

No. 25393

**AUSTRALIA
and
ITALY**

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (with protocol). Signed at Canberra on 14 December 1982

Authentic texts: English and Italian.

Registered by Australia on 1 November 1987.

**AUSTRALIE
et
ITALIE**

Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu (avec protocole). Signée à Canberra le 14 décembre 1982

Textes authentiques : anglais et italien.

Enregistrée par l'Australie le 1^{er} novembre 1987.

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

The Government of Australia and the Government of the Republic 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,
Have agreed as follows:

CHAPTER I. SCOPE OF THE CONVENTION

Article 1. PERSONAL SCOPE

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

Article 2. TAXES COVERED

(1) This Convention shall apply only to taxes on income imposed on behalf of each Contracting State irrespective of the manner in which they are levied.

(2) The existing taxes to which this Convention shall apply are:

(a) In the case of Australia: the Australian income tax, including the additional tax upon the undistributed amount of the distributable income of a private company.

(b) In the case of Italy:

(i) The individual income tax (*l'imposta sul reddito delle persone fisiche*);

(ii) The corporate income tax (*l'imposta sul reddito delle persone giuridiche*);
even if they are collected by withholding taxes at the source.

(3) The Convention shall apply 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 significant changes which have been made in their laws relating to the taxes to which this Convention applies.

CHAPTER II. DEFINITIONS

Article 3. GENERAL DEFINITIONS

(1) In this Convention, unless the context otherwise requires:

(a) The term "Australia" means the Commonwealth of Australia and, when used in a geographical sense, includes:

(i) The Territory of Norfolk Island;

(ii) The Territory of Christmas Island;

¹ Came into force on 5 November 1985 by the exchange of the instruments of ratification, which took place at Rome, in accordance with article 29 (2).

- (iii) The Territory of Cocos (Keeling) Islands;
- (iv) The Territory of Ashmore and Cartier Islands;
- (v) The Coral Sea Islands Territory; and
- (vi) Any area adjacent to the territorial limits of Australia or of the said Territories in respect of which there is for the time being in force a law of Australia or of a State or part of Australia or of a Territory aforesaid dealing with the exploitation of any of the natural resources of the sea-bed and subsoil of the continental shelf.

(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 for 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 natural resources may be exercised.

(c) The terms “Contracting State”, “one of the Contracting States” and “other Contracting State” mean Australia or Italy, as the context requires.

(d) The term “person” comprises 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 company or body corporate for tax purposes.

(f) The terms “enterprise of one of the Contracting States” and “enterprise of the other Contracting State” mean an enterprise carried on by a resident of Australia or an enterprise carried on by a resident of Italy, as the context requires.

(g) The term “tax” means Australian tax or Italian tax, as the context requires.

(h) The term “Australian tax” means tax imposed by Australia, being tax to which this Convention applies by virtue of Article 2.

(i) The term “Italian tax” means tax imposed by Italy, being tax to which this Convention applies by virtue of Article 2.

(j) The term “competent authority” means, in the case of Australia, the Commissioner of Taxation or his authorized representative and, in the case of Italy, the Ministry of Finance.

(2) In this Convention, the terms “Australian tax” and “Italian tax” do not include any penalty or interest imposed under the law of either Contracting State relating to the taxes to which this Convention applies by virtue of Article 2.

(3) In 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 to which this Convention applies.

Article 4. RESIDENCE

(1) For the purposes of this Convention, a person is a resident of one of the Contracting States:

- (a) In the case of Australia, subject to paragraph (2), if the person is a resident of Australia for the purposes of Australian tax; and

(b) In the case of Italy, if the person is a resident of Italy for the purposes of Italian tax.

(2) In relation to income from sources in Italy, a person who is subject to Australian tax on income which is from sources in Australia shall not be treated as a resident of Australia unless the income from sources in Italy is subject to Australian tax or, if that income is exempt from Australian tax, it is so exempt solely because it is subject to Italian tax.

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

(a) He shall be deemed to be a resident solely of the Contracting State in which he has a permanent home available to him.

(b) If he has a permanent home available to him in both Contracting States, or if he does not have a permanent home available to him in either of them, he shall be deemed to be a resident solely of the Contracting State in which he has an habitual abode.

