

No. 27311

**AUSTRIA
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 additional protocol). Signed at Vienna on 29 June 1981

Supplementary Protocol to the above-mentioned Convention. Signed at Vienna on 25 November 1987

Authentic texts: German and Italian.

Registered by Austria on 6 June 1990.

**AUTRICHE
et
ITALIE**

Convention en vue d'éviter la double imposition et de prévenir l'évasion fiscale en matière d'impôts sur le revenu et sur la fortune (avec protocole additionnel). Signée à Vienne le 29 juin 1981

Protocole complémentaire à la Convention susmentionnée. Signé à Vienne le 25 novembre 1987

Textes authentiques : allemand et italien.

Enregistrés par l'Autriche le 6 juin 1990.

7. The land tax (*die Grundsteuer*);
8. The tax on agricultural and forestry enterprises (*die Abgabe von land- und forstwirtschaftlichen Betrieben*);
9. The contributions from agricultural and forestry enterprises to the equalization fund for family allowances (*die Beiträge von land- und forstwirtschaftlichen Betrieben zum Ausgleichsfonds für Familienbeihilfen*);
10. The tax on the value of vacant plots (*die Abgabe vom Bodenwert bei unbebauten Grundstücken*)

(hereinafter referred to as "Austrian tax").

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

CHAPTER II. DEFINITIONS

Article 3. GENERAL DEFINITIONS

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

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

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

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

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

(e) The term "nationals" means:

(1) All individuals possessing the nationality of a Contracting State;

(2) All legal persons, partnerships and associations deriving their status as such from the law in force in a Contracting State;

(f) 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;

(g) The term "competent authority" means:

(1) In Italy: the Ministry of Finance;

(2) In Austria: the Federal Minister of Finance.

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

Article 4. FISCAL DOMICILE

(1) For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. However, the term does not include any person who is liable to tax 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 Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);

(b) If the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

(c) If he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

(d) If he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall endeavour to 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 he 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 an enterprise is wholly or partly carried on.

(2) The term “permanent establishment” includes especially:

(a) A place of management;

(b) A branch;

(c) An office;

(d) A factory;

(e) A workshop;

(f) A mine, a quarry or any other place of extraction of natural resources;

(g) A building site, or a construction or assembly project which exists for a period of more than 12 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 of 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 of 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, provided that such persons are acting in the ordinary course of their business.

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

CHAPTER III. TAXATION OF INCOME

Article 6. INCOME FROM IMMOVABLE PROPERTY

(1) Income from immovable property, including income from agriculture or forestry, may be taxed in the Contracting State in which such property is situated.

(2) 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 also apply to income derived from the direct use, letting or use in any other form of immovable property.

(4) The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of 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 the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are directly connected with the business of the permanent establishment including executive and general administrative expenses, whether incurred in the State in which the permanent establishment is situated or elsewhere.

(4) In so far 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 and 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.

(8) The provisions of this article shall also apply to income received by:

- (a) Members of a "*stillen Gesellschaft*" constituted under Austrian law;
- (b) Members of an "*associazione in partecipazione*" constituted under Italian law.

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 from participation in a pool, a joint business or an international operating agency.

Article 9. ASSOCIATED ENTERPRISES

Where:

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

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

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises than 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 dividend is a resident and according to the laws of that State, but if the recipient, being a resident of the other Contracting State, is the beneficial owner of the dividends, the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

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

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

(3) The term “dividends” as used in this article means income from shares, “jouissance” shares or “jouissance” rights, mining shares, founders’ shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the taxation laws 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 shall be taxed in that other Contracting State according to its own laws.

(5) Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except in so far as such dividends are paid to a resident of that other State or in so far 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 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 laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the amount of the interest. The competent authorities of the Contracting States may 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 Contracting State or a local authority thereof; or

(b) The interest is paid to the other Contracting State or to one of its local authorities or to another body corporate (including a financial institution) wholly owned by that other Contracting State or local authority thereof; or

(c) The interest is paid to any other body corporate (including a financial institution) in connection with loans granted in application of an agreement concluded between 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 to income from loans 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 shall be taxed in that other Contracting State according to its own laws.

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

interest shall be deemed to arise in the State in which the permanent establishment is situated.

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

Article 12. ROYALTIES

(1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State, if such resident is the beneficial owner of the royalties.

(2) However, royalties paid by a company which is a resident of one Contracting State to a person who is a resident of the other Contracting State and who owns more than 50 per cent of the capital of the company paying the royalties may be taxed in the first State, but the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

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

(4) The provisions of paragraph 1 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 shall be taxed in the other Contracting State according to its laws.

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

Article 13. CAPITAL GAINS

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

(2) Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing 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. However, gains from the alienation of movable property referred to in article 22, paragraph 3, shall be taxable only in the Contracting State in which the property in question is taxable under that article.

