UNIVERSITÀ DEGLI STUDI DI NAPOLI FEDERICO II

FACOLTÀ DI GIURISPRUDENZA

DOTTORATO DI RICERCA

ISTITUZIONI E POLITICHE AMBIENTALI, FINANZIARIE-PREVIDENZIALI E TRIBUTARIE

XXIV CICLO

INCOME TAX TREATIES WITH PARTICULAR REGARD FOR THE CONVENTION BETWEEN THE UNITED STATES AND ITALY

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ANNO ACCADEMICO 2010-2011

To my family,
who has supported me in each moment in my life
and helped me to pursue my dreams.

To my professor Raffaele Perrone Capano,
who has always believed in me.
I thank him for my academic education.

To professor Michael Graetz,
who has been an irreplaceable guide
in writing my thesis.

To professor Elizabeth Defeis and lawyer Calogero Bellia,
for their invaluable advices.

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FOREWORD

This Ph.D. thesis focuses on the topic of international taxation "Income Tax Treaties With Particular Regard for the Convention between the United States and Italy."

Several trials have been generated by the double imposition and by a misunderstanding of the relevant international tax conventions.

The objective of double tax agreements is to avoid the double taxation, ameliorating the obstacles to cross-border economic transactions. Furtehrmore, the globalization of financial markets and the backdrop of the financial crises have increased the necessity for international cooperation in many fields, including tax matter.

The first convention between the government of the United States and the government of the Republic of Italy adopted to avoid double taxation and the prevention of fraud or fiscal evasion was signed in 1955. This agreement was updated in 1984 and, most recently, in 1999. The last Convention, signed in 1999, has recently entered into force (December 16, 2009), ten years later the date of its signature. It has become effective on January 1, 2010, and on February 2, 2010 for certain provisions.

These all updates of the Convention required important reforms in the internal law of both countries.

This thesis, divided into five chapters, is intended to provide a general view of the matter, and to analyze the U.S.-Italy tax convention in that frame, finally underlining some weaknesses.

In fact, the first chapter addresses the issue of international double taxation, either from the legal point of view or from the economic one.
A general introduction, in fact, has necessary to better define the topic of the international agreements for the avoidance of double taxation.
International double taxation is when the same property or the same income are taxed at the same time by different countries to the same taxpayer or different ones; it happens, for example, when a person has his/her citizenship or residence in more than one countries adopting the "worldwide taxation rule," or when a holding company has a parent in a country and subsidiaries in other countries, adopting the rule of income taxation in the country of the source, that is in the country where the income has been made. In these cases it is possible, if corrective measures have not been taken in a pactional way, that a private taxpayer or a company must pay taxes in different countries in reference to the same income source.

Particularly, the international juridical double taxation is when the same subject is taxed two or more times by different countries in reference to the same income source.

The international economical double taxation is when the same income, referred to different taxpayers, is taxed by different countries; this can happen, for example, if there are any operations among associated parties.

The international double taxation is an obstacle to the realization of the cross-border operations and to the free circulation of capitals, goods, services, and people.
Consequently, since the beginning of the 20th century, but in a better way after the Second World War, the need of agreeing any pactional measures for the avoidance of double taxation among countries was emphasized, in order to impair an excessive and discriminating taxation on certain operations.

This is the main function of the international agreements for the avoidance of double taxation, now widely signed by most countries through the world.

The second chapter of my thesis analyzes the international tax agreements functions, their historical development and the procedures adopted at international level and fixed by the Vienna Convention on the Law of Treaties signed in May 23, 1969.

In this chapter particular attention is given to internal procedures in Italy and in the U.S. for the approval and ratification of the aforementioned tax conventions, as well as the relationship between income tax treaties and domestic law.

Widely discussed, the controversial question of the interpretation must happen to the light either of the Commentaries of OECD/UN, or of the Technical Explanations given by the competent authorities, that are internal to the Contracting Countries, and to the light of aforementioned Vienna Convention with its Commentaries.

Moreover, in the second chapter the relationship between international law of treaties and European law is addressed with particular attention to the position of the Court of Justice of the European Union about the power of the member states to recognize in a pactional way tax reductions only to certain countries, as well as to limit free circulation of capitals, goods, services, and people in the exercise of their tax sovereignty.

The third chapter is devoted to the treatment of the principal models of international tax agreements for the avoidance of double taxation; particularly the single dispositions of the OECD model tax convention are analyzed as a model of a wide part of the international agreements, among them, these ones drawn up by Italy too. Moreover, the principal differences are underlined as regards to the UN model, widely used as well.

The fourth chapter is totally devoted to the analysis of the Unites States model income tax convention, and of the convention between U.S.

and Italy for the avoidance of double taxation and the prevention of fiscal evasion.

Such Convention is based on the U.S. model, and includes some particular dispositions which make it peculiar as regards other conventions normally drawn up by Italy.

Since the most recent updating at the end of 1999, there are few articles or books on this topic that are available in Italy. However several additional sources have been available in the United States and have enabled me to complete this final Ph.D. thesis.

The last chapter of the thesis, that is the fifth chapter, is devoted to the conclusions, with particular attention to the prospects of revision of the tax convention between U.S. and Italy in the light, from Italy side, of the starting federalism fiscal system, which is going to change considerably the fiscal system, and in the light too, from the U.S. side, of the modifications introduced in the U.S. model after the subscription and ratification of the U.S.-Italy convention and of the Camp International Tax Reform, that is in discussion in the U.S.

Under this perspective, one more important element to be considered is the recent approval in the U.S. of FATCA (Foreign Account Tax Compliance Act). This law was approved on March 18, 2010, but not become effective yet; it will enter into force on January 1, 2013.

The FATCA unites a series of anti-avoidance measures, among them of particular importance there is the obligation, which burdens on not American financial qualified intermediaries, to point out financial information concerning their American clients or, alternatively, to pay a 30% tax of the income made from the investments of their American clients in replacement of such obligation of information.

At the end of this foreword, it must be underlined that the topic has persuaded me to conduct, as “Visiting Ph.D. Candidate,” a great part of the

Ph.D. thesis research at Columbia Law School in New York, where I have accessed the abundant international sources available in the library.

Both the topic and the international nature of the used sources (English, French, German, and Spanish) have led me to write this Ph.D. thesis in English language.

In addition, the system of citation used is that of “The Bluebook: A uniform System of Citation.”[1]

Giuseppe De Girolamo

[1] See THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass’n et al. eds., 19th 2010).

CHAPTER 1

INTERNATIONAL DOUBLE TAXATION

1.1 Introduction.

International double taxation refers to the fact that the same transaction, asset or income source, is simultaneously subject to tax by the authorities of two countries. This situation can happen, for example, when people are citizens or residents of two or more countries that tax their citizens or residents on their worldwide income, or when there are companies with branches in different countries that tax income sourced in their states only.[2]

It must be clear that no rules of international law exist to ban double taxation.[3]

[2] To have an idea about the most important definitions provided by some authors, see OTTMAR BÜHLER, INTERNATIONALES STEUERRECHT UND INTERNATIONALES PRIVATRECHT, EIN SYSTEMATISCHER VERSUCH (1960); Martin Norr, *Jurisdiction to tax and International Income*, 17 TAX L. REV. (1961-1962); R. C. ALBERT SCHMITZ, KOMMENTAR ZUM INTERNATIONALEN STEURRECHT DER BUNDESREPUBLIK DEUTSCHLAND (1957); Marco Vitale & Pietro Adonnino, *Doppia imposizione, in* 13 ENCICLOPEDIA DEL DIRITTO 1007 (1964).
H. DORN, VERHANDLUNGEN DES 33 DEUTSCHEN JURISTENTAGES (1925), provides the following definition "international double imposition happens when different States, that have tax sovranity, hit the same taxpayer in respect of the same tax prerequisites with a similar tax."
ARMIN SPITALER, DAS DOPPELBESTEUERUNGSPROBLEM BEI DEN DIREKTEN STEUERN (1936), provides the following definition "double imposition is the concurrence of dispositions that happens when the tax sovranity of different Countries hit with its taxes the same object."
To have a good idea about some important cases in American Law, see BORIS I. BITTKER & LAWRENCE F. EBB, TAXATION OF FOREIGN INCOME, CASES AND MATERIALS (1960); an interesting definition is provided in LONDON AND MEXICO MODEL TAX CONVENTIONS (1946), by the same commentators, "international double or multiple taxation arises when the taxes of two or more countries overlap in such a manner that persons liable to tax in more than one country bear a higher tax burden then if they were subject so incurred must, of course, be due non merely to differences in tax rates for the countries concerned, but to the fact that two or more jurisdictions concurrently impose taxes having the same bases and incidence without regard to the claim of the other tax jurisdiction."

[3] MARTIN NORR, *supra* note 2, at 431, "no rules of international law exists to limit the extent of any country's tax jurisdiction. Similarly, no rules exist ti require a country to grant relief from international double taxation."

Usually a government is widely concerned about the national activities of non-residents (*source jurisdiction of taxation*) and the activities of its residents in foreign countries (*residence jurisdiction of taxation*).

The two main methods to tax income are:

1) worldwide principle, which consists of taxing all incomes of citizens or residents, independently by the territorial source;

2) source principle, which consists of taxing all incomes sourced in a specific country requiring only that the income was realized there.

The source and residence tax jurisdictional approaches work well when they are applied to only one country, because taxpayers are not involved in cross-border activities, or when taxpayers act cross-border transactions, and those transactions happen in countries that apply the "source principle" to tax income and those sources are very clear.

In the remaining cases, problems of international double impositions may occur, so it is necessary to find a solution.

In fact, international double taxation can create several market distortions because it restricts international operators from doing business involving different countries, causing great damage to the market,[4] and because might cause inequality for taxpayers who operate in one country and subsequently pay taxes only one time, while other taxpayers who do the same work in two or more countries could pay two or more times.

There are two different kinds of international double taxation:[5]

[4]H. DEBATIN, ENTWICKLUNGSTENDENZEN UND AKTUELLE AUSLEGUNGSFRAGEN IM AUSSENSTEUERRECHT DER BUNDESREPUBLIK, (DEUTSCHE VEREINIGUNG FÜR INTERNATIONALES STEUERRECHT) (1962), "the bad effect of double taxation is not only that incomes or assets of cross-border operations suffer a higher tax burden, but that it is a brake which impairs making some international transactions that without double taxation would be beginned."

[5]To understand more about this distinction in U.S. law, see the case Irving Air Chute Co. v. Commissioner, 143 F.2d 256 (2d Cir., 1944), where the Court stated "as the credit is allowable only by virtue of our statute, payments or accruals which give a basis in fact for the claim must be recognized as the taxes of the claimant in the light of our own scheme of taxation. Credits under our system of income taxation are allowed only to those who are taxpayers, both by virtue of the tax on which the credit is claimed and by virtue of the credit itself in the sense that they are directly liable for the taxes which form the basis of the credit. They are a measure of relief from the direct as contrasted with the ultimate burden of taxation. This petitioner has failed to show that

- Juridical double taxation (JDT); and
- Economic double taxation (EDT).

1.2 Juridical double taxation (JDT).

Juridical double taxation can be defined as the imposition of income taxes in two (or more) states on the same taxpayer with respect to the same income. Juridical double taxation can arise, for example, where a resident of one country derives income from sources in another country, and both countries' domestic tax legislation would tax that income. It can also arise where each country considers the taxpayer to be resident in that country under domestic tax laws.[6]

Juridical double taxation can arise from three main conflicts:

-a source-source conflict;
-a residence-residence conflict;
-a source-residence conflict.

In the case of "a source-source conflict," each country claims to be a source of the taxpayer's income, and to tax income using the "source principle."

As a consequence, the taxpayer must pay tax twice on the same income.

In the case of "a residence-residence conflict," two countries assert that, according to their laws, they are both country of residence of the taxpayer, who is "a dual resident." Clearly in this case, each country applies the rule of "worldwide principle" to tax the income, so the same resident pays tax twice on the same income.

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it has paid or accrued any taxes other than some which were assessed against and paid by another who was the only foreign taxpayer."

[6] See the OECD COMMITTEE ON FISCAL AFFAIRS, MODEL TAX CONVENTION ON INCOME AND CAPITAL (2003), at 7, "international Juridical double taxation can be generally defined as the imposition of comparable taxes in two (or more) States on the same taxpayer in respect of the saem subject matter and for identical periods. Its harmful effects on the exchange of goods and services and movements of capital, technology and persons are so well known that it is scarcely necessary to stress the importance of removing the obstacles that double taxation presents to the development of economic relations between countries."

Finally, in the case of “a source-resident conflict,” one country claims to have the right to tax a taxpayer’s income as a taxpayer’s country of residence and another country claims to have the same right as it is the country of source.

As a consequence, it is fundamental that some mechanisms are found in order to avoid that juridical double taxation might have negative effects on cross-border transactions.

Three are the main methods to reach this result:

1) the exemption method;

2) the foreign tax credit method; and

3) the deduction method.

Under the **exemption method** there are two distinguishable ways: the so-called “full exemption” and “exemption with progression.”

With the “full exemption” method, there is complete separation of a taxpayer’s foreign source of income and domestic source of income for the purposes of taxation, such that country of residence offers its residents a tax exemption for foreign source income, it does not tax foreign sourced income.

The foreign source income is excluded from tax base and tax calculations of the country of residence. With this method the taxpayer obtains full relief from double taxation.

This method is used, for example, in Australia in relation to gains from specific foreign venture capital investments.

With the “exemption with progression” method, the country of residence takes the amount of exempted income into account when determining the tax to be imposed on the non-exempt income, meaning that it considers the foreign income in calculating the tax basis.

This method has a different result to the “full exemption” method in those countries where there is a progressive tax rate scale, because in these

countries adding the foreign income to the domestic income will increase the tax base, and it is possible that the taxpayer will suffer a higher tax rate.
It can be said that with the "exemption with progression" method the taxpayer does not obtain total relief from double taxation. This method is applied, for example, in the Netherlands.

Under the **foreign tax credit method**, the country of residence taxes the foreign income source as a domestic income source, but it allows that the domestic taxes of its residents are reduced by their foreign taxes paid in the foreign country.[7]
With this method the taxpayer can also obtain full relief from double taxation.

We should distinguish the so-called "full credit" method and "ordinary credit" method.

Under the "full credit" method, the country of residence allows the use of a full credit for the entire amount of the taxes paid in the foreign country by its residents.

Under the "ordinary credit" method, the country of residence does not allow a full credit of tax paid to a country of source, but it limits the amount of the foreign tax credit allowed for the amount of tax that it would have otherwise obtained on the foreign source income.
The limit on foreign tax credits imposed by the "ordinary credit" method is important only when the domestic tax rate is less than the foreign tax rate. In fact, when the domestic tax rate is equal to or greater than the foreign tax rate, under the "ordinary credit" method it will be a full credit deduction, identical to the "full credit" method.
Moreover, it should be underlined that under this method foreign source income derived by residents of a country is effectively taxed at the higher of the domestic tax rate or the foreign tax rate, as a consequence an investor

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[7] See ELIZABETH A. OWENS, THE FOREIGN TAX CREDIT: A STUDY OF THE CREDIT FOR FOREIGN TAXES UNDER UNITED STATES INCOME TAX LAW (1961).

will invest indifferently in the country of its residence or in the country of source because the “ordinary credit” method assures the achievement of the capital export neutrality policy objective.

Finally, there is **the deduction method**. Under this method, the country of residence taxes the foreign source income in addition to the domestic source income, but it allows for a deduction from the basis of income equal to the same amount of the taxes paid in the foreign country.

Unlike the other methods explained above, this method fails to give the taxpayer full relief from double taxation, and therefore it does not totally solve the residence-source conflict. In fact, a resident of a country, that uses the deduction method, is left to suffer some remnants of double imposition on its foreign source income. The amount of this double taxation depends on the marginal tax rates of the source and residence countries.

In other words, under the tax credit method, the taxes paid in the country of source are subtracted from those that the taxpayer must pay in its residence country; while instead, under the tax deduction method the taxes paid in the country of source are subtracted from the tax basis of the residence country, so the taxpayer will save in its residence country only an amount of tax equal to the tax that it should pay on the amount deducted.

If we consider the point of view of the residence country, the deduction method is the most convenient, however it does not assure the achievement of the capital export neutrality policy objective because taxpayers have an incentive to reduce foreign taxes and increase their income in their residence country.

As a consequence, this tax method provides incentives to invest overseas only if the benefits to the investor’s residence country exceed the benefits from investing domestically.

Rarely it can happen that the deduction method is more convenient than the credit method, for example if in the country of residence there are some rules that deny the credit for the foreign tax sources, while they allow for the deduction of the same taxes paid abroad.

To sum up, the fundamental difference between the three different methods for eliminating or reducing the double taxation is that the exemption and the deduction methods offer relief by way of concerning income while the credit methods offer relief by way of concerning tax payable.

1.3 Economic double taxation (EDT).

Economic double taxation means the inclusion, by more than one state's tax administration, of the same income in the tax base when the income is in the hands of different taxpayers.

Unlike juridical double taxation, the focus here is on the taxable object.

Under a tax policy perspective, economic double taxation distorts commercial decision making and the optimally efficient allocation of resources.

As a consequence, it forces taxpayers to invest thinking more about the way that would provide the best after-tax return, rather than the most appropriate commercial way to reach the best pre-tax return.

Transfer pricing cases are the best example of economic double taxation. For example, a tax administration adjusts the price charged between related parties with a resulting tax charged on the additional income in the hands of one related party, when tax has already been charged in another country on that same income when it was in the hands of the other related party.

There are different methods to eliminate or at least reduce the effects of economic double taxation:

1) the exemption of income from taxation at the corporate level;

2) the exemption at the shareholder level;

3) the full integration of corporate profits and shareholder income; and
4) the full imputation of corporate profits to shareholders.

Under the method of **exemption at the corporate level**, income derived by a company is exempt from taxation at the corporate level, but it is subject to tax when it passes through the shareholder level. It is important to note that the income is taxed only once, thus avoiding economic double imposition. This method offers the advantage that the income is taxed as if it does not derive by the corporate but goes directly to shareholders.

The method of **exemption at the shareholder level** involves taxing the income only at the corporate level, and so economic double taxation is avoided once again by exempting from tax in the shareholder's hands the after-tax profits distributed by the corporation as a dividend to its shareholders.

Under the method of **full integration of corporate profits and shareholder level**, the corporate income is attributed directly to the shareholder, so income derived by the company is taxed only once it is in the hands of the shareholders. The result is the same that is reached when the method of the exemption at the corporate level is applied, but in the case of the method of full integration there is no difference between the income derived by the corporation and the income of the shareholders.

Finally, under the method of **full imputation of corporate profits to shareholders** taxation is imposed on the corporate income at the company level and is also imposed on the shareholder's share of the income of corporation, but to avoid double income taxation the shareholder is given a credit of the same amount of taxes paid by the corporation. As a consequence the income originally derived by the corporation is at the end taxed in the hands of shareholders at their marginal rate.

The methods to overcome economic double taxation that have been explained above may have different effects on domestic and foreign shareholders when, for example, a foreign shareholder is subject to a non-resident withholding tax in the country of source.

Some mechanisms for resolving this situation need to be explored.
For example, one possibility is that the country can give an income tax credit to a resident corporation that will pay a dividend to foreign shareholders conditional upon the circumstance that the credit will be used to pay an additional dividend to the foreign shareholders such as to compensate the non-resident withholding tax usually imposed on foreign shareholders.

In fact the withholding tax will be imposed on all dividends paid to non-resident shareholders, both the normal dividend and the additional dividend. In this way the taxes paid by foreign investors are reduced, and the tax credits allowed in the home country of the foreign shareholders for the non-resident withholding tax paid in the source country are increased.