(c) If he has an habitual abode in both Contracting States, or if he does not have an habitual abode in either of them, he shall be deemed to be a resident solely of the Contracting State with which his personal and economic relations are the closer.

(4) 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 solely of the Contracting 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 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) An agricultural, pastoral or forestry property;

(h) A building site or construction, installation or assembly project which exists for more than twelve 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 activities which have a preparatory or auxiliary character for the enterprise, such as advertising or scientific research.

(4) An enterprise shall be deemed to have a permanent establishment in one of the Contracting States and to carry on business through that permanent establishment if:

- (a) It carries on supervisory activities in that State for more than twelve months in connection with a building site, or a construction, installation or assembly project which is being undertaken in that State; or
- (b) Substantial equipment is being used in that State for more than twelve months by, for or under contract with the enterprise in exploration for, or the exploitation of, natural resources, or in activities connected with such exploration or exploitation.

(5) A person acting in one of the Contracting States on behalf of an enterprise of the other Contracting State — other than an agent of an independent status to whom paragraph (6) applies — shall be deemed to be a permanent establishment of that enterprise in the first-mentioned State if:

- (a) He has, and habitually exercises in that State, an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
- (b) In so acting, he manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise provided that this provision shall apply only in relation to the goods or merchandise so manufactured or processed.

(6) An enterprise of one of the Contracting States 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 that person is acting in the ordinary course of his business as such a broker or agent.

(7) The fact that a company which is a resident of one of the Contracting States 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.

(8) The principles set forth in paragraphs (1) to (7) inclusive shall be applied in determining for the purposes of this Convention whether there is a permanent establishment outside both Contracting States, and whether an enterprise, not being an enterprise of one of the Contracting States, has a permanent establishment in one of the Contracting States.

CHAPTER III. TAXATION OF INCOME

Article 6. INCOME FROM REAL PROPERTY

(1) Income from real property may be taxed in the Contracting State in which such property is situated.

(2) The term "real property" (*beni immobili*) shall have the meaning which it has under the laws in force in the Contracting State in which the property in question is situated. The term shall in any case include rights to royalties and other payments in respect of the operation of mines or quarries or of the exploitation of any natural resource and those rights shall be regarded as situated where the land is situated. Ships, boats or aircraft shall not be regarded as real property.

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

(4) Income from a lease of land and income from any other direct interest in or over land, whether or not improved, shall be regarded as income from real property situated where the land is situated.

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

Article 7. BUSINESS PROFITS

(1) The profits of an enterprise of one of the Contracting States 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 one of the Contracting States 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 or with other enterprises with which it deals.

(3) In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise, being expenses which are incurred for the purposes of the permanent establishment (including executive and general administrative expenses so incurred) and which would be deductible if the permanent establishment were an independent entity which paid those expenses, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

(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) Nothing in this Article shall affect the operation of any law of a Contracting State relating to taxation of profits from insurance with non-residents pro-

vided that if the relevant law in force in either State at the date of signature of this Convention is varied (otherwise than in minor respects so as not to affect its general character) the Contracting States shall consult with each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

(6) For the purposes of this Article, the profits of an enterprise do not include items of income which are dealt with separately in other Articles of this Convention and the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8. SHIPPING AND AIRCRAFT

(1) Where profits are derived by a resident of one of the Contracting States from the operation of ships and the place of the effective management of the shipping enterprise is situated in that State, those profits shall be taxable only in that State.

(2) Notwithstanding the provisions of paragraph (1), such profits may be taxed in the other Contracting State where they are profits from operations of ships confined solely to places in that other State.

(3) The provisions of paragraphs (1) and (2) shall apply in relation to the share of the profits from the operation of ships derived by a resident of one of the Contracting States through participation in a pool service, in a joint transport operating organization or in an international operating agency.

(4) For the purpose of this Article, profits derived from the carriage by ships of passengers, livestock, mail, goods or merchandise shipped in one of the Contracting States for discharge at another place in that State shall be treated as profits from operations of ships confined solely to places in that State.

(5) 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.

