:

- (i) As a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Italy,
- (ii) As a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in Italy.

Such deduction in either case shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in Italy.

b) Notwithstanding the provisions of sub-paragraph a), dividends paid by a company which is a resident of Italy to a company which is a resident of Finland shall be exempt from Finnish tax to the extent that the dividends would have been exempt from tax under Finnish taxation law if both companies had been residents of Finland.

3. Where a resident of a Contracting State receives any payment referred to in paragraph 2 of Article 18 which may be taxed in the other Contracting State, that other State shall allow as a deduction from the tax on income of that resident an amount equal to the tax on income paid in the first-mentioned State. Such deduction, however, shall not exceed that part of the income tax, as computed before the deduction is given, which is attributable to the payments which may be taxed in that other State.

4. Where, in accordance with the laws of a Contracting State, taxes covered by this Convention are exempted or reduced for the purpose of encouraging economic development in that State for a limited period of time, that part of such taxes which has been exempted or reduced shall be deemed to have been paid for the purpose of the preceding paragraphs of this Article.

Article 24. NON-DISCRIMINATION

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

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

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

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

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 25. MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contract-

ing States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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

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

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

Article 26. EXCHANGE OF INFORMATION

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

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

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

Article 27. DIPLOMATIC AGENTS AND CONSULAR OFFICERS

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

Article 28. ENTRY INTO FORCE

1. The Governments of the Contracting States shall notify each other that the constitutional requirements for the entry into force of this Convention have been complied with.

2. The Convention shall enter into force thirty days after the date of the later of the notifications referred to in paragraph 1 and its provisions shall have effect:

- a) In respect of taxes withheld at source, to income arising on or after 1 January in the calendar year next following the year in which the Convention enters into force;
- b) In respect of other taxes on income, and taxes on capital, to taxes chargeable for any taxable period beginning on or after 1 January in the calendar year next following the year in which the Convention enters into force.

3. The Convention between Finland and Italy for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital signed at Rome on 4 August 1967¹, as amended by the exchange of notes dated 7 May 1971 and 19 June 1971¹, shall terminate. Its provisions shall cease to have effect from the date on which the provisions of the present Convention according to the provisions of paragraph 2 apply for the first time.

Article 29. TERMINATION

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year following after the period of five years from the date on which the Convention enters into force. In such event, the Convention shall cease to have effect:

- a) In respect of taxes withheld at source, to income arising on or after 1 January in the calendar year next following the year in which the notice is given;
- b) In respect of other taxes on income, and taxes on capital, to taxes chargeable for any taxable period beginning on or after 1 January in the calendar year next following the year in which the notice is given.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Convention.

DONE in duplicate at Helsinki this 12th day of June 1981, in the Finnish, Italian and English languages, all three texts being equally authoritative. In case of any divergence of interpretation the English text shall prevail.

For the Government of Finland:

MATTI TUOVINEN

For the Government of Italy:

GIOVANNI SARAGAT

¹ United Nations, *Treaty Series*, vol. 987, p. 195.

PROTOCOL

At the signing today of the Convention between Finland and Italy for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, the undersigned have agreed upon the following provisions which shall form an integral part of the Convention:

1. *Ad Article 2, paragraph 3*

a) The Convention shall not apply, in the case of Finland, to the national pension premium, the sickness insurance premium and the special lottery tax, and, in the case of Italy, to taxes (even if they are collected by withholding taxes at source) payable on lottery winnings, on prizes other than those connected with securities, and winnings from games of chance or ability, contests, guessing games, and betting.

b) Where a tax on capital is after the date of signature of the Convention introduced in Italy the Convention shall also apply to such tax.

2. *Ad Article 4*

An undivided estate of a deceased person shall, for the purposes of taxation in Finland, be deemed to be a resident of the Contracting State of which the deceased was a resident at the time of his death according to the provisions of paragraphs 1 and 2 of the Article.

3. *Ad 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.

4. *Ad Article 10, paragraph 3*

The term "dividends" includes income from "jouissance" shares or "jouissance" rights, mining shares and founders' shares.

5. *Ad Article 23*

a) The Finnish tax on capital levied in accordance with the Convention shall be set off against a tax on capital introduced in Italy after the date of signature of the Convention in the manner provided for in paragraph 1 of the Article.

b) (i) Where a person, being a national of Finland and not a national of Italy, is a resident of Italy and under the so called three years rule contained in section 9 of the Finnish Act on Income and Capital Tax with respect to the Finnish taxes referred to in Article 2 of the Convention is regarded as resident in Finland, Finland may in cases, where the provisions of the Convention would restrict the right of Finland to tax, impose its taxes on the income of or on capital owned by such person derived from sources or situated, as the case may be, outside Italy. However, Finland shall allow any Italian tax paid on the income or capital as a deduction from Finnish tax in accordance with the provisions of paragraph 2 of the Article.

(ii) Where a person, being a national of Italy and not a national of Finland, is a resident of Finland and has the principal seat of his affairs and interests in Italy, Italy may in cases, where the provisions of the Convention would restrict the right of Italy to tax, impose its taxes on income of such person derived from sources outside Finland. However, Italy shall allow any Finnish tax paid on income as a deduction from Italian tax in accordance with the provisions of paragraph 1 of the Article.

(iii) The provisions of sub-paragraphs (i) and (ii) shall apply only for the year during which the person left, as the case may be, Finland or Italy and for the subsequent three years.

6. *Ad Article 25*

a) The expression "irrespective of the remedies provided by the domestic law" in paragraph 1 of the Article means that the mutual agreement procedure is not alternative with the national contentious proceedings which shall be, in any case, preventively initiated, when the claim is related to an assessment of taxes not in accordance with the Convention.

b) Taxes withheld at source in a Contracting State shall be reduced or refunded by request of the taxpayer if the right to collect such taxes is affected by the provisions of the Convention. Claims for reduction or refund shall be made within the time limits fixed by the law of the Contracting State which has to grant the reduction or refund. The claim shall be accompanied by necessary documentation concerning the existence of the conditions required by the Convention for reduction or refund. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of the foregoing provision.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Protocol.

DONE in duplicate at Helsinki this 12th day of June 1981, in the Finnish, Italian and English languages, all texts being equally authoritative. In case of any divergence of interpretation the English text shall prevail.

For the Government of Finland:

MATTI TUOVINEN

For the Government of Italy:

GIOVANNI SARAGAT