As a consequence, under this method the capital import neutrality is reached and the achievement of the capital export neutrality policy objective is assured.

CHAPTER 2

INCOME TAX TREATIES (ITTs) OR DOUBLE TAX AGREEMENTS (DTAs)

2.1 Introduction.

As I have explained above, double taxation has a detrimental effect on the movement of capital, technology and persons and on the exchange of goods and services.

Tax conventions,[8] when properly applied, remove the obstacles of double taxation, thereby promoting the development and flow of international trade and investment.

Thus, one of the most important roles of double income treaties is to remove the double taxation and to beat these obstacles for cross-border economic transactions.[9] The globalization of financial markets and the backdrop of the financial crisis have caused international cooperation in tax matters to increase in importance.

Treaties try to remove double taxation in two ways. First of all, tax agreements delineate specific types of income (e.g., dividends and interest) and provide special rules to tax these items. It can be said that in a tax treaty the source country generally gives way to the recipient's country of domicile. Tax agreements usually provide that under certain conditions the

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[8] See on the topic, *ex plurimis*, B.J. ARNOLD & M.J. MCINTYRE, INTERNATIONAL TAX PRIMER (2002); ROBERT DEUTSCH ET AL., PRINCIPLES AND PRACTICE OF DOUBLE TAXATION AGREEMENTS: A QUESTION AND ANSWER APPROACH (2008); Yitzhak (Isaac) Hadari, *Tax Treaties and Their Role in the Financial Planning of the Multinational Enterprise*, 20 AM. J. COMP. L. 111 (1972); Adrian A. Kragen, *Avoidance of International Double Taxation Arising From Section 482 Reallocations*, 60 CAL. L. REV. 1493 (1972); Howard M. Liebman, *A Formula for Tax-Sparing Credits in U.S. Tax Treaties with Devepoling Countries*, 72 AM. J. INT'L L. 296 (1978); Claudio Sacchetto, *Accordi internazionali in materia tributaria, in* ENCICLOPEDIA GIURIDICA TRECCANI (2008).

[9] See, on the topic, Augusto Fantozzi & Klaus Vogel, *Doppia imposizione internazionale, in* DIG. DISC. PRIV., SEZ. COMM. 184 (1990); G. FRANSONI, LA TERRITORIALITÀ NEL DIRITTO TRIBUTARIO (2004); Marco Vitale & Pietro Adonnino, *Doppia imposizione*, *supra* note 2; KLAUS VOGEL, KLAUS VOGEL ON DOUBLE TAXATION CONVENTIONS (3d ed. 1997); EDWIN R.A. SELIGMAN, DOUBLE TAXATION AND INTERNATIONAL FISCAL COOPERATION (1928).

recipient of a particular item of income is taxed at a lower tax rate or is exempted from taxation in the source country.

The second way to remove double imposition goes through the establishment of “competent authority” procedures, which provide to taxpayers the chance to present disputes on treaty dispositions to the officials of their home countries for resolution.

Problems can arise between the provisions contained in a tax treaty and domestic dispositions if, for instance, countries have conflicting rules about such issues as the taxation of some items on a gross basis or net basis. In those cases, tax agreements can totally change the tax treatment prescribed by the revenue code of a foreign country.

Moreover, tax treaties have the purpose to prevent the fiscal evasion. In fact when a taxpayer has economic connections with more than one country, it is possible that its tax base is reduced by the effect of this situation.[10]

There are several dispositions in the OECD model that have the purpose to prevent fiscal avoidance, as Article 26 (Exchange of information) by means of which the tax administrations of the Contracting States can obtain all the information that they require, even though they cannot have any access domestically, to ensure that their taxing rights are protected.

To sum up, tax treaties cause benefits either to taxpayers, by the allocation of taxing rights between the Contracting States, or to tax administrations in different countries, by avoiding tax evasion.[11]

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[10] According to OECD Commentary on Article 1(7) “the principal purpose of double tax conventions is to promote, by eliminating international double taxation, exchanges of goods and services, and the movement of capital and persons. It is also a purpose of tax conventions to prevent tax avoidance and evasion.”

[11] For a different point of view, see JOSEPH ISENBERGH, INTERNATIONAL TAXATION 229 (2d ed. 2005), “on first encounter you might conclude that an income tax treaty was designed to confer tax advantage on certain taxpayers. Although tax treaties may occasionally have that effect, however, that is not what they are mainly about. Rather, they are principally concerned with the apportionment of tax revenues between the treasuries of the treaty countries.”

Given this basic function, income tax treaties usually arise between high-tax countries. In fact, there is no interest to conclude a tax treaty with a tax haven country because it has little to offer by way of concessions in an agreement with a more industrial State.

If income tax rates are totally the same in the negotiating countries, a treaty will have no effects on taxpayers, but only on the administrations of the two countries; in fact it will have only the function to allocate taxes between different countries.

Rather, if income tax rates are different, the first effect of treaties will be often to create a tax regime that is more favorable than the one which would otherwise be available and the treaty will have effect directly on taxpayer that will use the dispositions in the double income treaty to pay less taxes than it should have paid before tax agreement.

With treaties, countries try to protect their interest, taking into account the patterns of their usual economic relations with other countries.

For example, countries that export intellectual property will press for exemption in the country of source and for taxation by the country of residence of the intellectual property owner, so they collect more taxes.

I have written about the main methods[12] to try to reduce or totally eliminate juridical double taxation, and these same methods are used in tax treaties.

In fact, even if a treaty can choose a specific method, another can use a different method. All tax conventions try to reduce juridical double taxation by allocating taxing rights between residence and source states on various categories of income, typically by eliminating or limiting source country taxation or by requiring a residence state to grant relief for source state taxation through a credit or exemption mechanism.

For example, tax conventions typically provide that one country may not tax the business profits earned by a resident of the other country, unless that

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[12] See *supra* § 1.2.

resident has a taxable presence in the form of a permanent establishment in the first country and the profits are attributable to that permanent establishment.

Tax conventions also reduce juridical double taxation by establishing criteria for determining an exclusive residency status for taxpayers. The most common instances of juridical double taxation are disputes over residency or permanent establishment status, or over the characterisation of particular items of income and their coverage under particular provisions of the convention.

To provide a definition of "tax treaty," also called "double tax agreement" or "double tax treaty" or "double tax convention" or "double income treaty," we can relate to the "International Tax Glossary,"[13] according to which "tax treaty is a term generally used to denote an agreement between two (or more) countries for the avoidance of double taxation…… In fact there are various types of tax treaty of which the most common are treaties for the avoidance of double taxation of income and capital (usually known as a comprehensive income tax treaty). Such treaties are also commonly written to be aimed at the prevention of fiscal evasion. In avoiding double taxation, such treaties also provide for the distribution between the treaty partners of the rights to tax, which may either be exclusive or shared between the treaty partners."

2.2 Historical review.

Since their introduction, the international agreements have met a hard obstacle in political opposition of states, which have ever considered tax measures an essential requisite to sovereignty and claimed their absolute freedom of overcoming other countries.

[13] B. LARKING (ed.), INTERNATIONAL TAX GLOSSARY (4th ed. 2001).

One of the foundation principles of international taxation law is the idea of "territorial sovereignty," according to it each state has the right of wielding, generally and exclusively, its power on its own territory.
However the consequence of this principle implies the duty of keeping from entering and acting, without any consent, trough other countries.[14]
For that reason, with the developing of the international taxation law, each country should have begun to accept a limit to its fiscal imposition power so that other states could practise own one equally.[15]

Tax international agreements have been, therefore, a result to a long evolution.[16]

Till the First World War, the international agreements concerned principally the movement of goods and customs. They were included in the international treaties which had been for a long time the main written source of international law. They were essentially business treaties, as their chief function was that of regulating goods exchange among different countries and assuring a certain freedom in trading, even if, as we know, there was no free trade to protect nor any other organization aimed to safeguard trade at that time.

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[14] See on the topic ALESSANDRO DRAGONETTI ET AL., MANUALE DI FISCALITÀ INTERNAZIONALE (4th ed. 2010); CARLO GARBARINO, MANUALE DI TASSAZIONE INTERNAZIONALE (2d ed. 2008); LORIS TOSI & ROBERTO BAGGIO, LINEAMENTI DI DIRITTO TRIBUTARIO INTERNAZIONALE (3d ed. 2011); VICTOR UCKMAR ET AL., DIRITTO TRIBUTARIO INTERNAZIONALE MANUALE (2009).
[15] G.C. CROXATTO, L'IMPOSIZIONE DELLE IMPRESE CON ATTIVITÀ INTERNAZIONALE (1965); A. D. GIANNINI, I CONCETTI FONDAMENTALI DEL DIRITTO TRIBUTARIO (1956); V. KLUGE, DAS INTERNATIONALE STEUERRECHT (2000); Gian Antonio Micheli, *Problemi attuali di diritto tributario nei rapporti internazionali*, I DIR. PRAT. TRIB. 216 (1965); Claudio Sacchetto, *Territorialità nel diritto tributario, in* 44 ENCICLOPEDIA DEL DIRITTO 317 (1990); E. HERZFELD, PROBLEME DES INTERNATIONALEN STEUERRECHT UNTER BESONDERER BERUCKSICHTIGUNG DES TERRITORIALPROBLEMS UND DES QUALIFICATIONS PROBLEMS (1932); H. SCHAUMBURG, INTERNATIONALES STEUERRECHT (1998); VICTOR UCKMAR, LA TASSAZIONE DEGLI STRANIERI (1955); R. VALDES COSTA, ESTUDIOS DE DERECHO TRIBUTARIO LATINOAMERICANO (1959); Giuseppe Melis, *Vincoli internazionali e norma tributaria interna,* 10 (I) RIV. DIR. TRIB. 1083 (2004); R. J. JEFFERY, THE IMPACT OF STATE SOVEREIGNTY ON GLOBAL TRADE AND INTERNATIONAL TAXATION (1999); PIETRO BORIA, DIRITTO TRIBUTARIO EUROPEO (2005).
[16] See, on the topic of the law on the treaties, F. Capotorti, *Il diritto dei trattati secondo la Convenzione di Vienna, in* LA CONVENZIONE DI VIENNA SUL DIRITTO DEI TRATTATI 11 (1969); M. MARESCA, IL DIRITTO DEI TRATTATI. LA CONVENZIONE CODIFICATRICE DI VIENNA DEL 23 MAGGIO 1969 (1971).

Customs represented the law expression of each country to wield own rightful power of limiting or stopping trade or to grant them, only subordinately to custom payment.

The first form of international tax agreement, therefore, regarded essentially customs on goods imported in a country, but there was no mention to direct fiscal imposition.

Since the end of the First World War and the increasing of business relations among foreign countries, problems connected with profit of income appeared on the international law scene.

Furthermore, some countries introduced the “World Wide Taxation” principle according to which the residents of a country were taxed not only for the incomes produced in their country, but even for those ones produced abroad, with the inevitable consequence that the same income could be liable to multiple taxes.

That, of course, had effect on the rating of a cross-border operation, in the way that it was important to value the imposing taxation and decide if it was convenient to do foreign transactions rather than national ones, with the effect of holding foreign trade.

Consequently, it was necessary to regulate the relations among countries in order to avoid excessive taxation on foreign trade, with the consequence of holding its full realization.

It was really at the end of the First World War, in 1919, when the Society of Nations was founded, the first intergovernmental organization aimed at increasing the welfare and life quality of citizens.

In spite of its short life, in fact it ended in 1946, the Society of Nations promoted the settlement of conventions among member countries for the avoidance of double taxation, in order to prevent from tax increase which could deteriorate the cross-border relations.

The activity of the Society of Nations was carried on by ONU (Organization of the United Nations), for the same purpose founded.

A push to encourage the drawing-up of conventions against double taxation was given by OEEC (Organization for European Economic Co-operation), later replaced by OECD (Organization for Economic Cooperation and Development).

A further and decisive step was the 1957 Treaty of Rome, its original Article 220 stated "member States shall, so far as is necessary, enter into negotiations with each other with a view to securing for the benefit of their nationals:……..the abolition of double taxation within the Community." [17] It was this rule inside the European Community to decree that each country should limit, as much as possible, its fiscal power in order to avoid excessive increase in taxes on cross-border transactions.

Born to avoid double taxations, additional clauses are introduced inside the conventions in order to prevent from tax fraud and to fight tax elusion, which sometimes fostered abuses of the same instruments provided by the conventions.

In order to intensify the fight against tax avoidance, the instrument of the change of information was adopted as a preventive method to block possible abuses of tax rules and to mark any irregular situation such as requiring a preventive intervention of a government.

Furthermore, single reports were published by OECD in order to avoid supranational practices with their aims clearly evasive.[18]

Since the First World War if the necessity of having conventions appeared to the international scene and could limit a state fiscal power, in the last 30s such need has become more and more pressing and urgent because of the boom in globalization which caused a staggering increase in

[17] Recently, Article 293 (ex Article 220) of the Treaty of Rome has been deleted by the Treaty of Lisbon, so actually there is no mention in the Treaty on the Functioning of the European Union about an obligation of the European Union's member countries to conclude tax treaties with other states.

[18] See, for instance, the "Report Transfer Pricing and Multinational Enterprises" that is still used by many countries. Moreover, it is updated continuously.

importing and exporting materials, with the consequent sudden raise of international trade.

This sudden economic raise involved the need of establishing new and restricting rules in order, on one hand, to limit the fiscal power of a country, on the other hand, to control elaborate operations which could cause an extremely unbalanced burden of taxation for countries with a taxation system much more easier than those ones with a heavier one, out of control from the Fiscal Authorities of countries involved.

Then, it appeared the necessity of organizing the States according to a fixed level, with the supervision of over-national organizations like OECD, ONU and EU.

Particularly, in 1996 European Union approved the Report "Taxation in European Union," where it was underlined the necessity of coordinating at a over governmental level, and in the same period of time a special council, called ECOFIN, was appointed in order to take fiscal measures against harmful competition and a "Code of conduct." [19]

This "Code" was passed on December 1, 1997 and it contained some guidelines the member states should follow in order to avoid that national rules could give problems to the correct fiscal competition.

On an over-European level, OECD approved in 1998 the directive "Harmful Tax Competition"[20] in order to curb fiscal practices of

[19] It should be noted that the "Code of conduct" is included in the "Tax Package," and that legally it is not binding.

[20] In the foreword of the directive "Harmful Tax competition" it can be read "in May 1996 Ministers called upon the OECD to 'develop measures to counter the distorting effects of harmful tax competition on investment and financing decisions and the consequences for national tax bases, and report back in 1998'. In response to the Ministers' request, the OECD's Committee on Fiscal Affairs launched its project on harmful tax competition. The results of this project are now available. This Report addresses harmful tax practices in the form of tax havens and harmful preferential tax regimes in OECD Member countries and non-Member countries and their dependencies. It focuses on geographically mobile activities, such as financial and other service activities. The Report defines the factors to be used in identifying harmful tax practices and goes on to make 19 wide-ranging Recommendations to counteract such practices. In approving the Report on the 9 April 1998, the OECD Council adopted a Recommendation to the Governments of Member countries and instructed the Committee to pursue its work in this area and to develop a dialogue with non-member countries (see Annex I). Luxembourg and Switzerland abstained in

transferring funds towards countries which a subsidized taxation system for fiscal saving with effects distorting from the trade market.

In this report OECD formulated a set of advices which should have been accepted by the member states controlled by a special “Forum” which, in 1999, has prepared a list of “Tax-havens” countries, considered with a tax regime distorting from the fair competition, with serious consequences on international relations between different countries.

Naturally, the list aimed to discourage investments and transfers of capital towards those countries.

2.3 Procedures for ratification.

Income tax treaties are international agreements. Thus, they are subject to the dispositions contained in the Vienna Convention on the Law of Treaties[21] done in Vienna on May 23, 1969, ratified from the Italian Republic by the law 12 February 1974 n.112, entered into force on January 27, 1980.

The Vienna Convention applies only to treaties that are concluded by states.

This Convention applies to any treaty that is the constituent instrument of an international organization, as well as to any treaty adopted within an international organization without prejudice to any relevant rules of the organization. It regulates the processes of conclusion and entry into force of treaties, the requirements of validity and effectiveness of themselves.

The Vienna Convention is divided into:

-Part I: Introduction (articles 1-5);

-Part II: conclusion and entry into force of treaties (articles 6-25);

Council on the approval of the Report and the adoption of the Recommendation (see Annex II). The Report was also submitted to Ministers when they met at the OECD on 27-28 April 1998.”

[21] Article 1 (Scope of the present Convention), in fact, establishes “the present Convention applies to treaties between States.”

-Part III: observance, application and interpretation of treaties (articles 26-38);

-Part IV: amendment and modification of treaties (articles 39-41);

-Part V: invalidity, termination and suspension of the operation of treaties (articles 42-72);

-Part VI: miscellaneous provisions (articles 73-75);

-Part VII: depositaries, notifications, corrections et registration (articles 76-80); and

-Part VIII: final provisions (articles 81-85).

To be concise, we can divide the approval process for an international agreement into several steps.[22]

Firstly, there is the time of negotiations that are beginning by the negotiating countries and that will finish by the authentication that is the stamping at the bottom of the concluding convention of the initials of the negotiators.

Later, there is the time of signing; instead of authentication that does not constrict negotiating countries to approve a tax treaty, by signing the convention the concluding states are bound to ratify and stipulate that tax treaty that have negotiated.

Ratification is an internal procedure in which the competent authorities of the concluding countries approve a tax agreement and recognize all the legal consequences for them.

The stipulation consists of mutual notification of the happened ratification by the concluding countries and, in case of bilateral agreements, it consists in changing of their ratifications.

Consequentially, it is essential to relate to domestic law in order to establish the procedure to ratify an international agreement, especially with an income tax treaty.

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[22] See on the topic, *ex plurimis*, Robert E. Dalton, *National treaty law and practice United States, in* NATIONAL TREATY LAW AND PRACTICE 765 (Duncan B. Hollis, Merritt R. Blakeslee & L. Benjamin Ederington ed., 2005); CARLO GARBARINO, *supra* note 14, at 147-162.

For example, the Italian legal system undoubtedly relates to Articles 23, 80 and 87[23] of the Constitution of the Italian Republic, by which it can infer that taxation is an object of relative reserve by the law of the Parliament. This means that a law of ratification of an income tax treaty for the avoidance of double imposition by the Parliament is mandatory.

After Parliament authorization, Article 87 of Italian Constitution states that the President of the Italian Republic ratifies the international agreements.

The process of incorporation of international tax treaties into Italian system is completed by the publication of them in the Official Journal of the Italian Republic (Gazzetta Ufficiale).