(6) Nothing in this Convention shall affect the operation of the Agreement between the Governments of the Contracting States for the avoidance of double taxation of income derived from international air transport signed at Canberra on 13 April 1972.¹

Article 9. ASSOCIATED ENTERPRISES

Where

- (a) An enterprise of one of the Contracting States 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 one of the Contracting States and an enterprise of the other Contracting State,

and in either case conditions operate between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing wholly independently with one

¹ United Nations, *Treaty Series*, vol. 1020, p. 61.

another, then any profits which, but for those conditions, might have been expected to accrue 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 one of the Contracting States for the purposes of its tax, being dividends to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

(2) Such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident for the purposes of its tax, and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

(3) The term “dividends” in this Article means income from shares and other income assimilated to income from shares by the taxation law of the Contracting State of which the company making the distribution is a resident.

(4) The provisions of paragraphs (1) and (2) shall not apply if the person beneficially entitled to the dividends, being a resident of one of the Contracting States, 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 a case the dividends are taxable in that other Contracting State according to its own law.

(5) Dividends paid by a company which is a resident of one of the Contracting States, being dividends to which a person who is not a resident of the other Contracting State is beneficially entitled, shall be exempt from tax in that other State except insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or fixed base situated in that other State, provided that this paragraph shall not apply in relation to dividends paid by any company which is a resident of Australia for the purposes of Australian tax and which is also a resident of Italy for the purposes of Italian tax.

Article 11. INTEREST

(1) Interest arising in one of the Contracting States, being interest to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

(2) Such interest may be taxed in the Contracting State in which it arises, and according to the law of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

(3) Notwithstanding the provisions of paragraph (2), interest derived by the Government of one of the Contracting States or by a political or administrative sub-division or a local authority thereof or by any other body exercising public functions in, or in a part of, a Contracting State, or by a bank performing central banking functions in a Contracting State, shall be exempt from tax in the other Contracting State.

(4) The term “interest” in this Article includes interest from Government securities or from bonds or debentures, whether or not secured by mortgage and

whether or not carrying a right to participate in profits, and interest from any other form of indebtedness as well as all 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 person beneficially entitled to the interest, being a resident of one of the Contracting States, 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 indebtedness in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the interest is taxable in that other Contracting State according to its own law.

(6) Interest shall be deemed to arise in one of the Contracting States when the payer is that State itself or a political or administrative sub-division of that State or a local authority of that State or a person who is a resident of that State for the purposes of its tax. Where, however, the person paying the interest, whether he is a resident of one of the Contracting States or not, has in one of the Contracting States or outside both Contracting States a permanent establishment or fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

(7) Where, owing to a special relationship between the payer and the person beneficially entitled to the interest, or between both of them and some other person, the amount of the interest paid, having regard to the indebtedness for which it is paid, exceeds the amount which might have been expected to have been agreed upon by the payer and the person so entitled 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 amount of the interest paid 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 one of the Contracting States, being royalties to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

(2) Such royalties may be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

(3) The term “royalties” in this Article means payments, whether periodical or not, and however described or computed, to the extent to which they are paid as consideration for the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trade-mark, or other like property or right, or industrial, commercial or scientific equipment, or for the supply of scientific, technical, industrial or commercial knowledge or information, or for the supply of any assistance of an ancillary and subsidiary nature furnished as a means of enabling the application or enjoyment of such knowledge or information or any other property or right to which this Article applies, and includes any payments to the extent to which they are paid as consideration for the use of, or the right to use, motion

picture films, films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting.

(4) The provisions of paragraphs (1) and (2) shall not apply if the person beneficially entitled to the royalties, being a resident of one of the Contracting States, 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 a case, the royalties are taxable in that other Contracting State according to its own law.