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

Article 14. INDEPENDENT PERSONAL SERVICES

(1) Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless such resident 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 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

(a) The recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned; and

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

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

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

(4) Where an individual who is a resident of a Contracting State living in the vicinity of the frontier exercises an employment in the other Contracting State, also in the vicinity of the frontier, and habitually crosses the frontier to go to work, he

shall be taxed on the income derived from such activity only in the State of which he is a resident.

Article 16. DIRECTOR'S FEES

Director's fees and other similar payments derived by a resident of a Contracting State 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 AND ATHLETES

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

(2) Where income in respect of personal activities 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

Subject to the provisions of article 19, paragraph 3, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

Article 19. GOVERNMENT SERVICE

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

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

(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) Paragraph 1 shall also apply to remuneration received by members of the staff of:

(a) Austrian trade missions in Italy; and

(b) Agencies or offices in Austria of the Italian State Railways (FF. SS.), of the Post and Telegraph Service (PP. TT.), of the Italian Tourist Office (ENIT) and of the Italian Trade Delegation (ICE).

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

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

(4) 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 administrative subdivision or a local authority thereof.

Article 20. UNIVERSITY AND OTHER TEACHERS, AND STUDENTS

(1) A university or other teacher who is staying temporarily, for a period not exceeding two years, in a Contracting State for the purpose of teaching or conducting research at a university, college, school or other educational establishment and who is, or was immediately prior to that stay, a resident of the other Contracting State shall be exempt in the first-mentioned Contracting State from tax on remuneration received for such teaching or research.

(2) Payments which a student or business apprentice who is, or was previously, a resident of a Contracting State and who is present in the other Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that other State, provided that such payments 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 if the recipient of the 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 provisions of article 7 or article 14, as the case may be, shall apply.

CHAPTER IV. OTHER INCOME

Article 22. CAPITAL

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

(2) Capital represented by movable property forming part of the business property of a permanent establishment of an enterprise or by movable property pertaining to a fixed base used for the purpose of performing independent personal services may be taxed in the Contracting State in which the permanent establishment or fixed base is situated.

(3) 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.

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

CHAPTER V. METHODS FOR ELIMINATION OF DOUBLE TAXATION

Article 23

(1) It is agreed that double taxation shall be eliminated in accordance with the following paragraphs of this article.

(2) If a resident of Italy owns items of income which are taxable in Austria, Italy, in determining its income taxes specified in article 2 of this Convention, may include the said items of income in the basis upon which such taxes are levied, unless specific provisions of this Convention stipulate otherwise.

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

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.

(3) (a) Where a resident of Austria owns elements of income which, in accordance with the provisions of this Convention, may be taxed in Italy, Austria shall deduct from the income tax charged to that person an amount corresponding to the income tax paid in Italy. The amount to be deducted shall, however, not exceed that part of the income tax, calculated before the deduction is made, which corresponds to the income which may be taxed in Italy.

(b) Where a resident of Austria owns capital which, in accordance with this Convention, may be taxed in Italy, Austria shall exempt this capital from tax, but, in determining the amount of tax on the remaining capital of such person, may apply the same rate of tax which would have been applicable if the capital in question had not been exempted from tax.

CHAPTER VI. SPECIAL PROVISIONS

Article 24. NON-DISCRIMINATION

(1) Nationals of a Contracting State, whether or not they are residents of a Contracting State, shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is different from or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

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

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

(3) Except where the provisions of article 9, or article 11, paragraph 7, or article 12, paragraph 5, apply, interest, royalties or 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) For the purposes of this article, the term "taxation" means taxes of every kind and description.

Article 25. MUTUAL AGREEMENT PROCEDURE

(1) Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with 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 this 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 concerning taxes covered by the Convention, in so far as the taxation thereunder is not contrary to the Convention, or for preventing fiscal evasion. The exchange of information is not restricted by article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the

subject of this 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 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. REFUNDS

(1) Taxes withheld at source in a Contracting State will be refunded at the request of the taxpayer, if the right to collect such taxes is limited by the provisions of this Convention.

(2) Claims for refunds, which shall be produced within the time-limit established by the law of the Contracting State obliged to make such refund, shall be accompanied by an official certificate of the Contracting State of which the taxpayer is a resident, stating that the conditions required for entitlement to the benefits provided for in this Convention have been fulfilled.

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

(4) Bodies of persons, constituted under the laws of a Contracting State and having their head offices in that State, may apply to the other State for the tax benefits referred to in articles 10, 11 and 12 of this Convention, provided that at least three quarters of the body's profits accrue to persons resident in the first-mentioned State.

For the purposes of this paragraph, the term "body of persons" means:

(a) In Italy: A "*società semplice*", a "*società in nome collettivo*", a "*società in accomandita semplice*" and any other body of persons subject to the same tax regime under Italian law;

(b) In Austria: An "*offene Handelsgesellschaft*", a "*Kommanditgesellschaft*", a "*Gesellschaft nach bürgerlichem Recht*" or any other body of persons subject to the same tax regime under Austrian law.