In sum, the Italian internal procedure of approval for an income tax treaty for the avoidance of double income imposition[24] involves the

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[23] Article 23 of the Italian Constitution states "no obligation of a personal or financiai nature may be imposed on any person except by law (nessuna prestazione personale o patrimoniale può essere imposta se non in base alla legge)"; Article 80 of the Italian Constitution states "Parliament shall authorise by law the ratification of such international treaties as have a political nature, require arbitration or a legal settlement, entail change of borders, spending or new legislation (le Camere autorizzano con legge la ratifica dei trattati internazionali che sono di natura politica, o prevedono arbitrati o regolamenti giudiziari, o importano variazioni del territorio od oneri alle finanze o modificazioni di leggi)"; finally, Article 87 of the Italian Constitution establishes "the President of the Republic is the Head of the State and represents national unity. The President may send messages to Parliament. The President shall: – authorise the introduction to Parliament of bills initiated by the Government; – promulgate laws and issue decrees having the force of law, and regulations; – call a general referendum in the cases provided for by the Constitution; – appoint State officials in the cases provided for by the law; – accredit and receive diplomatic representatives, and ratify international treaties which have, where required, been authorised by Parliament. The President is the commander-in-chief of the armed forces, shall preside over the Supreme Council of Defence established by law, and shall make declarations of war as have been agreed by Parliament. The President shall preside over the High Council of the Judiciary. The President may grant pardons and commute punishments. The President shall confer the honorary distinctions of the Republic (il Presidente della Repubblica è il capo dello Stato e rappresenta l'unità nazionale. Può inviare messaggi alle Camere. Indice le elezioni delle nuove Camere e ne fissa la prima riunione. Autorizza la presentazione alle Camere dei disegni di legge di iniziativa del Governo. Promulga le leggi ed emana i decreti aventi valore di legge e i regolamenti. Indice il "referendum" popolare nei casi previsti dalla Costituzione. Nomina, nei casi indicati dalla legge, i funzionari dello Stato. Accredita e riceve i rappresentanti diplomatici, ratifica i trattati internazionali, previa, quando occorra, l'autorizzazione delle Camere. Ha il comando delle Forze armate, presiede il Consiglio supremo di difesa costituito secondo la legge, dichiara lo stato di guerra deliberato dalle Camere. Presiede il Consiglio superiore della magistratura. Può concedere grazia e commutare le pene. Conferisce le onoreficienze della Repubblica)."

[24] See Bravo L. Ferrari, *Accordi Internazionali, in* ENCICLOPEDIA GIURIDICA TRECCANI 3 (1989); Augusto Fantozzi & Klaus Vogel, *Doppia imposizione fiscale internazionale, in* DIG. DISC. PRIV. SEZ. COMM.LE (1990); Victor Uckmar, *I trattati internazionali in materia tributaria, in* TRATTATO DI DIRITTO TRIBUTARIO (Andrea Amatucci ed., 1994); Stefania Bariatti, *L'accordo nel sistema*

promulgation by the President of Italian Republic, after the authorization of the Parliament. However, if the treaty is only technical in nature or involves compliance or interpretation of other previously concluded treaties, in that case, according to the most commentators it does not need any ratification.[25]

In general, before its implementation, an international treaty is not yet part of the domestic law,[26] but according to some commentators a concluded treaty may have a role in the interpretation of the internal law. This means that the internal law provisions may be interpreted in a way that is not in conflict with the unimplemented treaty provisions.[27]

According to the United States Constitutional Law, the President may ratify a treaty only with "advice and consent" of the Senate supported by the affirmative vote of two-thirds of the members present.[28]

Clarifying the process requires distinction between international treaties that are non self-executing and those that are self-executing.

An international treaty is not self-executing in following cases:

-if it manifests an intention that is not to be effective as part of the domestic law without the enactment of implementing legislation;

-if the Senate in giving consent to the Treaty or Congress by resolution requires implementing legislation; and

-if implementing legislation is constitutionally required.

The "executive agreements," as they are called, do not have to be submitted to Senate, but are regarded by the United States Government and by other states as treaties for purposes of international law. In that case, the

delle fonti e il diritto dei trattati, in ISTITUZIONI DI DIRITTO INTERNAZIONALE 83 (S.M. Carbone et al. ed., 2006).

[25] See BENEDETTO CONFORTI, DIRITTO INTERNAZIONALE (8th ed. 2010); NATALINO RONZITTI, INTRODUZIONE AL DIRITTO INTERNAZIONALE (2d ed. 2004); MARIO GIULIANO ET AL., DIRITTO INTERNAZIONALE (1991).

[26] See Italian Supreme Court (United Branches), no.867, 1972.

[27] See BENEDETTO CONFORTI, *supra* note 25.

[28] Article II *section* 2(2) of the Constitution of the U.S. "[The President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur."

United States Government avoids obtaining the advice and consent of the Senate, but all executive agreements must be notified to Congress within 60 days of their entry into force and published thereafter.[29]

The U.S. tax treaties need anyway the consent of the Senate, according to Article II section 2(2) of the Constitution of the United States. In fact, the Executive Branch of the United States has the exclusive authority to negotiate income tax treaties. In particular, the Department of Treasury does the actual negotiation.

Once a treaty is signed by the President or the President's delegate, the treaty is sent to the Senate for its advice and consent. It must pass through a Committee that can conduct hearings before approving or rejecting a treaty.

If the Committee approves, the treaty is subject to the vote of the full Senate, and must pass by the affirmative vote of two-thirds of the members present.

If the Senate approves a treaty subject to a reservation in respect of a particular provision, the treaty can enter into force except in respect of such a provision.

If the Senate approves a treaty without any reservation, it enters into force after the exchange of instruments of ratification by the Executive Branch of the two countries.

Afterwards, a treaty could be amended through bilateral Protocols that are subject to the same ratification process.

2.4 Relationship of income tax treaties and domestic law in the Italian and in the U.S. legal systems.

In this paragraph, I want to address the issue of placing the conventions against the double taxation in the legal system of Italian and

[29] See Federal Statute, the *Case Act*, Public Law 92-403 as amended.

U.S. law sources. In fact, there is the problem of relation between the international agreements and the previous and following set of rules in force, the so called issue of "treaty overrides."[30]

About the Italian system,[31] the first step is to settle the rank to be known to the conventional rules introduced in the positive system; about this point I can detect different main opinions.

According to a more tracing direction,[32] it is enforceable also to the law of treaties Article 10(1) of the Italian Constitution according to which "the Italian legal system conforms to the generally recognized principles of international law (l'ordinamento giuridico italiano si conforma alle norme del diritto internazionale geralmente riconosciute)."

According to such trend inside the rules of international law commonly acknowledged must be included the treaties rules, which would join our system without any law of adoption.

Such "doctrinaire" idea has not found confirmation in jurisprudence of the Italian Constitutional Court, that has always supported the exclusion of the pactional rules from the field of enforcement of Article 10, in fact it could make reference only to the customary rules, which, if meeting the requirements generally clarified (*repetitio facti e opinion iuris sive*

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[30] See on the topic, *ex plurimis*, Guglielmo Maisto (ed.), 2 *Tax Treaties and Domestic Law, in* EC and International Tax Law Series (2006).

[31] See, on the topic, Pietro Bracco, *Italy, in* 2 EC AND INTERNATIONAL TAX LAW SERIES 245 (Guglielmo Maisto ed., 2006); CARLO GARBARINO, *supra* notes 14 and 22; Andrea Amatucci, *La normativa comunitaria quale fonte per l'ordinamento tributario interno, in* DIRITTO TRIBUTARIO INTERNAZIONALE 1165 (V. Uckmar ed., 2005); Joachim Lang, *I presupposti costituzionali dell'armonizzazione del Diritto tributario in Europa, in* I,2 TRATTATO DI DIRITTO TRIBUTARIO 765 (Andrea Amatucci ed., 1994); Giuseppe Melis, *Note minime sulla disapplicazione dell'IRAP da parte del giudice nazionale,* DIR. PRAT. TRIB. INTERNAZ. 691 (2005); E. Nuzzo, *Riflessioni in margine ai rapporti tra trattati contro le doppie imposizioni e talune regole impositive del diritto comunitario e del diritto interno,* I RIV. DIR. TRIB. 739 (1993); R. Pisano, *Il rapporto tra norme interne, diritto convenzionale e diritto comunitario, in* ASPETTI FISCALI DELLE OPERAZIONI INTERNAZIONALI 411 (V. Uckmar & C. Garbarino eds., 1995); Claudio Sacchetto, *Il diritto comunitario e l'ordinamento tributario italiano,* DIR. PRAT. TRIB. INTERNAZ. 3 (2001).

[32] See, *ex plurimis*, ROLANDO QUADRI, DIRITTO INTERNAZIONALE PUBBLICO (5th ed. 1989).

necessitatis), are introduced inside the Italian Law system in conformity with the Article above-mentioned.[33]

According to a second direction, on the contrary, in line with the constant law of the Italian Constitutional Court, the rank to assign to the pactional rules must be the one of the source which has taken measures for adjustment.[34] According to that final direction, in case of rules included in the conventions against the double taxations, it would be necessary to assign them the rank of ordinary law, because they were promulgated by the President of the Republic, through authorization of the houses of Parliament.

According to a further direction, the interpretation of a pactional rule would have been done according to the principle of peculiarity for which, because it is a special rule governing the matter, it would be prevalent on the general rules, unless the latest dispositions in time are detailed and express the will of derogating from the pactional rules.

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[33] See, *ex plurimis*, Italian Constitutional Court no. 188/1980, 143/1993, 153/1987, 168/1994, 288/1997, 32/1999, 464/2005, and lately no.348/2007 in which "it is also shared the exclusion - argued in the remittal ordinances- of the CEDU rules, as pactional rules, from the field of operativeness of Article 10(1) of Italian Constitution, in accordance with the constant jurisprudence of this Court about this point. The aforementioned constitutional disposition, with the expression "rules of International Law generally acknowledged", refers only to customary rules and provides automatic adaptation, as regards themselves, to Italian legal system. The pactional rules, even though they are general, included in International bilateral or multilateral agreements, does not fall within the aforementioned Article 10. CEDU belongs to this category, with the consequent «impossibility of admitting the relative rules as parameters of judgment of constitutional legitimacy, by themselves (sentence no.188 of 1980), or as interposed rules ex Article 10 of Italian Constitution»."

The text of the sentence in its original language is: "Si condivide anche l'esclusione - argomentata nelle ordinanze di rimessione - delle norme CEDU, in quanto norme pattizie, dall'ambito di operatività dell'art. 10, primo comma, Cost., in conformità alla costante giurisprudenza di questa Corte sul punto. La citata disposizione costituzionale, con l'espressione «norme del diritto internazionale generalmente riconosciute», si riferisce soltanto alle norme consuetudinarie e dispone l'adattamento automatico, rispetto alle stesse, dell'ordinamento giuridico italiano. Le norme pattizie, ancorché generali, contenute in trattati internazionali bilaterali o multilaterali, esulano pertanto dalla portata normativa del suddetto art. 10. Di questa categoria fa parte la CEDU, con la conseguente «impossibilità di assumere le relative norme quali parametri del giudizio di legittimità costituzionale, di per sé sole (sentenza n. 188 del 1980), ovvero come norme interposte ex art. 10 della Costituzione»."

[34] See on the topic VICTOR UCKMAR, *supra* note 14.

In my opinion, the attribution of the rank of ordinary law to international conventions against the double taxations can produce several enforcing problems which could be overcome, from another point of view.
The lack in Italian law system of a source intermediate between the Italian Constitution and the primary law involves the inability to assign, according to the actual legal system, the nature of a source intermediate to the international conventions; however we should consider that the conventions are the result of international agreements drawn up among authorities with their representative power of the national interests.

Furthermore, we should consider the text of the Article 117 of the Italian Constitution of the updated Title V, of which Paragraph 1, later on the novel introduced by the Constitutional Law of 2001, states "legislative powers shall be vested in the State and the Regions in compliance with the Constitution and with the constraints deriving from EU legislation and international obligations."[35]

Doctrine is not agree with the interpretation of the text of the above-mentioned Paragraph, according to a part such disposition would rule the final supremacy of the conventional law over the internal rules, as well the following ones, according to other one it could have any innovative effect on the previous rules.

In my opinion, according to the text of the Article 117 of the Italian Constitution, the international obligations would seem to be binding for the exercise of the legislative power, which cannot be exercised but into consideration of the international obligations undertaken.
Certainly, it cannot be denied that among the international obligations mentioned by Article 117, the conventions against the double taxations must be considered, so they would be a limit to exercise the legislative

[35] Article 117 of the Italian Constitution in its original language states "la potestà legislativa è esercitata dallo Stato e dalle Regioni nel rispetto della Costituzione, nonché dei vincoli derivanti dall'ordinamento comunitario e dagli obblighi internazionali."

power of the State and of local self-government (particularly of the regional self-government).

How can we attribute, at this point, the single nature of a primary law to the international obligations taken in the conventions against the double taxations if there is a limit to the legislative power of a country?

In my opinion, to the pactional rules included in the international conventions, as in reference to Articles 10 and 117 of the Italian Constitution, the nature of over-primary sources should be agreed, which, as such, cannot be transgressed by rules included in primary law, in order to avoid a weakening of the State in international relations, necessarily based on correctness and mutual reliability.

Within the ambit of European Union the supremacy of the supranational law over the national one is by now clarified at the light of the long jurisprudential evolution of the Court of Justice of the European Union (see, for instance, sentences Granital and Simmenthal) in order to assign greater certainty and uniformity in the transnational relations.

The same requirements should be infused outside European Union when a country decides, in the exertion of own full sovereignty and autonomy, of limiting own fiscal power to assure correctness inside international transactions. Such decision would be thwarted if, following long negotiations and diplomatic efforts, an ordinary internal law would be enough to violate what has been agreed.

However the aforementioned Article 117 Paragraph 1 of the Italian Constitution, puts on the same level the Constitution, restrictions deriving from the European legal system and the international obligations, that is the best internal source, the restrictions inside European Union and the obligations over European Union, therefore those ones referable to international law.

Certainly it should be confirmed that at least the principle of correctness in the relations among States would be violated; conversely it ought to be one of the foundations of international law, and its violation would necessarily cause negative consequences in political transnational relations.

In conclusion, if it is true that the conventions against the double taxations have been passed in Italy by means of primary law, it is the same that they should form an impassable limit to the exercise of legislative power, with the consequent superiority on internal unlike provisions and with the only limit of the constitutional dispositions.

In this sense the Italian Constitutional Court seems to act too, and in the decision no.349 of 2007, even if with reference to the CEDU dispositions, it has stated the supremacy of the international agreements as regards the dispositions of primary internal law.[36]

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[36] In the sentence no. 349 (2007) it is written "the fact emerging at once is the existing gap before the replacement of the aforementioned disposition (Article 117 Italian Constitution) by the Article 2 of the Constitutional Law 18 October 2001, no.3 (that is titled "Amendments to the Title V of II Part of the Italian Constitution"), as the conformity of the ordinary laws to the rules of International Conventional Law was susceptible of control from this Court only within the limits and in the aforementioned cases (that is a direct transgression of Articles 10 and 11 of Italian Constitution). The consequence was that the transgression of International obligations, deriving from conventional rules not provided in Articles 10 and 11 of Italian Constitution, from the internal laws involved the unconstitutionality of the same only in reference to the direct transgression of constitutional rules (sentence n.223 of 1996). That came true in spite of one of the elements characterizing the Legal system based on the Constitution, formed by a strong opening towards the respect of International Law and more generally of external legal sources, enclosed herein those ones reminded by the rules of the International Private Law, in spite of the expressed importance of the transgression of International laws, subject of other and specific constitutional parameters. Furthermore, such transgression of International obligations could not be avoided properly by the only interpretative instrument, while, as above-specified, according to CEDU rules the appeal to the "non-enforcement" useful for the Community Law is not admissible. There is no doubt, therefore, in the light of the comprehensive description of the Constitutional laws and of the trends of this Court, that the new text of Article 117(1) of Italian Constitution, has filled a gap, and in accordance with the Constitutions of other European countries it is related, a part from its systematic placement inside the Constitution, to the description of the principles, which explicitly guaranteed, on a primary level, the observance of certain and international obligations, undertaken by the Country. It does not mean, of course, that with the Article 117(1) of Italian Constitution, we can assign the constitutional rank to the rules included inside the International agreements, subject-matter of an ordinary law of adaptation, as it is in the case of CEDU rules. The constitutional parameter taken into consideration requires, in fact, the obligation of the ordinary legislator to respect such rules, with the consequent incompatibility of the national rule with CEDU rules and, therefore, with the "International obligations" of which Article 117(1), violates, for the same, such constitutional parameter. With Article 117(1), it has been realized, definitively, a fluctuated reference to the conventional rule each time conferring, which gives origin and content to those international obligations generically recalled and, with them, to the parameter, so to be commonly called "interposed rule"; that is subject, as we will explain later, to a test of compatibility with the rules of the Italian Constitution. The result is that an ordinary judge has to interpret the internal

About the relationship of income tax treaties and domestic law in the U.S. legal system, it could happen that a treaty conflict with the U.S. domestic law.

The issue of the "treaty overrides" in the U.S. legal system is much debated and very broad, so in this paragraph I only want to give some main concepts.[37]

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rule in accordance with the International dispositions, within the limits where it is allowed by the texts of the rules. If that should be impossible, or if he is doubtful of the compatibility of the internal rule with the conventional "interposed" disposition, he must appoint this Court about the concerning issue of constitutional legitimacy as regards the parameter of Article 117(1), as correctly has been done by the previous judge in this occasion".

The text of the sentence in its original language is "il dato subito emergente è la lacuna esistente prima della sostituzione di detta norma [art. 117 Cost.] da parte dell'art. 2 della legge costituzionale 18 ottobre 2001, n. 3 (Modifiche al titolo V della parte seconda della Costituzione), per il fatto che la conformità delle leggi ordinarie alle norme di diritto internazionale convenzionale era suscettibile di controllo da parte di questa Corte soltanto entro i limiti e nei casi sopra indicati [cioè diretta violazione degli artt. 10 e 11 Cost.]. La conseguenza era che la violazione di obblighi internazionali derivanti da norme di natura convenzionale non contemplate dall'art. 10 e dall'art. 11 Cost. da parte di leggi interne comportava l'incostituzionalità delle medesime solo con riferimento alla violazione diretta di norme costituzionali (sentenza n. 223 del 1996). E ciò si verificava a dispetto di uno degli elementi caratterizzanti dell'ordinamento giuridico fondato sulla Costituzione, costituito dalla forte apertura al rispetto del diritto internazionale e più in generale delle fonti esterne, ivi comprese quelle richiamate dalle norme di diritto internazionale privato; e nonostante l'espressa rilevanza della violazione delle norme internazionali oggetto di altri e specifici parametri costituzionali. Inoltre, tale violazione di obblighi internazionali non riusciva ad essere scongiurata adeguatamente dal solo strumento interpretativo, mentre, come sopra precisato, per le norme della CEDU neppure è ammissibile il ricorso alla "non applicazione" utilizzabile per il diritto comunitario. Non v'è dubbio, pertanto, alla luce del quadro complessivo delle norme costituzionali e degli orientamenti di questa Corte, che il nuovo testo dell'art. 117, primo comma, Cost., ha colmato una lacuna e che, in armonia con le Costituzioni di altri Paesi europei, si collega, a prescindere dalla sua collocazione sistematica nella Carta costituzionale, al quadro dei princìpi che espressamente già garantivano a livello primario l'osservanza di determinati obblighi internazionali assunti dallo Stato. Ciò non significa, beninteso, che con l'art. 117, primo comma, Cost., si possa attribuire rango costituzionale alle norme contenute in accordi internazionali, oggetto di una legge ordinaria di adattamento, com'è il caso delle norme della CEDU. Il parametro costituzionale in esame comporta, infatti, l'obbligo del legislatore ordinario di rispettare dette norme, con la conseguenza che la norma nazionale incompatibile con la norma della CEDU e dunque con gli "obblighi internazionali" di cui all'art. 117, primo comma, viola per ciò stesso tale parametro costituzionale. Con l'art. 117, primo comma, si è realizzato, in definitiva, un rinvio mobile alla norma convenzionale di volta in volta conferente, la quale dà vita e contenuto a quegli obblighi internazionali genericamente evocati e, con essi, al parametro, tanto da essere comunemente qualificata "norma interposta"; e che è soggetta a sua volta, come si dirà in seguito, ad una verifica di compatibilità con le norme della Costituzione. Ne consegue che al giudice comune spetta interpretare la norma interna in modo conforme alla disposizione internazionale, entro i limiti nei quali ciò sia permesso dai testi delle norme. Qualora ciò non sia possibile, ovvero dubiti della compatibilità della norma interna con la disposizione convenzionale 'interposta', egli deve investire questa Corte della relativa questione di legittimità costituzionale rispetto al parametro dell'art. 117, primo comma, come correttamente è stato fatto dai rimettenti in questa occasione."