(5) Royalties shall be deemed to arise in one of the Contracting States when the payer is that Contracting State itself or a political or administrative sub-division of that State or a local authority of that State or a person who is a resident of that State for purposes of its tax. Where, however, the person paying the royalties, whether he is a resident of one of the Contracting States or not, has in one of the Contracting States or outside both Contracting States a permanent establishment or fixed base in connection with which the liability to pay the royalties was incurred, and the royalties are borne by the permanent establishment or fixed base, then the royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

(6) Where, owing to a special relationship between the payer and the person beneficially entitled to the royalties or between both of them and some other person the amount of the royalties paid, having regard to what they are paid for, exceeds the amount which might have been expected to have been agreed upon by the payer and the person so entitled 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 amount of the royalties paid shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13. ALIENATION OF PROPERTY

(1) Income from the alienation of real property may be taxed in the Contracting State in which that property is situated.

(2) For the purposes of this Article:

(a) The term "real property" shall include:

- (i) A lease of land or any other direct interest in or over land;
- (ii) Rights to exploit, or to explore for, natural resources; and
- (iii) Shares or comparable interest in a company, the assets of which consist wholly or principally of direct interests in or over land in one of the Contracting States or of rights to exploit, or to explore for, natural resources in one of the Contracting States.

(b) Real property shall be deemed to be situated:

- (i) Where it consists of direct interests in or over land, in the Contracting State in which the land is situated;
- (ii) Where it consists of rights to exploit, or to explore for, natural resources, in the Contracting State in which the natural resources are situated or the exploration may take place; and

(iii) Where it consists of shares or comparable interests in a company, the assets of which consist wholly or principally of direct interests in or over land in one of the Contracting States or of rights to exploit, or to explore for, natural resources in one of the Contracting States, in the Contracting State in which the assets or the principal assets of the company are situated.

(3) Gains from the alienation of shares or corporate rights in a company which is a resident of Italy for the purposes of Italian tax, derived by an individual who is a resident of Australia, may be taxed in Italy.

Article 14. INDEPENDENT PERSONAL SERVICES

(1) Income derived by an individual who is a resident of one of the Contracting States in respect of professional services or other independent activities of a similar 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 its attributable to activities exercised from that fixed base.

(2) The term “professional services” includes especially services performed in the exercise of independent scientific, literary, artistic, educational or teaching activities as well as in the exercise of 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 an individual who is a resident of one of the Contracting States 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 from that exercise may be taxed in that other State.

(2) Notwithstanding the provisions of paragraph (1), remuneration derived by an individual who is a resident of one of the Contracting States 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 that other State for a period or periods not exceeding in the aggregate 183 days in the year of income or the fiscal year as the case may be, of that other State; and
- (b) The remuneration is paid by, or on behalf of, an employer who is not a resident of that other State; and
- (c) The remuneration is not deductible in determining taxable profits of a permanent establishment or a fixed base which the employer has in that other State.

(3) Notwithstanding the preceding provisions of this Article remuneration derived by a resident of one of the Contracting States in respect of an employment exercised aboard a ship or aircraft in international traffic shall be taxable only in that Contracting State.

Article 16. DIRECTORS' FEES

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

Article 17. ENTERTAINERS

(1) Notwithstanding the provisions of Articles 14 and 15, income derived by entertainers (such as theatrical, motion picture, radio or television artistes and musicians and 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 the personal activities of an entertainer as such accrues not to that entertainer 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 are exercised.

Article 18. PENSIONS AND ANNUITIES

(1) Pensions (including government pensions) and annuities paid to a resident of one of the Contracting States shall be taxable only in that State.

(2) 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.

(3) Any alimony or other maintenance payment arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in the first-mentioned State.

Article 19. GOVERNMENT SERVICE

(1) Remuneration (other than a pension or annuity) paid by one of the Contracting States or by a political or administrative sub-division of that State or by a local authority of that State to any individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State. 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 State who:

- (a) Is a citizen or national of that State; or
- (b) Did not become a resident of that State solely for the purpose of performing the services.

(2) The provisions of paragraph (1) shall not apply to remuneration in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or by a political or administrative sub-division of one of the States or by a local authority of one of the States. In such a case the provisions of Articles 15 and 16 shall apply.

Article 20. PROFESSORS AND TEACHERS

A professor or teacher who visits one of the Contracting States for a period not exceeding two years for the purpose of teaching or carrying out advanced study or research at a university, college, school or other educational institution in that State and who immediately before that visit was a resident of the other Contracting State

shall be exempt from tax in the first-mentioned State on any remuneration for such teaching, advanced study or research in respect of which he is, or upon the application of this Article will be, subject to tax in the other State.