CHAPTER VII. 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) This Convention shall enter into force 60 days after the exchange of the instruments of ratification and its provisions shall have effect:

(a) In Italy, in respect of income subject to taxation for the tax periods commencing on or after 1 January 1974;

(b) In Austria, in respect of tax levied for the tax periods commencing on or after 1 January 1974.

(3) Applications for refunds or for tax credits authorized by this Convention in respect of any tax payable by residents of one of the Contracting States for the tax periods commencing on or after 1 January 1974 and up to the entry into force of this Convention may be submitted within two years from the date of entry into force of this Convention or from the date on which the tax was levied, whichever is later.

Article 30. TERMINATION

This Convention shall remain in force indefinitely, but either Contracting State may give written notice of termination to the other Contracting State, through the diplomatic channel, up to and including 30 June of any calendar year beginning after a five-year period has elapsed from the date of its entry into force.

In such case the Convention shall cease to have effect,

(a) In Italy: In respect of income subject to taxation for the tax periods commencing on or after 1 January of the calendar year following that in which denunciation takes place;

(b) In Austria: In respect of tax levied for the tax periods commencing on or after 1 January of the calendar year following that in which denunciation takes place.

IN WITNESS WHEREOF the undersigned, being duly authorized for the purpose, have signed this Convention.

DONE at Vienna on 29 June 1981, in duplicate in the German and Italian languages, both texts being equally authentic.

For the Republic of Austria:
Dr. EGON BAUER

For the Italian Republic:
FAUSTO BACCHETTI

ADDITIONAL PROTOCOL TO THE CONVENTION BETWEEN THE REPUBLIC OF AUSTRIA AND THE ITALIAN REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

On signing the Convention concluded this day between the Republic of Austria and the Italian Republic 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 additional provisions, which shall form an integral part of the Convention.

It is understood:

(a) That, in connection with the provisions of article 2, if a tax on capital is subsequently introduced in Italy, the Convention shall also apply to such tax;

(b) That the Austrian tax on capital levied in accordance with the Convention shall be allowed as a deduction from any tax on capital that may be introduced in Italy, in the manner established in article 23, paragraph 2;

(c) That, with reference to article 25, paragraph 1, the term “irrespective of the remedies provided by the domestic law” means that the mutual agreement procedure cannot constitute an alternative to the contentious proceedings provided for in the domestic law, which proceedings shall, in any case, be instituted first, when the claim is related to taxation not in accordance with this Convention;

(d) That the provisions of article 28, paragraph 3, shall not prevent the competent authorities of the Contracting States from establishing, by mutual agreement, a different procedure for the application of the tax relief provided for in this Convention;

(e) That, notwithstanding the provisions of article 29, paragraph 2, the provisions of article 8 and article 22, paragraph 3, shall apply, respectively, to income earned and to movable property owned by the shipping or air transport enterprises of each Contracting State during the tax periods commencing on or after 1 January 1964.

DONE at Vienna on 29 June 1981, in duplicate in the German and Italian languages, both texts being equally authentic.

For the Republic of Austria:

Dr. EGON BAUER

For the Italian Republic:

FAUSTO BACCHETTI

SUPPLEMENTARY PROTOCOL¹ TO THE CONVENTION BETWEEN
THE REPUBLIC OF AUSTRIA AND THE ITALIAN REPUBLIC
FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PRE-
VENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON
INCOME AND ON CAPITAL, WITH ADDITIONAL PROTOCOL,
SIGNED AT VIENNA ON 29 JUNE 1981²

With reference to the Convention between the Republic of Austria and the Italian Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, with Additional Protocol, signed at Vienna on 29 June 1981², the undersigned have agreed on the following supplementary provision, which shall form an integral part of the Convention.

It is understood that, with reference to the provisions of article 29, where the provisions of the 1925 Convention³ grant tax privileges greater than those granted by the 1981 Convention, those provisions shall continue to be applied until 31 December 1985.

Applications for refunds or for tax credits authorized by this Protocol in respect of any tax payable by residents of either Contracting State for the tax periods commencing on or after 1 January 1974 and ending on 31 December 1985 at the latest, may be submitted within two years from the date of entry into force of this Protocol or from the date on which the tax was levied, whichever is later.

This Protocol shall be ratified and the instruments of ratification shall be exchanged at Rome as soon as possible.

This Protocol shall enter into force on the first day of the third month following the exchange of the instruments of ratification.

IN WITNESS WHEREOF the undersigned, being duly authorized for the purpose, have signed this Protocol.

DONE at Vienna on 25 November 1987, in duplicate in the German and Italian languages, both texts being equally authentic.

For the Republic of Austria:

Dr. EGON BAUER

For the Italian Republic:

Dr. GIROLAMO NISIO

¹ Came into force on 1 May 1990, i.e., the first day of the third month following the exchange of the instruments of ratification, which took place at Rome on 1 February 1990, in accordance with the provisions of the said Protocol.

² See p. 39 of this volume.

³ League of Nations, *Treaty Series*, vol. LIII, p. 245.