[37] To broaden this topic in the U.S. legal system see, *ex plurimis*, Anthony C. Infanti, *United States*, *in* 2 EC AND INTERNATIONAL TAX LAW SERIES 355 (G. Maisto ed., 2006).

Firstly, the U.S. Constitution prevails against a conflicting treaty.

Moreover, the general rule in Article VI, cl.2, of the U.S. Constitution is "this Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Thus, according to the aforementioned general rule treaties and federal statutes are both the supreme law of the land, meaning that they will override common and state laws in conflict with them. It also means that if a treaty and a federal statute are in conflict, the later in the time will prevail. In case of contrast between a treaty and the U.S. domestic law, the Court may try to reconcile the two; this is the so called principle of "presumption of harmony" according to which "an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains."[38]

If this reconciliation is not possible then the Court must follow the residuary rules. As I have already written, they are:

-the Constitution prevails over all treaties;

-treaties prevail over common law;

-treaties prevail over state law;[39] and

-a later Act of Congress prevails over all treaties.

The last rule is very singular because an Act of Congress, that is later in time, overrides the treaty without the necessary of any other consent of the Senate.

It should be noted that according *section* 7852 (d)[40] of the U.S. Internal Revenue Code "(d) Treaty obligations

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[38] Murray v Schooner Charming Betsy, 6 US (2 Cranch) 64, 118 (1804), cited in McConnel v FEC, 540 US 93, 192 (2003); United States v IBM, 517 US 843 (1996); Hartford Fire Ins Co v Cal, 509 US 764 (1993).

[39] See Reuters Ltd v Tax Appeals Tribunal, 82 NY2d 112, 623 NE2d 1145 (1993).

(1) In general

For purposes of determining the relationship between a provision of a treaty and any law of the United States affecting revenue, neither the treaty nor the law shall have preferential status by reason of its being a treaty or law.

(2) Savings clause for 1954 treaties

No provision of this title (as in effect without regard to any amendment thereto enacted after August 16, 1954) shall apply in any case where its application would be contrary to any treaty obligation of the United States in effect on August 16, 1954."

Reconciling this disposition of the Internal Revenue Code with the aforementioned residuary rules is much debated.

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[40] *Section* 7852 of the U.S. Internal Revenue Code states "(a) Separability clause

If any provision of this title, or the application thereof to any person or circumstances, is held invalid, the remainder of the title, and the application of such provision to other persons or circumstances, shall not be affected thereby.

(b) Reference in other laws to Internal Revenue Code of 1939

Any reference in any other law of the United States or in any Executive order to any provision of the Internal Revenue Code of 1939 shall, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, be deemed also to refer to the corresponding provision of this title.

(c) Items not to be twice included in income or deducted therefrom

Except as otherwise distinctly expressed or manifestly intended, the same item (whether of income, deduction, credit, or otherwise) shall not be taken into account both in computing a tax under subtitle A of this title and a tax under chapter 1 or 2 of the Internal Revenue Code of 1939.

(d) Treaty obligations

(1) In general

For purposes of determining the relationship between a provision of a treaty and any law of the United States affecting revenue, neither the treaty nor the law shall have preferential status by reason of its being a treaty or law.

(2) Savings clause for 1954 treaties

No provision of this title (as in effect without regard to any amendment thereto enacted after August 16,1954) shall apply in any case where its application would be contrary to any treaty obligation of the United States in effect on August 16, 1954.

(e) Privacy Act of 1974

The provisions of subsections (d)(2), (3), and (4), and (g) of section 552a of title 5, United States Code, shall not be applied, directly or indirectly, to the determination of the existence or possible existence of liability (or the amount thereof) of any person for any tax, penalty, interest, fine, forfeiture, or other imposition or offense to which the provisions of this title apply."

2.5 Interpretation of income tax treaties.

A commonly discussed issue about income tax treaties is how to interpret them.[41]

The theory of legal interpretation developed considerably throughout the nineteenth and twentieth centuries. Over this period several schools of thought alternated in terms of importance and preponderance.

Five main methods can be considered:

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[41] See, on the topic of the interpretation of tax treaties, OTTMAR BÜHLER, *supra* note 2; WILLIAM JOHN GIBBONS, TAX FACTORS IN BASING INTERNATIONAL BUSINESS ABROAD. A STUDY OF THE LAW OF THE UNITED STATES AND OF SELECTED FOREIGN COUNTRIES (1957); M. CHRÉTIEN, A LA RECHERCHE DU DROIT INTERNATIONAL FISCAL COMMUN (1955); R. SH. ARYAL, INTERPRETATION OF TREATIES: LAW AND PRACTICE (2003); D.J. BEDERMAN, CLASSICAL CANONS: RHETORIC, CLASSICISM AND TREATY INTERPRETATION (2001); id., *Revivalist Canons and Treaty Interpretation*, 41 UCLALR 953 (1994); A. BREDIMAS, METHODS OF INTERPRERATION AND COMMUNITY LAW (1978); M. Bos, *Theory and Practice of Treaty Interpretation*, 27 NILR 3 (1980); H.W. Briggs, *The travaux preparatoires of the Vienna Convention on the Law of Treaties*, 65 AJIL 705 (1971); L. Condorelli, *Interpretazione giurisdizionale e interpretazione autentica di trattati nell'ordinamento internazionale*, 56 RIV. DIR. INT. 224 (1973); E. Criddle, *The Vienna Convention on the Law of Treaties in U.S. Treaty Interpretation*, 44 VIR. J INT'L L. 431 (2004); R. GARDINER, TREATY INTERPRETATION (2008); A. Glashausser, *Difference and Deference in Treaty Interpretation*, 50 VILL. L. REV. 25 (2005); M. HEYMANN, EINSEITIGE INTERPRETATIONSERKLÄRUNGEN ZU MULTILATERALEN VERTRÄGEN (2005); W. Hummer, *"Ordinary" versus "Special" Meaning*, 26 OZÖR 87 (1975); F. G. Jacobs, *Varieties of Approach to Treaty Interpretation: With Special Reference to the Draft Convention on the Law of Treaties before the Vienna Diplomatic Conference*, 18 ICLQ 318 (1969); I. Johnstone, *Treaty Interpretation: The Authority of Interpretive Communities*, 12 MICH. J. INT'L L. 371 (1991); A. Koziowski, *Interpretation of Treaties in the Light of the Relationship between International Law and the Law of the European Communities (European Union)*, 26 POLISH YBIL 115 (2002/2003); W. Lang, *Les règles d'interprètation codifiées par la Convention de Vienne sur le Droit des Traltés et les divers types de traités*, 24 OZÖR 113 (1973); G.P. McGinley, *Practice as a Guide to Treary Inrerpretation*, 9 FLETCHER F. 211 (1985); C. McLachlan, *The Principle of Systemic Interpretation and Article 31 (3)(c) of the Vienna Convention*, 54 ICLQ 279 (2005) ; J. G. Merrills, *Two Approaches to Treaty Interpretation*, 4 AUSTRALIAN YBIL 55 (1968-1969); S. MOYANO BONILLA, LA INTERPRETACIÓN DE LOS TRATADOS INTERNACIONALES (1985); *id.*, *La interpretacion de los tratados internacionales según la Convención de Viena de 1969*, 10 INTAL/IL 32 (1985) ; B.S. Murty, *The Content of Treaty Prescriptions-The Problems of Interpretation*, 19 INDIAN YBIL 169 (1986); S. E. Nahlik, *L'interprétation des traités internationaux à la lumière de la codification du droit des traités*, 9 WROCLAW 99 (1976); D. Pratap, *Interpretation of Treaties*, *in* ESSAYS ON THE LAW OF TREATIES 55 (S. K. Agrawala ed., 1971); Ch. Schreuer, *The Interpretation of Treaties by International Courts*, 45 BYBIL 255 (1971); S. SCOTT, THE POLITICAL INTERPRETATION OF MULTILATERAL TREATIES (2004); L. B. Sohn, *Settlement of Disputes Relating to the Interpretation and Application of Treaties*, 150 RC 195 (1976); S. SUR, L'INTERPRÉTATION EN DROIT INTERNATIONAL PUBLIC (1974); S. Torres Bernárdez, *Interpretation of Treaties by the International Court of Justice Following the Adoption of the 1969 Vienna Convention on the law of Treaties*, *in* LIBER AMICORUM I.SEIDL-HOHENVELDERN 721 (B. Hafner ed., 1998); D. Vagts, *Treaty Interpretation and the New American Ways of law Reading*, 4 EJIL 472 (1993); B. Vitanyi, *L'interprétation des traités dans la théorie du droit naturel*, 84 RGDIP 525 (1980); I. VOICOU, DE L'INTERPRÉTATION AUTHENTIQUE DES TRAITÉS INTERNATIONAUX (1968); J. C. Wolf, *The Jurisprudence of Treaty Interpretation*, 21 UCDLR 1023 (1988); E. S. YAMBRUSIC, TREATY INTERPRETATION: THEORY AND REALITY (1987); M. K. Yasseen, *L'interprétation des traités d'après la Convention de Vienne sur le Droit des Traités*, 151 RC 1 (1976).

1) the subjective or historical method,[42] according to which in the interpretive process of a treaty it is fundamental to understand the real intentions of the negotiating countries;

2) the textual or grammatical method,[43] that concentrates on the treaty text;

3) the contextual or systematic method, which appreciates the meaning of terms in their nearer and wider context;

4) the teleological or functional method, that concentrates on the object and purpose of a treaty, beyond the treaty text; and

5) the logical method, that favors rational techniques of reasoning and such abstract principles, e.g. *per analogia*.

Moreover, the principal documental interpretive sources are:

-Treasury Department Technical Explanations that serve as an official guide to explain, interpret, and often apply the particular provisions of the treaty;

-OECD Commentary and UN Commentary that contains explanatory materials written by the OECD or by the United Nation; and

-the Vienna Convention on the Law of Treaties with its Commentaries.

In fact, the two main models of international treaties for avoidance of double taxation, the OECD model and the United Nations model, are served by Commentaries that explain and sometimes expand the meaning of the provisions included in them.

In addition to the Commentaries, an important document in the interpretative process of international tax treaties is the Vienna Convention, with its Commentaries, about which I have already written in general terms.

In the interpretive process of tax treaties, Articles 31-33 of this Convention have a special importance.[44] These Articles are often followed

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[42] Sir Hersch Lauterpacht has been the most important exponent of this method.

[43] See Max Huber, as one of the most representative of this method.

[44] The section 3 of the Part III is about "Interpretation of Treaties".

Article 31 "General rule of interpretation" states "1.A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

by States which may not officially subscribe to the Vienna Convention because the Articles include provisions that are customary international law.

According to Article 31(1) a treaty must firstly be interpreted in good faith. Good faith is one of the basic principles governing the creation and performance of legal obligations and creates the presumption that treaty terms were intended to mean something, rather than nothing.

Moreover, good faith requires the parties to a treaty to act honestly, fairly and reasonably, and to refrain from taking unfair advantage. Behaving in good faith means that the negotiating parties expect that “pacta sunt servanda” and that they will not evade their obligations and will not exercise their rights in such a way as to cause injury to the other parties.

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2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
(a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
(b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
3. There shall be taken into account, together with the context:
(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
(c) any relevant rules of international law applicable in the relations between the parties.
4. A special meaning shall be given to a term if it is established that the parties so intended.”
Article 32 “Supplementary means of interpretation” states “Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:
(a) leaves the meaning ambiguous or obscure; or
(b) leads to a result which is manifestly absurd or unreasonable.”
Article 33 “Interpretation of treaties authenticated in two or more languages” states “1.When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.
2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.
3. The terms of the treaty are presumed to have the same meaning in each authentic text.
4. Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.”

Continuing the analysis of Article 31, a treaty must be interpreted “in accordance with the ordinary meaning to be given to the terms of the treaty in their context.”

The ordinary meaning is the starting point of the interpretive process and it means that the term must be interpreted in accordance with its current and usual meaning, put in the context of the treaty. It is possible for the same term to have several normal meanings, but we should choose the normal meaning related to the entire context of the treaty and related to the common intention of the parties. Moreover, the parties of a treaty can give to a term a special meaning, according to Article 31(4).

The context includes, in addition to the text of the treaty, its preamble and annexes (e.g. protocols to a treaty), and also the other means mentioned in Paragraphs 2 and 3. Specifically, it includes:

-agreement between parties made in connection with the conclusion of the income tax treaty (ITT), e.g. exchanges of letters between the concluding countries after the original signature of the treaty;

-any instrument made by one party in connection with the conclusion of the ITT, which is accepted by the other parties (e.g. explanatory memoranda issued by the Treasury Department of the Home Country of one party after conclusion of ITT, which give the state interpretation of the provisions of the treaty).

The means in Paragraphs 2 and 3 (a-b) can only be used if all the parties to the treaty have concluded an agreement about the interpretation of a particular term of the treaty, or if one or more of the parties have been involved by means of an instrument or subsequence practice to which the other parties have agreed.

So, I can say that Paragraphs 2 and 3(a-b) represent a kind of authentic interpretation accepted by all parties of the treaty, and this interpretation could have a binding force just because it arose from the parties of the treaty.

By the agreements or instruments mentioned in Paragraphs 2 and 3(a-b), the negotiating parties can also amend, extend or delete text in the treaty.

Article 31(2) mentions several means that originate before the conclusion of the treaty and are connected with it, while the means of interpretation mentioned in Paragraph 3(a-b) differ in that they originate after the conclusion of the treaty.

Article 31(3)(c) addresses “any relevant rules of international law.” The rules of international law are one of the general means of interpretation provided by Article 31. They correspond with the notion of sources of international law, but they must be “applicable in the relations between the parties,” meaning that they must be binding on all the parties to the treaty.

Those rules can be customary rules or general principles of international law, but must be in force at the time of the interpretation of the treaty.

If they are customary rules, they can be identical to the treaty rules.

Moreover, Paragraph 4 of Article 31 mentions “a special meaning” that the parties can give to a term of the treaty.

A term has a special meaning when the meaning of the term is not the usual meaning, and we can understand clearly that the parties intended to give a different meaning to the term. Special meanings are often found in technical or historical contexts or in specialized treaties.

Article 2 of the Vienna Convention could be an example of such special meanings. The purpose of Paragraph 2 is to underline the autonomy of the parties to establish a special meaning of the term.

This intention must transpire in good faith from one of the authentic means of interpretation mentioned above and contained in Paragraphs 2 and 3 (a-b) of article 31.

The Vienna Convention Commentaries on Articles 31-33 say, at Paragraph 17, that there is a relationship between ordinary meaning under Article 31(1), and special meaning under Article 31(4), but the burden of proof is on the party that invokes the special meaning of a term which is an exception to the ordinary meaning.

Eventually, according to Article 31(1) a treaty must be interpreted "in accordance with the ordinary meaning to be given to the terms of the treaty …… in the light of its object and purpose."[45]

Those terms include a treaty's aims, its nature and its end. Objects and purposes of a treaty can be several, but one of the most important is to maintain the balance of rights and obligations generated by the treaty.

That part of Article 31(1) expresses the teleological or functional approach of the interpretive process.

Article 32 states the ability to use supplementary means of interpretation, like the preparatory work of the treaty and the circumstances of its conclusion. These means are only examples, so they do not exclude other supplementary means. The preparatory work of the treaty has a fundamental importance. It includes all documents created by the parties during the negotiation process until the conclusion of the treaty. Examples of preparatory work are memoranda, statements and observations of the governments of the negotiating states transmitted to each other. We can also consider diplomatic exchanges between the parties, treaty drafts, negotiation records and minutes of commission to be other examples.

The circumstances of the conclusion of the treaty include the political, social and cultural factors surrounding the conclusion of the agreement.

Other supplementary means of interpretation could be the preparatory work of previous versions of the treaty, the interpretive declarations generated by the parties, any internal documents, etc.

[45] See on the topic V. Crnic-Grotic, *Object and Purpose of Treaties in the Vienna Convention on the Law of Treaties*, 7 ASIAN YBIL 141 (1997); Buffard/Zemanek, *The "Object and Purpose" of a Treaty: An Enigma?*, 3 AUSTRIAN RIEL 311 (1998); Ulf Linderfalk, *On the Meaning of the "Object and Purpose" Criterion, in the Context of the Vienna Convention on the Law of Treaties, Article 19*, 72 NORDIC JIL 429 (2003); Jan Klabbers, *Some Problems Regarding the Object and Purpose of Treaties*, 8 FINNISH YBIL 138 (1997). Moreover, see Italian Supreme Court (Corte di Cassazione), case no. 7950, 1995, in Giur.It. 1997, at 697.

All the parties of the treaty must be aware of those means of interpretation to use them in the interpretive process; under this condition, they can only be used with the other means of Article 31 to aid the process of interpretation.

In fact, according to Article 32, the use of the supplementary means of interpretation is possible only after employing the means of the General Rule of Interpretation in Article 31.

They may be used to confirm the meaning resulting from the application of Article 31, or to determine the meaning when the interpretation leads to a result that is ambiguous or obscure, or when using the interpretive means contained in Article 31 and the result is manifestly absurd or unreasonable.

As an effect, it can be inferred that Article 32 allows the use of those means of interpretation in a lot of different situations, and the only limit is that they may not be invoked before using the means contained in Article 31.

Article 33 is concerned about treaties authenticated in different languages. In fact, several difficulties can arise if multiple systems of law use the same terms but with different legal concepts. An example of this difficulty is which language's texts would be used to interpret the treaty and how to proceed if the various pertinent language texts do not coincide.

According to Article 33, there is a presumption of the equality of all authenticated languages and a presumption of the equal authenticity of the texts, with the only exception being when it is established that, in case of divergence, a particular text shall prevail, in which case other authenticated texts shall not be taken into consideration.

The negotiating parties can agree that some language texts are authoritative between some parties, and other texts between others.

A language different than those authenticated will not be considered an authentic text, so will not be considered authoritative for the interpretation of a plurilingual treaty, unless the treaty or the parties state differently; in the first case, it might be used as a supplementary mean of interpretation under Article 32.

Paragraph 3 of Article 33 repeats the presumption of equality of all authenticated terms in the various language texts that should unify, constituting a single treaty with a single set of terms reflecting a single intention of the parties. As an effect, it is possible to consult one single term and assume that it has the same meaning written in all the other texts.

That presumption is not true if the parties expressed the desire that a particular version prevail in accordance with Paragraph 1, or if there are differences of meaning that Articles 31 and 32 could not remove.

In the aforementioned last case, according to Paragraph 4 it is necessary to reconcile the meanings of the various authentic texts, with regard to the object and purpose of the treaty. At this stage all authenticated language texts must be compared.

The object and the purpose of the treaty can appear in many different ways, e.g. it can be found in original treaty drafts or in non-authentic official language texts or any supplementary means of interpretation can be used.

Paragraph 4 also repeats the exception that the treaty can provide or negotiating countries can agree that a particular text prevails in accordance with Paragraph 1 of Article 33.

It must be added that the rules of interpretation contained in Articles 31-33 are not a complete statement of all the interpretive principles that are found in decisions of international tribunals and that are not codified in OECD/UN Commentaries.