Article 21. STUDENTS

Where a student, who is a resident of one of the Contracting States or who was a resident of that State immediately before visiting the other Contracting State and who is temporarily present in the other State solely for the purpose of his education, receives payments from sources outside the other State for the purpose of his maintenance or education, those payments shall be exempt from tax in the other State.

Article 22. INCOME OF DUAL RESIDENT

Where a person, who by reason of the provisions of paragraph (1) of Article 4 is a resident of both Contracting States but by reason of the provisions of paragraph (3) or (4) of that Article is deemed for the purposes of this Convention to be a resident solely of one of the Contracting States, derives income from sources in that Contracting State or from sources outside both Contracting States, that income shall be taxable only in that Contracting State.

Article 23. SOURCE OF INCOME

Income derived by a resident of one of the Contracting States which, under any one or more of Articles 6 to 8 and 10 to 17 may be taxed in the other Contracting State, shall for the purposes of Article 24, and of the income tax law of that other State, be deemed to be income from sources in that other State.

CHAPTER IV. METHODS OF ELIMINATION OF DOUBLE TAXATION

Article 24

(1) Subject to the provisions of the law of Australia from time to time in force which relate to the allowance of a credit against Australian tax of tax paid in a country outside Australia (which shall not affect the general principle hereof), Italian tax paid, whether directly or by deduction, in respect of income derived by a person who is a resident of Australia from sources in Italy shall be allowed as a credit against Australian tax payable in respect of that income.

(2) If a resident of Italy owns items of income which are taxable in Australia, 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 Australian tax 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. 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 in accordance with the Italian law.

CHAPTER V. SPECIAL PROVISIONS

Article 25. MUTUAL AGREEMENT PROCEDURE

(1) Where a resident of one of the Contracting States 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. This case must be presented within two years from the first notification of the action.

(2) The competent authority shall endeavour, if the taxpayer's claim appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with this Convention.

(3) The competent authorities of the Contracting States shall endeavour to resolve any difficulties or doubts arising as to the application of this Convention.

(4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Convention.

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 or of the domestic laws of the Contracting States concerning taxes to which this Convention applies insofar as the taxation thereunder is not contrary to this Convention, or for the prevention of fiscal evasion in relation to such taxes. 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 to which this Convention applies. Such persons or authorities shall use the information only for such purposes.

(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 and 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 to supply information, the disclosure of which would be contrary to public policy (*ordre public*).

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. REFUNDS

(1) Taxes withheld at the source in one of the Contracting States will be refunded by request of the taxpayer or of the State of which he is a resident if the right to collect the said taxes is affected by the provisions of this Convention.

(2) 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.

(3) The competent authorities of the Contracting States shall settle the mode of application of this Article, in accordance with the provisions of Article 25 of this Convention.

CHAPTER VI. FINAL PROVISIONS

Article 29. ENTRY INTO FORCE

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

(2) The Convention shall enter into force on the date of the exchange of instruments of ratification and its provisions shall have effect:

(a) In Australia:

- (i) In respect of withholding tax on income that is derived by a non-resident, in respect of income derived on or after 1 July 1976;
- (ii) In respect of other Australian tax, for any year of income beginning on or after 1 July 1976.

(b) In Italy: in respect of income assessable for taxable periods beginning on or after 1 July 1976.

(3) Claims for refund or credits arising in accordance with this Convention in respect of any tax payable by residents of either of the Contracting States in respect of income which is subject to tax and to which this Convention applies in accordance with paragraph (2) of this Article and which was derived before the entry into force of this Convention, shall be lodged within three years from the date of entry into force of this Convention or from the date the tax was charged, whichever is later.

Article 30. TERMINATION

This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention, through the diplomatic channel, not earlier than five years after its entry into force by giving notice of termination at least six months before the end of the calendar year. In such event, the Convention shall cease to be effective:

(a) In Australia:

- (i) In respect of withholding tax on income that is derived by a non-resident, in respect of income derived on or after 1 July in the calendar year next following that in which the notice of termination is given;
- (ii) In respect of other Australian tax, for any year of income beginning on or after 1 July in the calendar year next following that in which the notice of termination is given.