I have already written that other important sources in the interpretive process of tax treaties are the OECD Commentary and the UN Commentary which contain explanatory materials written by the OECD or by the United Nations.

These Commentaries go with the two main models of tax treaties: the OECD model and the United Nations model.

There is no consensus concerning the relationship between Articles 31-33 of the Vienna Convention and the OECD and UN Commentaries.

According to some commentators, the Commentaries may be referenced in order to establish the ordinary meaning of treaty terms within Paragraph 1 of Article 31.[46] Others think that Paragraph 2 of Article 31 can be applicable.[47]

Some commentators suggest that the Commentaries may be covered by Paragraph 3 of Article 31;[48] some others take the position that they are covered by Paragraph 4,[49] so they can express "*a special meaning.*" Still other commentators think that the Commentaries are a preparatory work to a tax treaty which use is permitted in order to interpret it under Article 32.[50] In this way the Commentaries are considered, according to Article 32, a supplementary means of interpretation that can be used either to confirm a meaning resulting from the application of Article 31 or to interpret the meaning of some words according to Article 31 when it is ambiguous.[51]

It should be noted that Article 32 of the Vienna Convention does not provide an accurate definition of supplementary means of interpretation, but only specifies that supplementary means of interpretation can be "travaux préparatoires et [..] circonstances dans lesquelles le traité a été conclu."[52]

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[46] See, KLAUS VOGEL, *supra* note 20; REIMER EKKEHART, INTERPRETATION OF TAX TREATIES (1999).
[47] See, Kees van Raad, *Interpretatie van Belastingverdragen*, 47 MAANDBLAD BELASTING BESCHOUWIGEN 49 (1978).
[48] Richard Vann, *Interpretation of Treaties in New Holland, in* A TAX GLOBALIST: ESSAYS IN HONOUR OF MAARTEN J. ELLIS (2005).
[49] See Hugh Ault, *The Role of the OECD Commentaries in the Interpretation of Tax Treaties, in* ESSAYS ON INTERNATIONAL TAXATION IN HONOR OF SIDNEY I. ROBERTS (H.H. Alpert and K. van Raad eds., 1993).
[50] See, David Oliver, *Employees and Double Taxation Agreements*, BR. TAX REV. 529 (1995).
[51] See MICHAEL EDWARDES-KER, TAX TREATY INTERPRETATION: THE INTERNATIONAL TAX TREATIES SERVICE (1994).
[52] The original French words give better the intrinsic idea of the law.

However, the Commentaries often not only provide the meaning of single term, but are much more extensive than what can be considered the explanation of a term.

Either OECD Council or the Committee on Fiscal Affairs (CFA) have stated that the Commentaries are not legally binding, and also Paragraph 29 of the Introduction to the OECD Commentary declares "…the Commentaries…can….be of great assistance in the application and interpretation of the conventions and, in particular, in the settlement of any disputes…….Commentaries….are of special importance in the development of international fiscal law."

The OECD Council adopted on October 23, 1997 a Recommendation in which it recommended to the Governments of Member countries "that their tax administrations follow the Commentaries on the Articles of the model tax convention, as modified from time-to-time, when applying and interpreting the provisions of their bi-lateral tax conventions that are based on these Articles."

The most common opinion is that the Commentaries are "soft law," which means that they are non-binding written instruments and they do not have a specific role in the international law, but they provide to the member countries only a possible way to interpret the tax treaties.

As a consequence, it can be inferred that the Commentaries cannot be considered a basis to establish that the parties of a tax treaty wanted to attribute to some undefined words special meanings under Article 31(4).

The Italian Supreme Court[53] has held that the OECD model is not binding in the interpretation of a tax treaty law and therefore, in Italy, some commentators[54] think that this statement of the Court could be extended also to the Commentaries.

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[53] See Italian Supreme Court (Corte di Cassazione), case no. 112, 2000, in Boll.Trib. 2000, at 1026.

[54] See G. Bizioli, *Tax Treaty Interpretation in Italy, in* TAX TREATY INTERPRETATION (Michael Lang ed., 2001).

Some commentators suggest[55] that when a tax treaty is between two member countries of the OECD, the Commentaries may be an agreement relating to the treaty and made between the same parties in connection with the conclusion of the treaty, so it can be referred to Paragraph 2(a) of Article 31 of the Vienna Convention.

Therefore, while according to the Vienna Convention Commentaries Articles 31-32 do not constitute a complete statement of all interpretive rules of tax treaties, on the other hand, the OECD/UN Commentaries, as they existed at the time when the tax treaty based on an OECD/UN model was negotiated, are clearly very good aids to understand the meaning of particular provisions included in the tax treaty.[56]

That is truer when the parties negotiating a tax treaty are members of OECD/UN. As a consequence it can be inferred, in absence of evidence of to the contrary, that they wanted to adopt the interpretation provided by the Commentaries that were current at the time of the negotiation.

It is also clear that any interpretation of tax treaty provided by the OECD/UN Commentaries will not be applied if the negotiating parties stated otherwise in a protocol to the particular treaty or if there are some different elements on which it can conclude for a different desire of the parties.

About later Commentaries, that are not current at the time of the concluding treaty, the question often has arisen as to whether Commentaries

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[55] See ANTHONY AUST, MODERN TREATY LAW AND PRACTICE (2000).

[56] In FEDERAL INCOME TAX PROJECT, INTERNATIONAL ASPECTS OF UNITED STATES TAXATION II PROPOSALS OF THE AMERICAN LAW INSTITUTE ON UNITED STATES INCOME TAX TREATIES 54 (1992) we can read "the OECD Model Treaty and the accompanying Commentary are the benchmarks against which income tax treaties between developed countries are negotiated. Many treaties, including most U.S. treaties, incorporate language of the OECD Model Treaty or, in some cases, deliberately modify it for specified reasons. While the OECD materials undoubtedly do not rise to the level of customary international law, they occupy a unique position in the hierarchy of international tax materials. In practice both administrators and tax advisors automatically consult these materials when attempting to understand the meaning of treaty provisions. It would be wholly unrealistic, at least in the absence of strong evidence to the contrary, to think that treaty negotiators who adopted language derived from the OECD text were not familiar with and therefore did not knowingly accept the common meaning of that language as agreed among the OECD member countries."

which have been added or changed since the negotiation process was completed have the same role in the interpretive process.

The difficulty arises when the subsequent Commentary fills a gap in the existing Commentary by covering matters not previously mentioned at all, or it amplifies the existing Commentary by adding new examples or arguments to what is already there, or it records what states have been doing in practice, or it contradicts the existing Commentary.

According to the *section* 38 of the Statute of the International Court of Justice, the value of the aforementioned Commentaries will depend on the opinion of the Court that will establish if the Commentaries provide a reasonable interpretation of the particular provision included in a treaty.

Some authors suggest[57] that the subsequent Commentary generally can be taken into account under Article 31 Paragraph 3(a) or (b) of the Vienna Convention in interpreting pre-existing tax treaties.

Other authors[58] are of the view that later Commentaries should not affect interpretation of already concluded treaties.

Others,[59] moreover, think that the subsequent Commentary can only clarify the meaning of concluding treaties; so, in this case, it has a very great weight even though it is later in time.

In our view, the later Commentaries are not part of the "legal context" of the treaty according to Articles 31 and 32 of the Vienna Convention and it can be supposed that they have not been in the minds of the treaty negotiators at the time of negotiation of a tax treaty; there is no evidence about the intention of the negotiating countries to interpret the words included in the convention according to the suggestions of the Commentaries later in time.

[57] M. Waters, *The Relevance of the OECD Commentaries in the Interpretation of Tax Treaties*, *in* PRAXIS DES INTERNATIONALEN STEUERRECHTS, FESTSCHRIFT FÜR HELMUT LOUKOTA (Michael Lang and Heinz Jirousek eds., 2005).
[58] See Michael Lang, *Later Commentaries of the OECD Committee on Fiscal Affairs, Not to Affect the Interpretation of Previously Concluded Tax Treaties*, 25 INTERTAX 7 (1997).
[59] See KLAUS VOGEL, *supra* note 20.

As a consequence, in our view the later Commentaries could be considered only if they help to better understand some terms of the treaty that are already almost clear in their meaning, but if the subsequent Commentary fills a gap in the existing Commentary, or if it amplifies the existing Commentary, or if it contradicts the existing Commentary, then it should not have any consideration.

Thinking differently, I would attribute to the concluded treaty a meaning that the parties of the agreement could not have wanted to give at the time of the conclusion.

The problem of the later Commentaries introduces another important issue about the interpretive process of the tax agreements. In fact there are two methods of interpreting meanings of legislative terms “the static approach” and “the ambulatory approach.”

Static interpretation means that only the meaning that the term has at the time that the tax treaty was entered into force should be considered.

According to the ambulatory interpretation, the term takes on the meaning that it has been amended from time to time.

In our view, the ambulatory method must be preferred because it allows that the tax agreement accommodates changes that happen in the countries involved in the agreement without the need to renegotiate the tax treaty.

Moreover, the ambulatory method prevails according to the rules of interpretation contained in Articles 31-33 of the Vienna Convention, even though it must be clear that the parties of a treaty cannot to amend their tax agreements by the use of the ambulatory interpretation, thus avoiding, in this way, to renegotiate the tax agreements.

By analysis of Article 31-33 of Vienna Convention, and by analysis of OECD/UN Commentaries, it can be inferred that the intention of the parties is very important in the interpretive process in international law.

This intention must be inferred from the text of the treaty itself and it is not to be derived from any subjective determination; as well as the intention of the parties must be objective, not subjective.

To better understand the intention of the parties, one can use the interpretation principles of "logic and good sense" as "guides to assist in appreciating the meaning which the parties may have intended to attach to the expressions that they have employed in the document."[60]

Moreover, the OECD model and most treaties have an express provision that the competent authorities of the negotiating countries can resolve by "interpretive mutual agreement" doubts cast by the interpretation or application of the treaty.

Those competent authorities may also consult together for the elimination of double taxation in cases not provided for in the treaty (legislative mutual agreements).

It is common opinion that the mutual agreements fall within Article 31, Paragraph 3(a), of the Vienna Convention and they may have binding effect, such as they must be considered in the interpretative process of the treaty.

I have clarified that the Commentaries can be considered means of "soft law," so they are non-binding. Now I should ask myself if they, in fact, generate a binding obligation in international law, either on the basis that they have become recognized as customary law or on the basis of good faith.

At this point of the discussion, I should ask myself if, in the case that Commentaries, in fact, create a binding obligation in international law, they

[60] Paragraph 4 of the Vienna Convention Commentaries to Articles 31 and 32. In paragraphs 11 and 12 of the Vienna Convention Commentaries to Articles 31 and 32 we can read "[Article 31] is based on the view that the text must be presumed to be the authentic expression of the intentions of the parities, and that, in consequence, the starting point of interpretation is the elucidation of the meaning of the text, not an investigation ad initio into the intentions of the parties …..the parties are presumed to have the intention which appears from the ordinary meaning of the terms used by them."

become part of domestic law, and if they may be applied as binding rules by domestic courts in tax cases.

The Commentaries do not have the necessary requests to be considered customary law (repetictio facti e opinio iuris sive necessitatis); in fact, they change constantly and they fail to be supported by the requisite “opinio iuris.”

Neither, according to the principle of good faith, can they be considered binding, in fact, that principle cannot by itself create, in international law, legally binding obligations.

Therefore, Commentaries cannot themselves be considered binding, but I agree with that opinion according to which[61] they become binding when the parties of tax treaties clearly want to attribute to some words in the convention a special meaning according to the interpretation included in the Commentaries.

I mean that a clear reference given by the concluding countries to the interpretative rules included in the Commentaries is sufficient to make them binding, with any legal consequences.

In case that they can be considered in fact binding, the rules to transform the provisions of the Commentaries in domestic law, so as to give them a domestic legal status, are very different between countries.

For example, in the United States of America international law is considered to be part of the internal law without the need for any Congressional or Presidential action. The Court will apply it directly, as such as the customary international law, if the international law does not conflict with domestic law and with the Constitution.

In Italy the process of incorporation of international legal acta into domestic law may happen following one of two different procedures called the ordinary procedure and the special one.

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[61] See MICHAEL EDWARDES-KER, *supra* note 51.

As the ordinary method, all text of the international act is exactly incorporated in the national law, so that the internal law uses the same words as the international law. In this way, the international law is transformed into internal law.

As the special procedure, the incorporation of the international source into the Italian legislative system happens merely by reference.

Because of the Constitutional provision, the customary international law enters directly into the internal legal system without any further act of implementation;[62] they automatically become part of Italian law.

According to the classic theory of interpretation, when tax treaties become parties of the legal domestic system, they must be interpreted only by the internal interpretive rules of the country.

To conclude our issue about the interpretation of tax treaties, it should be emphasized that some problems of qualification may arise when a Convention uses terms that are part of, at the same time, either the international law or the internal law.

Sometimes, tax income treaty solves this problem of qualification by explaining the special meaning of these terms. In other cases, tax convention relates to the internal law of one of the two concluding countries.

Finally, some commentators[63] suggest three different solutions:

1) qualification under *lex fori*, means that each Concluding Country gives to the terms meaning that they have in its domestic law. This method has the advantage that the domestic courts know the internal law better than the international law, but with this method some problems may arise because each Concluding State might apply the convention differently. As a consequence, new situations of double imposition could be created;

[62] **Article 10(1)** of the Italian Constitution states "the Italian legal system conforms to the generally recognised principles of international law (l'ordinamento giuridico italiano si conforma alle norme del diritto internazionale generalmente riconosciute)."

[63] See, *e.g.*, KLAUS VOGEL, *supra* note 20.

2) qualification under *lex* of the country source, according to which all parties of the tax treaty decide to give to the terms the meaning that they have in the legal system of the source country. This method allows giving a unique meaning to the terms in the convention, but could facilitate the Concluded Countries by giving to the treaty's terms the widest meaning. That unfair effect is not in line with the purpose of the tax conventions that try to equally divide the tax sovereignty between the parties of the treaty;

3) independent qualification, means that all parties of the tax income agreement try to give to the terms of the treaty a sole meaning according to the entire context. This method allows one interpretation of the terms so that the courts of the Concluded Countries can decide in the same way.

A possible solution is provided by the OECD model. Article 3(2), in fact, states "as regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State."

The application of Article 3 of the OECD model is claimed by Italian Supreme Court, according to which "la tesi prospettata dalla ricorrente, che si basa essenzialmente sull'applicazione di regole interpretative contenute nella Convenzione di Vienna sul diritto dei trattati, non considera le speciali regole interpretative dettate dalla Convenzione Italia-U.S.A. contro le doppie imposizioni del 1984. La Convenzione non contiene una definizione, né del diritto d'autore, né degli "altri casi", secondo la previsione dell'art. 12., par. 2, lett. c). Si pone, quindi, un problema di qualificazione, per la cui risoluzione l'art. 3, par. 2, della Convenzione dispone che: "Ai fini dell'applicazione della presente Convenzione da parte di uno Stato contraente, le espressioni ivi non definite hanno il significato che ad esse è attribuito dalla legislazione di detto Stato relativa alle imposte cui si applica la presente Convenzione, a meno che il contesto non richieda una diversa interpretazione". Si tratta di una regola, definita come "general renvoi clause", ripresa dalla corrispondente norma (art. 3, par. 2) del modello O.C.S.E. di Convenzione contro la doppia imposizione, costantemente ripetuta nei vari testi succedutisi nel tempo. E' quindi chiaro che la definizione di diritto d'autore deve essere rinvenuta, ai fini dell'applicazione della norma convenzionale, nell'ordinamento dello Stato della fonte."[64]

2.6 Relationship between income tax treaties and European law with particular attention to the point of view of the European Court of Justice.

The European Union (EU) is an economic and political union of 27 independent member states. It was formed on January 1, 1958 when the founding countries signed the Treaty of Rome.

The importance of EU has been increasing over time, as has its competencies.

The European Court of Justice is the highest court in the European Union, and it is tasked with interpreting EU law and ensuring its equal application across all EU member states.

In particular, the European Court of Justice must provide the official interpretation of the European treaties and all European legal sources.

In the "Treaty on the Functioning of the European Union," only Article 28,[65] and Articles 110-113[66] are concerned with the taxation matter,

[64] Italian Supreme Court (Corte di Cassazione), case no. 21220, 2006.
[65] **Article 28** "the Union shall comprise a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries."
[66] **Article 110** "no Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products. Furthermore, no Member State shall impose on the products of other

and their purpose is mainly to guarantee the four fundamental freedoms of the European Union, which means the free movement of goods, capital, services and people.

Thus, those Articles exist to avoid limitations to fair and effective competition in the Internal Market within EU's member States.

It can be inferred from these dispositions that the European Union's member countries have retained their exclusive sovereignty in the tax policy, even though the competencies of European Court of Justice have broadened over time.

VAT is the only tax that is harmonized so far, while other taxes are still under the legal control of member countries, meaning that theoretically the European Court of Justice cannot state anything about how European member states regulate their direct income taxes.[67]

Even if European countries retain their tax sovereignty, they are members of the European Union and so must respect the four fundamental freedoms and the Internal Market;[68] as a consequence, some problems in

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Member States any internal taxation of such a nature as to afford indirect protection to other products"; **Article 111**: "Where products are exported to the territory of any Member State, any repayment of internal taxation shall not exceed the internal taxation imposed on them whether directly or indirectly;" **Article 112** "in the case of charges other than turnover taxes, excise duties and other forms of indirect taxation, remissions and repayments in respect of exports to other Member States may not be granted and countervailing charges in respect of imports from Member States may not be imposed unless the measures contemplated have been previously approved for a limited period by the Council on a proposal from the Commission;" **Article 113** "the Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, adopt provisions for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition."

[67] See Pietro Adonnino, *Il principio di non discriminazione nei rapporti tributari tra paesi membri secondo le norme Cee e la giurisprudenza della Corte di Giustizia delle comunità,* 1(I) RIV. DIR. FIN. 63 (1993); FABRIZIO AMATUCCI, IL PRINCIPIO DI NON DISCRIMINAZIONE FISCALE (1998)**;** G. Bizioli, *Il rapporto tra libertà di stabilimento e principio di non discriminazione in materia fiscale: un'applicazione del recente caso Imperial Chemical Industries,* 4(III) DIR. PRAT. TRIB. 313 (1999); Pasquale Pistone, *Uguaglianza, discriminazione a rovescio e normativa antiabuso in ambito comunitario,* 4(III) DIR. PRAT. TRIB. 581 (1998); PASQUALE PISTONE, THE IMPACT OF COMMUNITY LAW ON TAX TREATIES-ISSUES AND SOLUTIONS (2004).

[68] See on the topic case C-250/95, Futura Participations SA, Singer & Administration des contributions, Court of Justice of the European Union, "according to settled case-law, although direct taxation falls within the competence of the Member States, the latter must none the less exercise that competence consistently with Community law and therefore avoid any overt or covert

coordination between the internal tax policy and the European law can arise.

The situation becomes more complicated if I consider that the power to sign international tax treaties is under the exclusive control of the States,[69] as I have already written, but it is possible that some dispositions of a treaty are in conflict with the European law.[70]

In those cases, the intervention of the European Court of Justice is legitimate because there could be a risk of unequal application of the European law within all EU member states.

The most recent opinion of the European Court of Justice is that the EU's member states cannot provide any justification to restrict the four fundamental freedoms, except regarding the coherence of their internal tax system or for the avoidance of fiscal evasion.

On this topic, an important sentence has been pronounced in the famous case **C-204/90, Hans-Martin Bachmann and Belgian State**, Court of Justice of the European Union, on the interpretation of Articles 48, 59,

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discrimination on grounds of nationality (Case C-279/93 Schumacker [1995] ECR I-225, paragraphs 21 and 26; Case C-80/94 Wielockx [1995] ECR I-2493, paragraph 16; and Case C-107/94 Asscher [1996] ECR I-3089, paragraph 36)."

[69] See, *e.g.*, on the topic, case C-524/04, Test Claimants in the Thin Cap Group Litigation *v.* Commissioners of Inland Revenue, Court of Justice of the European Union, "it must be pointed out in that regard that, in the absence of any unifying or harmonising Community measures, Member States retain the power to define, by treaty or unilaterally, the criteria for allocating their powers of taxation, particularly with a view to eliminating double taxation (Case C-336/96 Gilly [1998] ECR I-2793, paragraphs 24 and 30; Case C-470/04 N [2006] ECR I-0000, paragraph 44; and Case C-513/04 Kerckhaert and Morres [2006] ECR I-0000, paragraphs 22 and 23). In that context, it is for the Member States to take the measures necessary to prevent double taxation by applying, in particular, the apportionment criteria followed in international tax practice, including the model conventions drawn up by the OECD (see, to that effect, Gilly, paragraph 31; N, paragraph 45; and Kerckhaert and Morres, paragraph 23)………..Moreover, even if, in some cases, the application of the provisions at issue in the main proceedings did no more than implement criteria laid down in DTCs, the fact remains that, in exercising the powers of taxation allocated under them, the Member States are obliged to comply with the rules of Community law (see, to that effect, Saint-Gobain ZN, paragraphs 58 and 59, and Case C-385/00 De Groot [2002] ECR I-11819, paragraph 94) and, more particularly, the freedom of establishment which Article 43 EC guarantees."

[70] See, on the topic, REUVEN S. AVI-YOHAN, JAMES R. HINES JR. & M. LANG, COMPARATIVE FISCAL FEDERALISM (2007); L.W. GORMLEY, EU TAXATION LAW (2005); M. HELMINEN, EU TAX LAW – DIRECT TAXATION (2009); M. LANG, J. SCHUCH & C. STARINGER, TAX TREATY LAW AND EC LAW (2007); M. LANG & P. PISTONE (eds.), THE EU AND THIRD COUNTRIES-DIRECT TAXATION (2007); BEN J.M. TERRA & PETER J. WATTEL, EUROPEAN TAX LAW (5th ed. 2008); DENNIS WEBER, TAX AVOIDANCE AND THE EC TREATY FREEDOMS (2005).

67 and 106 of the EEC Treaty, in which the Court has stated “to be obliged to terminate a contract concluded with an insurer based in one Member State, in order to be eligible for a tax deduction provided for in another Member State, in circumstances where the person concerned considers the continuation of such a contract to be in his interests, constitutes, by reason of the arrangements and expense involved, a restriction on his freedom of movement….Whilst in the absence of Community harmonization measures Member States are able, with a view to ensuring the protection, as consumers, of insured persons and policy-holders, to make the conclusion of certain insurance contracts conditional upon the insurer being officially approved, no such public interest may be invoked as a ground for refusing to recognize the existence of insurance contracts concluded with insurers established in another Member State at the time when the policy-holder was resident there…..It is to be noted that provisions such as those contained in the Belgian legislation at issue constitute a restriction on freedom to provide services. Provisions requiring an insurer to be established in a Member State as a condition of the eligibility of insured persons to benefit from certain tax deductions in that State operate to deter those seeking insurance from approaching insurers established in another Member State, and thus constitute a restriction of the latter's freedom to provide services. However, as the Court has previously held (see the judgment in Commission v Germany, referred to above, paragraph 52), the requirement of an establishment is compatible with Article 59 of the Treaty where it constitutes a condition which is indispensable to the achievement of the public-interest objective pursued……Consequently, the answer to the question submitted by the national court is that legislation of a Member State which makes the deductibility of sickness and invalidity insurance contributions and pensions and life assurance contributions conditional on those contributions being paid in that State is contrary to Articles 48 and 59 of the Treaty. However, that condition may be justified by the need to

preserve the cohesion of the applicable tax system. Such legislation is not contrary to Articles 67 and 106 of the EEC Treaty."

On the same topic, the sentences claimed by Court of Justice of the European Union in the important following cases must be mentioned:

1) **C-264/96, Imperial Chemical Industries plc (ICI) & Kenneth Hall Colmer (Her Majesty's Inspector of Taxes)**, in which the Court has written "although direct taxation is a matter for the Member States, they must nevertheless exercise their direct taxation powers consistently with Community law (see Case C-279/93 Schumacker [1995] ECR I-225, paragraph 21; Case C-80/94 Wielockx [1995] ECR I-2493, paragraph 16; Case C-107/94 Asscher [1996] ECR I-3089, paragraph 36; and Case C-250/95 Futura Participations and Singer [1997] ECR I-2471, paragraph 19)………….. It is true that in the past the Court has accepted that the need to maintain the cohesion of tax systems could, in certain circumstances, provide sufficient justification for maintaining rules restricting fundamental freedoms (see, to this effect, Case C-204/90 Bachmann [1992] ECR I-249 and Case C-300/90 Commission v Belgium [1992] ECR I-305). Nevertheless, in the cases cited, there was a direct link between the deductibility of contributions from taxable income and the taxation of sums payable by insurers under old-age and life assurance policies, and that link had to be maintained in order to preserve the cohesion of the tax system in question. In the present case, there is no such direct link between the consortium relief granted for losses incurred by a resident subsidiary and the taxation of profits made by non-resident subsidiaries;"

2) **joined cases C-397/98 and C-410/98, Metallgesellschaft Ltd and Others (C-397/98), Hoechst AG, Hoechst UK Ltd (C-410/98) & Commissioners of Inland Revenue, H.M. Attorney General**, in which the Court has stated again "it should be remembered that, according to settled case-law, although direct taxation falls within their competence, Member States must none the less exercise that competence consistently

with Community law and avoid any discrimination on grounds of nationality (Case C-80/94 Wielockx [1995] ECR I-2493, paragraph 16, Case C-107/94 Asscher [1996] ECR I-3089, paragraph 36, Case C-311/97 Royal Bank of Scotland [1999] ECR I-2651, paragraph 19, and Case C-251/98 Baars [2000] ECR I-2787, paragraph 17)…………… The Court of Justice has, it is true, held that the need to safeguard the cohesion of a tax system may justify rules that are liable to restrict fundamental freedoms (Case C-204/90 Bachmann [1992] ECR I-249 and Case C-300/90 Commission v Belgium [1992] ECR I-305);"

3) **C-9/02, Hughes de Lasteyrie du Saillant and Ministère de l'Économie, des Finances et de l'Industrie**, in which the Court has claimed "moreover, the prohibition on Member States establishing restrictions on the freedom of establishment also applies to tax provisions. According to consistent case-law, even if, in the current state of Community law, direct taxation does not as such fall within the scope of the Community's jurisdiction, Member States must nevertheless exercise their retained powers in compliance with Community law (Case C-279/93 Schumacker [1995] ECR I-225, paragraph 21; ICI, cited above, paragraph 19; Case C-436/00 X and Y [2002] ECR I-10829, paragraph 32)………… It should be noted, secondly, that a measure which is liable to hinder the freedom of establishment laid down by Article 52 of the Treaty can be allowed only if it pursues a legitimate objective compatible with the Treaty and is justified by imperative reasons in the public interest. It is further necessary, in such a case, that its application must be appropriate to ensuring the attainment of the objective thus pursued and must not go beyond what is necessary to attain it (see Futura Participations and Singer, paragraph 26, and the case-law cited therein, and X and Y, paragraph 49);"

4) **C-446/03, Marks & Spencer plc v. David Halsey-Her Majesty's Inspector of Taxes**, in sentence of which it can be read "in that regard, it must be borne in mind that, according to settled case-law,

although direct taxation falls within their competence, Member States must none the less exercise that competence consistently with Community law (see, in particular, Joined Cases C-397/98 and C-410/98 Metallgesellschaft and Others [2001] ECR I-1727, paragraph 37 and the case-law cited). Freedom of establishment, which Article 43 EC grants to Community nationals and which includes the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, under the conditions laid down for its own nationals by the law of the Member State where such establishment is effected, entails, in accordance with Article 48 EC, for companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the European Community, the right to exercise their activity in the Member State concerned through a subsidiary, a branch or an agency (see, in particular, Case C-307/97 Saint Gobain ZN [1999] ECR I-6161, paragraph 35). Even though, according to their wording, the provisions concerning freedom of establishment are directed to ensuring that foreign nationals and companies are treated in the host Member State in the same way as nationals of that State, they also prohibit the Member State of origin from hindering the establishment in another Member State of one of its nationals or of a company incorporated under its legislation (see, in particular, ICI, cited above, paragraph 21)……….. Such a restriction is permissible only if it pursues a legitimate objective compatible with the Treaty and is justified by imperative reasons in the public interest. It is further necessary, in such a case, that its application be appropriate to ensuring the attainment of the objective thus pursued and not go beyond what is necessary to attain it (see, to that effect, Case C-250/95 Futura Participations and Singer [1997] ECR I-2471, paragraph 26, and Case C-9/02 De Lasteyrie du Saillant [2004] ECR I-2409, paragraph 49)…………….. None the less, the Court must ascertain whether the restrictive measure goes beyond what is necessary to attain the objectives pursued;”

5) **C-196/04, Cadbury Schweppes plc, Cadbury Schweppes Overseas Ltd v. Commissioners of Inland Revenue**, in which the Court has said “according to settled case-law, although direct taxation falls within their competence, Member States must none the less exercise that competence consistently with Community law (Case C-311/97 Royal Bank of Scotland [1999] ECR I-2651, paragraph 19; Case C-319/02 Manninen [2004] ECR I-7477, paragraph 19; and Case C-446/03 Marks & Spencer [2005] ECR I-10837, paragraph 29)…………….. Even though, according to their wording, the provisions of the Treaty concerning freedom of establishment are directed to ensuring that foreign nationals and companies are treated in the host Member State in the same way as nationals of that State, they also prohibit the Member State of origin from hindering the establishment in another Member State of one of its nationals or of a company incorporated under its legislation (see, in particular, Case C-264/96 ICI [1998] ECR I-4695, paragraph 21, and Marks & Spencer, paragraph 31)…………. Such a restriction is permissible only if it is justified by overriding reasons of public interest. It is further necessary, in such a case, that its application be appropriate to ensuring the attainment of the objective thus pursued and not go beyond what is necessary to attain it (Case C-250/95 Futura Participations and Singer [1997] ECR I-2471, paragraph 26; Case C-9/02 De Lasteyrie du Saillant [2004] ECR I-2409, paragraph 49; and Marks & Spencer, paragraph 35);” [71]

[71] “……..on the other hand, a national measure restricting freedom of establishment may be justified where it specifically relates to wholly artificial arrangements aimed at circumventing the application of the legislation of the Member State concerned (see to that effect ICI, paragraph 26; Case C-324/00 Lankhorst-Hohorst [2002] ECR I-11779, paragraph 37; De Lasteyrie du Saillant, paragraph 50; and Marks & Spencer, paragraph 57)………….. It follows that, in order for a restriction on the freedom of establishment to be justified on the ground of prevention of abusive practices, the specific objective of such a restriction must be to prevent conduct involving the creation of wholly artificial arrangements which do not reflect economic reality, with a view to escaping the tax normally due on the profits generated by activities carried out on national territory……….. In order to find that there is such an arrangement there must be, in addition to a

6) **C-524/04, Test Claimants in the Thin Cap Group Litigation v. Commissioners of Inland Revenue**, in the sentence of which is stated "in that respect, it should be pointed out that, in paragraphs 28 and 21 respectively of the judgments in Case C-204/90 Bachmann [1992] ECR I-249 and Case C-300/90 Commission v Belgium [1992] ECR I-305, the Court recognised that the need to maintain the cohesion of a tax system can justify a restriction on the exercise of the fundamental freedoms guaranteed by the Treaty. However, for an argument based on such a justification to succeed, a direct link must be established between the tax advantage concerned and the offsetting of that advantage by a particular tax levy (see, to that effect, Case C-484/93 Svensson and Gustavsson [1995] ECR I-3955, paragraph 18; Manninen, paragraph 42; and Case C-471/04 Keller Holding [2006] ECR I-2107, paragraph 40)………. It must be pointed out that, according to established case-law, a national measure restricting freedom of establishment may be justified where it specifically targets wholly artificial arrangements designed to circumvent the legislation of the Member State concerned (see, to that effect, Case C-264/96 ICI [1998] ECR I-4695, paragraph 26; Lankhorst-Hohorst, paragraph 37; Marks & Spencer, paragraph 57; and Cadbury Schweppes and Cadbury Schweppes Overseas, paragraph 51)……….. In order for a restriction on the freedom of establishment to be justified on the ground of prevention of abusive practices, the specific objective of such a restriction must be to prevent conduct involving the creation of wholly artificial arrangements which do not reflect economic reality, with a view to escaping the tax normally due on the profits generated by activities carried out on national territory (Cadbury Schweppes and Cadbury Schweppes Overseas, paragraph 55);"

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subjective element consisting in the intention to obtain a tax advantage, objective circumstances showing that, despite formal observance of the conditions laid down by Community law, the objective pursued by freedom of establishment, as set out in paragraphs 54 and 55 of this judgment, has not been achieved (see, to that effect, Case C-110/99 Emsland-Stärke [2000] ECR I-11569, paragraphs 52 and 53, and Case C-255/02 Halifax and Others [2006] ECR I-0000, paragraphs 74 and 75)" (Cadbury Schweppes plc, Cadbury Schweppes Overseas Ltd v. Commissioners of Inland Revenue).

7) C-231/05 (Oy AA),[72] in the sentence of which is written "it should be noted as a preliminary observation that, according to consistent case-law, whilst direct taxation falls within the competence of Member States, the latter must nevertheless exercise that competence in a manner consistent with Community law (see, in particular, Case C-446/03 Marks & Spencer [2005] ECR I-10837, paragraph 29; Case, C-196/04 Cadbury Schweppes and Cadbury Schweppes Overseas [2006] ECR I-7995, paragraph 40; and Case C-374/04 Test Claimants in Class IV of the ACT Group Litigation [2006] ECR I-11673, paragraph 36)……….…… A restriction on the freedom of establishment is permissible only if it is justified by overriding reasons in the public interest. It is further necessary, in such a case, that its application be appropriate to ensuring the attainment of the objective in question and not go beyond what is necessary to attain it (Marks & Spencer, paragraph 35; Cadbury Schweppes and Cadbury Schweppes Overseas, paragraph 47; and Test Claimants in the Thin Cap Group Litigation, paragraph 64)."

It must be pointed out that the aforementioned cases refer to some discriminations that could be practised between residents and non residents (i.e. direct discrimination), as well as some limitations of the four fundamental freedoms of the European Union.

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[72] "…………as is apparent from paragraph 51 of the judgment in Marks & Spencer, the need to safeguard the balanced allocation of the power to impose taxes between the Member States was accepted by the Court in conjunction with two other grounds of justification, based on the risks of the double use of losses and of tax avoidance (see also Case C-347/04 Rewe Zentralfinanz [2007] ECR I-0000, paragraph 41). It should also be remembered that, in the absence of any unifying or harmonising Community measures, Member States retain the power to define, by treaty or unilaterally, the criteria for allocating their powers of taxation (Case C-336/96 Gilly [1998] ECR I-2793, paragraphs 24 and 30; Case C-470/04 N [2006] ECR I-7409, paragraph 44; Case C-513/04 Kerkhaert and Morres [2006] ECR I-10967, paragraphs 22 and 23; and Test Claimants in the Thin Cap Group Litigation, paragraph 49). Concerning, first, the need to safeguard a balanced allocation of the power to tax between Member States, it should be pointed out that that need cannot justify a Member State systematically refusing to grant a tax advantage to a resident subsidiary, on the ground that the income of the parent company, having its establishment in another Member State, is not capable of being taxed in the first Member State (see, to that effect, Rewe Zentralfinanz, paragraph 43). That element of justification may be allowed, however, where the system in question is designed to prevent conduct capable of jeopardising the right of the Member States to exercise their taxing powers in relation to activities carried on in their territory (Rewe Zentralfinanz, paragraph 42)" (Oy AA).

Moreover, it is possible that a European country reserves special treatment for the residents of another country of the EU under the dispositions of a tax treaty with this country, and that these advantages are not extended to the residents of other countries because of the conventional nature of tax agreements (i.e. horizontal discrimination).

Also on this topic (horizontal discrimination), I can mention some important sentences stated by the European Court of Justice in the following cases:

1) **C-270/83, Avoir Fiscal**. This case has arisen from some dispositions of the French "Code General des Impots" that provide that the benefit of the shareholders' tax credit is granted only to persons who have their habitual residence or registered office in France, or to persons resident in the territory of states which have concluded double-taxation agreements with France. These dispositions can discriminate some people who come from a country that has not concluded any tax treaty with France.

Reading this sentence it can be inferred that Article 52 of the EU Treaty embodies one of the fundamental principles of the community. It is intended to ensure that all nationals of member states who establish themselves in another member state for the purpose of pursuing activities there as self-employed persons, even if that establishment is only secondary, receive the same treatment as nationals of that state. As a consequence, the article prohibits any discrimination on grounds of nationality resulting from the legislation of the member state, even if only of a limited nature, as this would mean a restriction on freedom of establishment. It is possible that a distinction based on the location of the registered office of a company or the place of residence of a natural person may, under certain conditions, be justified in an area such as Tax law.

However, if the tax rules of a member state place on the same footing for the purpose of taxing profit, insurance companies whose registered office is on the national territory, as well as branches and agencies (of companies whose registered office is abroad) that are situated on its territory, those rules cannot, without giving rise to discrimination, treat them differently in regard to the grant of a tax-related advantage, (e.g. for shareholders' tax credits). By treating the two forms of establishment in the same way for the purpose of taxing their profit, the legislature of that member state has in fact admitted that there is no objective difference between their positions in regard to the detailed rules and conditions relating to that taxation which could justify different treatment.

The second sentence of the first paragraph of Article 52 of the EU Treaty expressly leaves traders free to choose the appropriate legal form in which to pursue their activities in another member state and this freedom of choice must not be limited by discriminatory tax provisions; consequently, discrimination in regard to taxation practised in a member state against branches and agencies of insurance companies having their registered office in another member state, cannot be justified on the ground that they can escape any discrimination by choosing to set up a subsidiary.

The fact that the laws of the member states on corporation tax have not been harmonized cannot justify discrimination practised in a member state against branches and agencies of insurance companies having their registered office in another member state. Although it is true that in the absence of such harmonization, a company's tax position depends on the national law applied to it, Article 52 of the treaty prohibits the member states from laying down in their laws conditions for the pursuit of activities by persons exercising their right of establishment, which differ from those laid down for their own nationals.