(b) In Italy: in respect of income assessable for taxable periods beginning on or after 1 July in the calendar year next following that in which the notice of termination is given.

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

DONE in duplicate at Canberra the fourteenth day of December 1982 in the Italian and English languages, both texts being equally authoritative.

SERGIO ANGELETTI
For the Government
of the Republic of Italy

JOHN HOWARD
For the Government
of Australia

PROTOCOL

The Government of Australia and
The Government of the Republic of Italy,

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

It is understood that:

(1) With reference to Articles 7 and 9:

If the information available to the competent authority of one of the Contracting States is inadequate to determine the profits of an enterprise on which tax may be imposed in that State in accordance with Article 7 or Article 9 of the Convention, nothing in those Articles shall prevent the application of any law of that State relating to the determination of the tax liability of a person provided that that law shall be applied, so far as the information available to the competent authority permits, in accordance with the principles applicable under Articles 7 and 9.

(2) With reference to paragraph (6) of Article 8:

The Italian taxes to which the Agreement therein referred to shall apply, with effect from the date of their entry into force, are the following:

- (i) The individual income tax (*l'imposta sul reddito delle persone fisiche*);
- (ii) The corporate income tax (*l'imposta sul reddito delle persone giuridiche*);
- (iii) The local income tax (*l'imposta locale sui redditi*).

If, in Australia, a tax (not being Australian tax referred to in Article 1 of the said Agreement) is imposed on profits derived by an enterprise of Italy from the operation of aircraft in international traffic, the taxes to which the Agreement shall apply in Italy shall thereupon cease to include the local income tax (*l'imposta locale sui redditi*).

(3) With reference to Article 9:

Notwithstanding the provisions of Article 9, an enterprise of one of the Contracting States may be taxed by that Contracting State as if that Article had not come into effect but, so far as it is practicable to do so, in accordance with the principles applicable under that Article.

(4) With reference to Article 12:

The term "payments" includes credits or any amount credited and a reference to royalties paid includes royalties credited. The term "royalties" includes payments or credits for total or partial forbearance in respect of the use of a property or right referred to in paragraph (3).

(5) With reference to Article 24:

The tax paid in respect of income by way of dividend in one of the Contracting States that is to be allowed as a credit against tax payable in respect of that income in the other Contracting State shall not include tax paid in respect of the profits out of which the dividend is paid.

(6) With reference to paragraph (1) of Article 25:

The expression “notwithstanding the remedies provided by the national laws” means that the mutual agreement procedure is not alternative to the national contentious proceedings which shall be, in any case, preventively initiated, when the claim is related to an assessment of Italian tax not in accordance with this Convention.

(7) With reference to Article 28:

The provisions of paragraph (3) shall not prevent the Contracting States from carrying out other practices for the allowance of the taxation reductions provided for in this Convention.

(8) If, in a Convention for the avoidance of double taxation that is subsequently made between Australia and a third State being a State that at the date of signature of this Protocol is a member of the Organisation for Economic Co-operation and Development, Australia shall agree to limit the rate of its taxation

- (i) On dividends paid by a company which is a resident of Australia for the purposes of Australian tax to which a company that is a resident of the third State is entitled, to a rate less than that provided in paragraph (2) of Article 10; or
- (ii) On interest arising in Australia to which a resident of the third State is entitled, to a rate less than that provided in paragraph (2) of Article 11; or
- (iii) On royalties arising in Australia to which a resident of the third State is entitled, to a rate less than that provided in paragraph (2) of Article 12,

the Government of Australia shall immediately inform the Government of the Republic of Italy in writing through the diplomatic channel and shall enter into negotiations with the Government of the Republic of Italy to review the provisions in sub-paragraphs (i), (ii) and (iii) above in order to provide the same treatment for Italy as that provided for the third State.

DONE in duplicate at Canberra the fourteenth day of December 1982 in the English and Italian languages, both texts being equally authoritative.

JOHN HOWARD
For the Government
of Australia

SERGIO ANGELETTI
For the Government
of the Republic of Italy