The rights conferred by Article 52 of the EU Treaty are unconditional and a member state cannot make these rights subject to the contents of a double-taxation agreement concluded with another member state. In particular, this Article does not permit these rights to be made subject to a condition of reciprocity imposed for the purpose of obtaining corresponding advantages in other member states;

2) **C-80/94, G.H.E.J. Wielockx & Inspecteur der directe belastingen**, in which is stated by the Court “accordingly, a rule laid down by a Member State which allows its residents to deduct from their taxable income business profits which they allocate to form a pension reserve but denies that benefit to Community nationals liable to pay tax who, although resident in another Member State, receive all or almost all of their income in the first State, cannot be justified by the fact that the periodic pension payments subsequently drawn out of the pension reserve by the non-resident taxpayer are not taxed in the first State but in the State of residence with which the first State has concluded a double-taxation convention even if, under the tax system in force in the first State, a strict correspondence between the deductibility of the amounts added to the pension reserve and the liability to tax of the amounts drawn out of it cannot be achieved by generalizing the benefit. Such discrimination is therefore contrary to Article 52 of the Treaty;”

3) **C-307/97, Compagnie de Saint-Gobain, Zweigniederlassung Deutschland, & Finanzamt Aachen-Innenstadt**, in which the Court has claimed “in this regard, it must be observed first of all that, in the absence of unifying or harmonising measures adopted in the Community, in particular under the second indent of Article 220 of the EC Treaty (now the second indent of Article 293 EC), the Member States remain competent to determine the criteria for taxation of income and wealth with a view to eliminating double taxation by means, inter alia, of international agreements. In this context, the Member States are at liberty, in the framework of bilateral agreements concluded in order to prevent double taxation, to determine the connecting factors for the purposes of allocating powers of taxation as between themselves (see, to this effect, Case C-336/96 Gilly [1998] ECR I-2793, paragraphs 24 and 30). As far as the

exercise of the power of taxation so allocated is concerned, the Member States nevertheless may not disregard Community rules. According to the settled case-law of the Court, although direct taxation is a matter for the Member States, they must nevertheless exercise their taxation powers consistently with Community law (see ICI, cited above, paragraph 19, and the case-law cited there). In the case of a double-taxation treaty concluded between a Member State and a non-member country, the national treatment principle requires the Member State which is party to the treaty to grant to permanent establishments of non-resident companies the advantages provided for by that treaty on the same conditions as those which apply to resident companies. As the Advocate General points out in point 81 of his Opinion, the obligations which Community law imposes on the Federal Republic of Germany do not affect in any way those resulting from its agreements with the United States of America and the Swiss Confederation. The balance and the reciprocity of the treaties concluded by the Federal Republic of Germany with those two countries would not be called into question by a unilateral extension, on the part of the Federal Republic of Germany, of the category of recipients in Germany of the tax advantage provided for by those treaties, in this case corporation tax relief for international groups, since such an extension would not in any way affect the rights of the non-member countries which are parties to the treaties and would not impose any new obligation on them;"[73]

[73] "consequently, the answer to be given to the Finanzgericht must be that Articles 52 and 58 of the Treaty preclude the exclusion of a permanent establishment in Germany of a company limited by shares having its seat in another Member State from enjoyment, on the same conditions as those applicable to companies limited by shares having their seat in Germany, of tax concessions taking the form of: -an exemption from corporation tax for dividends received from companies established in non-member countries (corporation tax relief for international groups), provided for by a treaty for the avoidance of double taxation concluded with a non-member country; -the crediting, against German corporation tax, of the corporation tax levied in a State other than the Federal Republic of Germany on the profits of a subsidiary established there, provided for by German legislation, and -an exemption from capital tax for shareholdings in companies established in non-member countries (capital tax relief for international groups), also provided for by German legislation" (Compagnie de Saint-Gobain, Zweigniederlassung Deutschland, & Finanzamt Aachen-Innenstadt).

4) **C-55/00, Elide Gottardo & Istituto nazionale della previdenza sociale**, in which it can be read "with regard to a cultural agreement concluded between two Member States which reserved entitlement to study scholarships exclusively to nationals of those two States, the Court has ruled that Article 7 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475) obliged the authorities of those two Member States to extend the benefit of the training bursaries provided for by that bilateral agreement to Community workers established within their territory (Case 235/87 Matteucci [1988] ECR 5589, paragraph 16). The Court has also ruled that if application of a provision of Community law is liable to be impeded by a measure adopted pursuant to the implementation of a bilateral agreement, even where the agreement falls outside the field of application of the Treaty, every Member State is under a duty to facilitate application of that provision and, to that end, to assist every other Member State which is under an obligation under Community law (Matteucci, cited above, paragraph 19). With regard to a bilateral international treaty concluded between a Member State and a non-member country for the avoidance of double taxation, the Court has pointed out that, although direct taxation is a matter falling within the competence of the Member States alone, the latter may not disregard Community rules but must exercise their powers in a manner consistent with Community law. The Court accordingly ruled that the national treatment principle requires the Member State that is party to such a treaty to grant to permanent establishments of companies resident in another Member State the advantages provided for by the agreement on the same conditions as those which apply to companies resident in the Member State that is party to the treaty (see, in this connection, Case C-307/97 Saint-Gobain ZN [1999] ECR I-6161, paragraphs 57 to 59). It follows from that case-law that, when giving effect to commitments assumed under international agreements, be it

an agreement between Member States or an agreement between a Member State and one or more non-member countries, Member States are required, subject to the provisions of Article 307 EC, to comply with the obligations that Community law imposes on them. The fact that non-member countries, for their part, are not obliged to comply with any Community-law obligation is of no relevance in this respect. It follows from all of the foregoing that, when a Member State concludes a bilateral international convention on social security with a non-member country which provides for account to be taken of periods of insurance completed in that non-member country for acquisition of entitlement to old-age benefits, the fundamental principle of equal treatment requires that that Member State grant nationals of other Member States the same advantages as those which its own nationals enjoy under that convention unless it can provide objective justification for refusing to do so………………… The answer to the question submitted by the national court must therefore be that the competent social security authorities of one Member State are required, pursuant to their Community obligations under Article 39 EC, to take account, for purposes of acquiring the right to old-age benefits, of periods of insurance completed in a non-member country by a national of a second Member State in circumstances where, under identical conditions of contribution, those competent authorities will take into account such periods where they have been completed by nationals of the first Member State pursuant to a bilateral international convention concluded between that Member State and the non-member country;"

5) C-376/03, **D. Case**. This case is concerned with the condition of Mr. D. who resides in Germany. As of 1st January 1998, 10% of his wealth consisted of real property situated in the Netherlands, while the remainder was held in Germany. In accordance with the Netherlands Law he was subjected to a tax treatment different than that of a resident of Belgium in an equivalent situation, because of Article 25(3) of the Belgium-

Netherlands Convention, according to which a person resident in Belgium is entitled in the Netherlands to the allowances and other tax benefits which the Netherlands grants to its own residents.

In the opinion of Mr., the difference resulting from application of the Belgium-Netherlands Convention, between his situation and that of a resident of Belgium in an equivalent situation, amounted to discrimination prohibited by the EU Treaty.

The European Court of Justice has answered "under Article 293 EC, Member States are, so far as is necessary, to enter into negotiations with each other with a view to securing for the benefit of their nationals the abolition of double taxation within the Community. The Court noted in Case C-336/96 Gilly [1998] ECR I-2793, at paragraph 23, that apart from Convention 90/436/EEC on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (OJ 1990 L 225, p. 10), no unifying or harmonising measure for the elimination of double taxation had yet been adopted at Community level and that the Member States had not yet concluded any multilateral convention to that effect under Article 293 EC. In the absence of other Community measures or conventions involving all the Member States, numerous bilateral conventions have been concluded between the latter. As the Court has already pointed out, the Member States are at liberty, in the framework of those conventions, to determine the connecting factors for the purposes of allocating powers of taxation (see Case C-307/97 Saint-Gobain ZN [1999] ECR I-6161, paragraph 57). The Court has also accepted that a difference in treatment between nationals of the two Contracting States that results from that allocation cannot constitute discrimination contrary to Article 39 EC (see Gilly, cited above, paragraph 30). The main proceedings do not, however, relate to the consequences of allocating powers of taxation in relation to nationals or residents of Member States that are party to a convention, but are concerned with drawing a comparison between the situation of a person resident in a State not party to such a convention and that of a person covered by the convention. The scope of a bilateral tax convention is limited to the natural or legal persons referred to in it. However, there are situations where the benefits under a bilateral convention may be extended to a resident of a Member State which does not have the status of party to that convention. The Court has thus held that, in the case of a double taxation convention concluded between a Member State and a non-member country, the national treatment principle requires the Member State which is party to the convention to grant to permanent establishments of non-resident companies the benefits provided for by that convention on the same conditions as those which apply to resident companies (see Saint-Gobain ZN, cited above, paragraph 59). In such a case, the non-resident taxable person having a permanent establishment in a Member State is regarded as being in a situation equivalent to that of a taxable person resident in that State………………… It is to be remembered that, in order to avoid the same income and assets being taxed in both the Netherlands and Belgium, Article 24 of the Belgium-Netherlands Convention allocates powers of taxation between those two Member States and Article 25(3) lays down a rule under which natural persons resident in one of those two States are entitled in the other to the personal allowances which are granted by it to its own residents. The fact that those reciprocal rights and obligations apply only to persons resident in one of the two Contracting Member States is an inherent consequence of bilateral double taxation conventions. It follows that a taxable person resident in Belgium is not in the same situation as a taxable person resident outside Belgium so far as concerns wealth tax on real property situated in the Netherlands. A rule such as that laid down in Article 25(3) of the Belgium-Netherlands Convention cannot be regarded as a benefit separable from the remainder of the Convention, but is an integral part thereof and contributes to its overall balance. Having regard to the foregoing considerations, the answer to the second question asked must be that Articles 56 EC and 58 EC do not preclude a rule laid down by a bilateral convention for the avoidance of double taxation such as the rule at issue in the main proceedings from not being extended, in a situation and in circumstances such as those in the main proceedings, to residents of a Member State which is not party to that convention."

The sentence claimed in the D.Case is very important because here the European Court of Justice has changed its opinion slightly.

In fact the Court has concluded that "Articles 56 EC and 58 EC do not preclude a rule laid down by a bilateral convention for the avoidance of double taxation such as the rule at issue in the main proceedings from not being extended, in a situation and in circumstances such as those in the main proceedings, to residents of a Member State which is not party to that convention," and so has denied application of the "Most favored nation clause."

The Court has guaranteed the possibility of the European Union's member countries to reserve special treatment for some countries (and not for others) as a consequence of a concluded tax treaty; this could be obvious if I consider that by stating differently, the Court would have encouraged tax payers from all over the EU to decide the best tax treatment they want, by picking some dispositions included in any tax treaty between some EU's countries.

In other words, the Court has protected the tax sovereignty of each member country under the present situation of the EU legal system. In fact the only acta adopted by the EU authorities in the matter of avoidance of double imposition are Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, the Convention 90/436/EEC on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, and Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments. Apart these acta, no unifying or harmonising measures designed to eliminate cases of double taxation have been adopted by the European Union so far.

It must be pointed out that Article 293[74] of the Treaty of Rome has been deleted by the Treaty of Lisbon, so currently there is no mention in the "Treaty on the Functioning of the European Union" about an obligation of the European Union's member countries to conclude tax treaties with other states.

In the sentence claimed in the case **C-194/06, Staatssecretaris van Financiën & Orange European Smallcap Fund NV,** it seems that the European Court of Justice has confirmed its opinion declared in the **D.Case**; in fact it can be read "as a preliminary point, it must be observed that it is for each Member State to organise, in compliance with Community law, its system for taxing distributed profits and to define, in that context, the tax base and the tax rate which apply to the shareholder receiving them (see, to that effect, Case C-374/04 Test Claimants in Class IV of the ACT Group Litigation [2006] ECR I-11673, paragraph 50, and Case C-446/04 Test Claimants in the FII Group Litigation [2006] ECR I-11753, paragraph 47). Therefore, the dividends distributed by a company established in one Member State to a company established in another may be subject to taxation at several levels. First of all, those dividends may be subject to a series of charges to tax in the Member State of establishment of the distributing company, which occurs where the distributed profits are subject, initially, to the corporation tax owed by that company and, subsequently, to a tax deducted from the dividends paid to the recipient company. Second, those dividends may be subject to juridical double taxation, which occurs when they are taxed again with respect to the

[74] **Article 293** states "member States shall, so far as is necessary, enter into negotiations with each other with a view to securing for the benefit of their nationals……… the abolition of double taxation within the Community."

recipient company in the State in which it is established. Third, the taxation of dividends received by the recipient company in the State in which it is established – where the company distributing the dividends has been taxed on distributed profits – may also give rise to a series of charges to tax in that Member State. In addition, in the absence of any unifying or harmonising Community measures, Member States retain the power to define, by treaty or unilaterally, the criteria for allocating their powers of taxation, particularly with a view to eliminating double taxation (Case C-336/96 Gilly [1998] ECR I-2793, paragraphs 24 and 30; Case C-307/97 Saint-Gobain ZN [1999] ECR I-6161, paragraph 57; and Case C-379/05 Amurta [2007] ECR I-0000, paragraph 17). Apart from Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ 1990 L 225, p. 6), the Convention of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (OJ 1990 L 225, p. 10) and Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments (OJ 2003 L 157, p. 38), the application of which in the dispute in the main proceedings has not been invoked, no unifying or harmonising measure designed to eliminate cases of double taxation has as yet been adopted at Community-law level………….. In the light of the foregoing, the answer to Question 1(a) must be that Articles 56 EC and 58 EC do not preclude legislation of a Member State, such as the legislation at issue in the main proceedings, which grants a concession to fiscal investment enterprises established in that Member State on account of tax deducted at source in another Member State from dividends received by those enterprises, and restricts that concession to the amount which a natural person resident in the first Member State could have had credited, on account of similar deductions, on the basis of a double taxation convention concluded with that other Member State."[75]

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[75] "……………. admittedly, it follows from the case-law that, where a Member State has a system for preventing or mitigating a series of charges to tax or economic double taxation for dividends paid to residents by resident companies, it must treat dividends paid to residents by non-resident companies in the same way (Test Claimants in Class IV of the ACT Group Litigation, paragraph 55 and the case-law cited). Under such systems, the situation of shareholders resident in a Member State and receiving dividends from a company established in that State is comparable to that of shareholders who are resident in that State and receive dividends from a company established in another Member State, inasmuch as both the dividends deriving from a national source and those deriving from a foreign source may be subject to a series of charges to tax (see Test Claimants in Class IV of the ACT Group Litigation, paragraph 56). However, the status of Member State of residence of the company in receipt of dividends cannot include the obligation for that Member State to offset a fiscal disadvantage arising where a series of charges to tax is imposed entirely by the Member State in which the company distributing those dividends is established, since the dividends received are neither taxed nor treated differently by the first Member State as regards investment enterprises established in that State……………….. Community law does not require a Member State to grant a concession in response to offset the disadvantage resulting from a series of charges to tax that is exclusively due to the parallel exercise of the various Member States' fiscal sovereignty. However, where that Member State has decided to grant such a concession, that power must be exercised in accordance with Community law. In that respect, it must be noted that, as has been observed in paragraphs 30 and 32 of this judgment, it is for the Member States to organise their systems for taxing distributed profits and to define, in that context, the tax base and the tax rate which apply to the shareholder receiving them, and that, in the absence of any unifying or harmonising Community measures, Member States retain the power to define, by treaty or unilaterally, the criteria for allocating their powers of taxation. Consequently, given the resulting disparities between the tax laws of the various Member States, a Member State may find it necessary, by treaty or unilaterally, to treat dividends from the various Member States differently so as to take account of those disparities. As regards the bilateral tax conventions concluded by the Member States, the Court has previously noted that the scope of such a convention is limited to the natural or legal persons referred to in it (see D., paragraph 54, and Test Claimants in Class IV of the ACT Group Litigation, paragraph 84). In those judgments, the Court held that, where a benefit granted by a bilateral tax convention cannot be classified as a benefit that is separable from that convention, but contributes to its overall balance (the fact that the reciprocal rights and obligations arising under that convention apply only to persons resident in one of the two contracting Member States being an inherent consequence of bilateral conventions), Community law does not preclude the benefit in question from not being conferred on the resident of a third Member State, in so far as that resident is not in a situation comparable to that of residents covered by the convention in question (see, to that effect, D., paragraphs 59 to 63, and Test Claimants in Class IV of the ACT Group Litigation, paragraphs 88 to 93). In the present case, as regards the payment of a concession in respect of a deduction made at source in another Member State from the dividends received by a fiscal investment enterprise established in the Netherlands, the application of Article 28(1)(b) of the Law on corporation tax results in different treatment of dividends from different Member States…………………… However, under such legislation, where a fiscal investment enterprise receives dividends from Member States with which the Kingdom of the Netherlands has concluded a convention providing for shareholders who are natural persons to be entitled to credit the tax which those Member States have deducted from the dividends to the income tax for which those shareholders are liable in the Netherlands, the situation of that enterprise is different from that in which it finds itself when receiving dividends from Member States with which the Kingdom of the Netherlands has not concluded such a convention, as there is no such entitlement in respect of those dividends. In fact, it is only as regards investments in the Member States with which the Kingdom of the Netherlands has concluded such a bilateral tax convention that, without the concession granted by the legislation at issue in the main proceedings, the decision to invest through the intermediary of a fiscal investment enterprise runs the risk of being less advantageous to a shareholder who is a natural person than direct investment. By contrast, as regards the

I have written about some discrimination that could be practised between residents and non residents, as well as some limitations of the four fundamental freedoms of the European Union.

Moreover, I have written about the chance that a European country must reserve a special treatment to the residents of another country of the EU under the dispositions of a tax treaty with this country, without extending those advantages to residents of other countries because of the conventional nature of the tax agreements.

At this point of our issue, the relations between European Union's member countries and third countries, i.e. countries that are not part of the European Union, should be mentioned.

According to Article 351 of the *Treaty on the Functioning of the European Union* "the rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of the Treaties.

Member States with which the Kingdom of the Netherlands has not concluded such a convention, the decision, by a natural person, to invest through the intermediary of such an enterprise does not involve the risk of losing a benefit which he could have enjoyed if he had chosen to invest directly in those Member States. Accordingly, that situation is not objectively comparable to the situation in which the Kingdom of the Netherlands has concluded such a tax convention. It follows that, in the case of legislation such as that at issue in the main proceedings, pursuant to which – in order to make the tax treatment of direct investments and of those made through the intermediary of investment enterprises the same, as far as possible – a Member State has decided to grant those enterprises a concession in respect of tax deducted at source on dividends from Member States vis-à-vis which it has undertaken, under the terms of bilateral agreements, to allow natural persons to credit those deductions to the income tax for which they are liable under national law, Articles 56 EC and 58 EC do not preclude that Member State from withholding that concession in respect of dividends from other Member States with which it has not concluded bilateral agreements containing such provisions, as these are not objectively comparable situations. In the light of the foregoing, the answer to Question 1(a) must be that Articles 56 EC and 58 EC do not preclude legislation of a Member State, such as the legislation at issue in the main proceedings, which grants a concession to fiscal investment enterprises established in that Member State on account of tax deducted at source in another Member State from dividends received by those enterprises, and restricts that concession to the amount which a natural person resident in the first Member State could have had credited, on account of similar deductions, on the basis of a double taxation convention concluded with that other Member State" (Staatssecretaris van Financiën & Orange European Smallcap Fund NV).

To the extent that such agreements are not compatible with the Treaties, the Member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established. Member States shall, where necessary, assist each other to this end and shall, where appropriate, adopt a common attitude.

In applying the agreements referred to in the first paragraph, member states shall take into account the fact that the advantages accorded under the Treaties by each Member State form an integral part of the establishment of the Union and are thereby inseparably linked with the creation of common institutions, the conferring of powers upon them and the granting of the same advantages by all the other Member States."

This Article could be the basis on which to analyze the problem. In fact from this article it could be inferred that there is a supremacy of the European Law above any agreement between a member country and a third country.

It should be noted that if a European country concludes an agreement with a third state, it is possible that this will also have some effect on other member countries.

Recently the European Court of Justice has intervened on this topic in the case **C-384/09, Prunus SARL, Polonium SA vs. Directeur des services fiscaux**, in which is stated that "article 64(1) TFEU must be interpreted as meaning that Article 63 TFEU is without prejudice to the application of national legislation in force on 31 December 1993 which exempts from the tax on the market value of immovable property located in the territory of a Member State of the European Union companies having their registered office in the territory of that State and makes entitlement to that exemption, for a company whose registered office is in the territory of an OCT, conditional either on the existence of a convention on administrative assistance to combat tax evasion and avoidance concluded between that Member State and that territory or on there being a requirement, under a treaty containing a clause prohibiting discrimination on grounds of nationality, that those legal persons are not to be taxed more heavily than companies established in the territory of that Member State."

I have already written about the opinion of the Court in the "D.Case" and in the "Orange European Smallcap Fund Case," and it seems that the European Court of Justice is claiming this same opinion regarding the relation between European Union member countries and third countries; in other words, it seems that the European Court of Justice is guaranteeing also in that situation the sovereignty of the European countries in their Tax Policy, even though they are part of the EU.[76]

I agree with the opinion of those authors who suggest that the solution to all those problems could be that all European Union member countries use a common model of income tax treaty against double imposition.

[76] In our opinion the point of view of the Court could be too related to the literal text of the EU acta, and it has a few consideration of the effects of this solution on the cohesion of the European Union that should be the first purpose. The opinion of the Court, perhaps, is an effect more of the civil law approach than of the common law approach.

CHAPTER 3

OECD AND UN MODEL TAX CONVENTIONS

3.1 Introduction.

A model treaty is one which two or more negotiating countries can use as the basis of their negotiations.

The typical double taxation convention can be viewed as a list of articles, which perform separate and distinct functions.[77]

There are several practical benefits in working with treaties based on well-known models; it allows, for instance, the negotiating states to indicate in advance those parts of the model with respect to that they differ and for the negotiations to focus only on those aspects and on the others not mentioned in the model.

Thus, I can say that the significant areas of the text of the concluded treaties are the same.

The most popular models are the **Organisation for Economic Cooperation and Development (OECD) Model Tax Convention on Income and on Capital** and **the United Nations (UN) Model Double Taxation Convention between Developed and Developing Countries**.

Although taxing rights can differ with respect to certain kinds of income between these popular models, they each follow a similar structure in terms of their application (*application articles*), distributive rules, evasion and avoidance-prevention measures (*prevention of tax avoidance and fiscal evasion articles*), administrative and procedural matters.

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[77] See K. van Raad, *The Netherlands Model Income Tax Treaty*, INTERTAX 241 (1988); K. VAN RAAD, MODEL INCOME TAX TREATIES (1983); R. DOERNBERG & K. VAN RAAD, THE 1996 UNITED STATES MODEL INCOME TAX CONVENTION (1997); Victor Uckmar, *I trattati internazionali in materia tributaria, in* I,2 TRATTATO DI DIRITTO TRIBUTARIO 727 (Andrea Amatucci ed., 1994); i*d.* (ed.), DIRITTO TRIBUTARIO INTERNAZIONALE (3d ed. 2005).

Besides these models, some countries have developed their own income tax treaty model, like, for example, the **United States (U.S.) Model Income Tax Convention**; these countries use their model as a basis for negotiating their own tax treaties with other countries.

As I have already mentioned, there is no European Union income tax treaty model.

3.2 The OECD model tax convention.

The last update of the OECD model tax convention was released on July 22, 2010.[78] It consists of seven chapters, each containing one or a group of articles.[79]

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[78] See, on the topic, *ex plurimis*, Piergiorgio Valente, *Il Modello OCSE di Convenzione contro le doppie imposizioni La versione 2010*, 33 IL FISCO 5333 (2010); KLAUS VOGEL, KLAUS VOGEL ON DOUBLE TAXATION CONVENTIONS, A COMMENTARY TO THE OECD, UN AND US MODEL CONVENTIONS FOR THE AVOIDANCE OF DOUBLE TAXATION OF INCOME AND CAPITAL, WITH PARTICULAR REFERENCE TO GERMAN TREATY PRACTICE (3d ed. 1997); P. BAKER, DOUBLE TAXATION CONVENTIONS (1994); OTTMAR BÜHLER, PRINZIPIEN DES INTERNATIONALES STEUERRECHTS (1964); K. van Raad, *The term "enterprise" in the Model Double Taxation Conventions-Seventy years of confusion*, INTERTAX 491 (1994); ARVID AAGE SKAAR, PERMANENT ESTABLISHMENT (1991); J. F. Avery Jones & D. A. Ward, *Agents as Permanent Establishments under the OECD Model Tax Convention*, ET 154 (1993); S. I. Roberts, *The Agency element of Permanent Establishmnent. The OECD Commentaries from the Civil Law View*, INTERTAX 396 (1993); VICTOR UCKMAR, LA TASSAZIONE DEGLI STRANIERI IN ITALIA (1955); Antonio Lovisolo, *La "stabile organizzazione"*, *in* DIRITTO TRIBUTARIO INTERNAZIONALE (V. Uckmar ed., 2005), at 439; Hans Pijl, *The relation between art. 5, pars. 1 and 3 of the OECD Model Convention*, INTERTAX 189 (2005); B. J. Arnold, *Threshold requirements for taxing business profits under tax treaties*, BULL. INT'L FISC. DOC. 476 (2003); V. O. DIAZ, EL COMMERCIO ELECTRONICO Y SUS EFECTOS EN LAS RELACIONES TRIBUTARIAS INTERNACIONALES (2001); D. PINTO, E-COMMERCE AND SOURCE-BASED INCOME TAXATION (2003); E. KEMMEREN, PRINCIPLE OF ORIGIN IN TAX CONVENTION (2001); M. HELMINEN, THE DIVIDEND CONCEPT IN INTERNATIONAL TAX LAW (1999); J. D. B. Oliver et al., *Beneficial Ownership*, BULL. INT'L FISC. DOC. 310 (2000); C. DU TOIT, BENEFICIAL OWNERSHIP OF ROYALTIES IN BILATERAL TAX TREATIES (1999); D. Ward, *Abuse of Tax Treaties, in* ESSAYS ON INTERNATIONAL TAXATION (H.H. Albert, & K. van Raad eds., 1993); J. Killius, *The Concept of "Beneficial Owner" of Items of Income under German Tax Treaties*, INTERTAX 340 (1989); F.P.G. Pötgens, *The "Closed System" of the Provisions on Income from employment in the OECD Model*, ET 454 (2001); L. De Broe et Al., *Interpretation of Article 15(2)(b) of the OECD Model Convention: "remuneration paid by, or on behalf of, an employer who is not a resident of the other State"*, BULL. INT'L FISC. DOC. 503 (2000); D. SANDLER, THE TAXATION OF INTERNATIONAL ENTERTAINERS AND ATHLETES. ALL THE WORLD'S STAGE (1995); D. Molenaar, Obstacles for International Performing Artists, ET 149 (2002); J. A. NITIKMAN, *Article 17 of the OECD Model Treaty-An Anachronism?*, INTERTAX 268 (2001); D. Molenaar & H. Grams, *Rent-A-Star: The Purpose of art. 17(2) of the OECD Model*, BULL. INT'L FISC. DOC. 500 (2002); R. Betten & M. Lombardi, *Article 17(2) of the OECD Model in Triangular Situations-Does Article 17(2) apply if the Artiste or Sportsman is resident in a third State?*, BULL. INT'L FISC.

Our intention is analyzing all articles in turn.

Article 1 (Persons covered).

DOC. 560 (1997); A. Ballancin, *Art. 18 of the OECD Model Tax Convention*, DIR. PRAT. TRIB. INTERNAZ. 128 (2002); M. ZUGER, ARBITRATION UNDER TAX TREATIES (2003); K. VAN RAAD, NON-DISCRIMINATION PRINCIPLE IN INTERNATIONAL TAX LAW (1986); J. F. Avery Jones et Al., *The Non-Discrimination Article in Tax Treaties*, BRIT. TAX REV. 359 (1991); A. Fedele, *Prospettive e sviluppo della disciplina dello scambio di informazioni tra Amministrazioni finanziarie*, RASS. TRIB. 49 (1999); Claudio Sacchetto, *L'evoluzione della cooperazione internazionale fra le amministrazioni finanziarie statali in materia di IVA ed imposte dirette: scambio di informazioni e verifiche incrociate internazionali*, BOLL. TRIB. 487 (1990); *id.*, TUTELA ALL'ESTERO DEI CREDITI TRIBUTARI DELLO STATO (1978).

[79] Summary of the convention:
"Title and Preamble
Chapter I: SCOPE OF THE CONVENTION
Article 1: Persons covered
Article 2: Taxes covered
Chapter II: DEFINITIONS
Article 3: General definitions
Article 4: Resident
Article 5: Permanent establishment
Chapter III: TAXATION OF INCOME
Article 6: Income from immovable property
Article 7: Business profits
Article 8: Shipping, inland waterways transport and air transport
Article 9: Assiociated enterprises
Article 10: Dividends
Article 11: Interest
Article 12: Royalties
Article 13: Capital gain
Article 14: Independent personal services
Article 15: Income from employment
Article 16: Directors' fees
Article 17: Artistes and sportsmen
Article 18: Pensions
Article 19: Government service
Article 20: Students
Article 21: Other income
Chapter IV: TAXATION OF CAPITAL
Article 22: Capital
Chapter V : METHODS FOR ELIMINATION OF DOUBLE TAXATION
Article 23A: Exemption method
Article 23B: Credit method
Chapter VI: SPECIAL PROVISIONS
Article 24: Non-discrimination
Article 25: Mutual agreement procedure
Article 26: Exchange of information
Article 27: Assistance in the collection of taxes
Article 28: Members of diplomatic missions and consular posts
Article 29: Territorial extension
Chapter VII: FINAL PROVISIONS
Article 30: Entry into force
Article 31: Termination".

This Article defines the scope of the income tax treaty in terms of the persons to which it applies. The use of the word "shall" offers no discretion; it means that a taxpayer must be a "person" who also is a "resident" of at least of one of the countries that are parts of the agreement.

According to Article 3(1) the term "person" includes an individual, a company and any other body of persons. According to the same Article, the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes. In the concept of "any other body of persons" I can include, for instance, partnerships, and trustees of a trust. The definition of "person" provided by Article 3(1) is open, in other words, it is not exclusive.[80]

I will write more about the concept of "resident" when I analyze Article 4.

The determination of the "person" is fundamental to establish to whom income is to be attributed. In fact, it is crucial to establish who is taxable with respect to the income, or who is legitimate to receive credits for

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[80] See P.J. Hattingh, *Article 1 of the OECD Model: historical background and the issues surrounding it,* BULL. INT'L FISC. DOC. 215 (2003); J.F. Avery Jones, *Place of effective management as a residence tie-breaker*, BULL. INT'L FISC. DOC. 20 (2005); J.F. Avery Jones & C. Bobbet, *Triangular Treaty Problems: a summary of the discussion in seminar E at the IFA Congress in London,* BULL. INT'L FISC. DOC. 19 (1999); E. Burgstaller & K. Haslinger, *Place of effective management as a tie-breaker-rule-concept, developments and prospects,* INTERTAX 376 (2004); L. Hinnekens, *Revised OECD-TAG definition of place of effective management in treaty tie-breaker rule*, INTERTAX 314 (2003); G. MARINO, LA RESIDENZA NEL DIRITTO TRIBUTARIO (1999); P.Owen, *Can effective management be distinguished from central management and control?,* BRIT. TAX REV. 296 (2003); C. Romano, *The evolving concept of "place of effective management" as a tie breaker rule under the OECD Model Convention and Italian law*, ET 339 (2001); S. Shalhav, *The evolution of Article 4(3) and Its Impact on the Place of Effective Management Tie Breaker Rule*, INTERTAX 460 (2004); K. van Raad, *Dual residence*, ET 241 (1998); D. A. Ward et al., *A resident of a contracting State for tax treaty purposes: a case comment on Crown Forest Industries*, CAN. TAX J. 408 (1996); R.L. Doernberg & K. van Raad, *Hybrid Entities and the U.S. Model Income Tax Treaty*, 19 TAX N INT'L 745 (1999); G. Marino, *La residenza fiscale del trust*, TRUSTS AT. FID. 72 (2000); L. Perrone, *La residenza del "trust"*, RASS. TRIB. 1601 (1999); Claudio Sacchetto, *Brevi note sui trusts e le convenzioni bilaterali contro le doppie imposizioni sul reddito*, TRUSTS AT. FID. 64 (2000); A. SALVATI, PROFILI FISCALI DEL TRUST (2004); J. Schaffner, *The OECD Report on the Application of Tax Treaties to Partnerships*, BULL. INT'L FISC. DOC. 218 (2000); S. VAN WHEEGHEL, THE IMPROPER USE OF TAX TREATIES (1998); A. J. M. Jiménez, *Defining the objective scope of income tax treaties: the impact of other treaties and EC law on the concept of tax in the OECD Model*, BULL. INT'L FISC. DOC. 432 (2005); MICHAEL LANG, "*Taxes Covered"-What is "tax" according to Article 2 of the OECD Model?*, BULL. INT'L FISC. DOC. 216 (2005).

foreign tax paid and who can request some benefits with respect to the income.

Generally, the internal law of a country determines to whom income must be attributed in order to apply a tax agreement; sometimes a country of residence must determine it, e.g. the case of the United States.

Several problems may arise when the circumstances that produce the income are provided by a person, but the taxpayer is different, e.g. it can happen in the case of a trust.[81] In these cases often the income tax agreement provides the solution. Problems can arise also about the treatment of a partnership.[82]

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[81] See on the topic Italian Fiscal Agency's Circular 06th August 2007, no. 48E.

[82] See Italian Supreme Court, no. 4600, 2009, that has denied the application of the income tax Convention between U.S. and Italy to a U.S. partnership according to the fact that the shareholder was a Japanese corporation. In the sentence we can read "secondo la tesi sostenuta dal Fondo una fattispecie così conformata dovrebbe essere sussunta sotto la L. 18 dicembre 1972, n. 855, art. 10, comma 2, lett. b), la quale s'intitola: "Ratifica ed esecuzione della Convenzione tra l'(OMISSIS) ed il (OMISSIS) per evitare le doppie imposizioni in materia di imposte sul reddito, con protocollo e scambio di note, conclusa a Tokyo il 20 marzo 1969". Se così fosse, l'imposta non potrebbe eccedere il 15%, donde la pretesa al rimborso dell'imposta nella misura corrispondente alla differenza rispetto alla ritenuta applicata del 32,4%.

La tesi è, tuttavia, priva di fondamento, se si tiene conto:

1) che la Convenzione "si applica alle persone che sono residenti di uno o di entrambi gli Stati contraenti" (L. 18 dicembre 1972, n. 855, art. 1);

2) che "le imposte che formano oggetto della ... Convenzione sono ...

in (OMISSIS) ... l'imposta sul reddito delle persone giuridiche ..." (L. 18 dicembre 1972, n. 855, art. 2, comma 1, lett. b) n. 2);

3) che "le espressioni uno Stato contraente e l'altro Stato contraente designano l'(OMISSIS) oppure il (OMISSIS), come il contesto richiede" (L. 18 dicembre 1972, n. 855, art. 3, comma 1, lett. c));

4) che ai fini della... Convenzione, l'espressione "residente di uno Stato contraente" designa ogni persona che, in virtù della legislazione di detto Stato contraente è ivi assoggettata ad imposta a motivo del suo domicilio, della sua residenza, del luogo della sua sede o del suo ufficio principale, della sede della sua direzione o di ogni altro criterio di natura analoga" (L. 18 dicembre 1972, n. 855, art. 3, comma 4);

5) che di regola vige il criterio della legge della residenza del percettore dei dividendi ("i dividendi pagati da una società residente di uno Stato contraente ad un residente dell'altro Stato contraente sono tassabili in detto altro Stato contraente" (L. 18 dicembre 1972, n. 855, art. 10, comma 1), ma che, in deroga ad esso, si può applicare il criterio della legge della residenza della società erogatrice dei dividendi ("tali dividendi possono essere tassati nello Stato contraente di cui la società che li paga è residente, ed in conformità alla legislazione di detto Stato contraente" (L. 18 dicembre 1972, n. 855, art. 10, comma 2);

6) se si applica il criterio in deroga - legge della residenza della società distributrice dei dividendi - "l'imposta ... non può eccedere: a) il 10 per cento dell'ammontare lordo dei dividendi se il beneficiario è una società che possiede almeno il 25 per cento delle azioni con diritto di voto della società che paga tali dividendi...; b) il 15 per cento dell'ammontare lordo dei dividendi, in ogni altro caso" (L. 18 dicembre 1972, n. 855, art. 10, comma 2).

Poiché è incontestato che si debba applicare al caso di specie il criterio della legge della residenza della società pagatrice dei dividendi, cioè la legge italiana, e poiché è pacifico che il percettore dei

Moreover, other problems can arise when states apply different principles.

For example a country is careful about the legal right to determine who produces the income, another focuses on the substance of the transaction.

Article 2 (Taxes covered).

It is crucial to also establish what taxes are covered by the income tax agreement.

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dividendi possiede azioni della società italiana in misura inferiore al 25%, la norma di cui s'ipotizza l'idoneità alla sussunzione della fattispecie controversa ha come contenuto "l'IRPEG al 15%" (L. 18 dicembre 1972, n. 855, art. 10, comma 2, lett. b)) e per oggetto il reddito di capitale distribuito sotto forma di dividendi e "pagati ... ad un residente dell'altro Stato contraente" (L. 18 dicembre 1972, n. 855, art. 10, comma 1).

Sennonché la sussunzione ipotizzata non può realizzarsi, perché la norma invocata ha come destinatario "un soggetto che riceve il pagamento e che è residente dell'altro Stato contraente" - del Giappone, nel caso in esame - (L. 18 dicembre 1972, n. 855, art. 10, comma 1), mentre la fattispecie controversa si caratterizza per il fatto che i dividendi sono stati pagati da una società italiana a un soggetto - The Milton Gate L.P. - residente negli (OMISSIS). La Convenzione parla di "pagamento" dei dividendi e non di "beneficio effettivo del pagamento dei dividendi", cosicché è sufficiente che il percettore dei dividendi non sia residente in (OMISSIS) perché esso non entri nella categoria dei destinatari della Convenzione.

Che, poi, la maggioranza della proprietà della società statunitense spetti ad una società giapponese - la Nippon Trust Bank Limited -, e che questa abbia operato come mandataria del Fondo sono dati che indicano quale sia stato il beneficiario finale dell'investimento effettuato, dandolo in gestione al mandatario, e dimostrano che la catena societaria è tale che il beneficio finale non consiste nei dividendi in quanto tali, che sono stati pagati ad un altro soggetto - la società statunitense -, ma non possono certo giustificare che una precisa disposizione normativa, qual è quella contenuta nella L. 18 dicembre 1972, n. 855, art. 10, comma 1, che indica come destinatario del precetto normativo "un soggetto residente dell'altro Stato contraente e al quale viene effettuato il pagamento dei dividendi", possa essere estesa fino a comprendere in tale categoria un residente di un qualsiasi altro Stato, che sia il percettore effettivo dei dividendi e che realizza utili propri, restando irrilevante per la Convenzione che tali utili possano, poi, attraverso la catena societaria delle partecipazioni, contribuire a formare il beneficio finale dell'investimento di soggetti residenti in (OMISSIS).

In senso contrario non vale osservare, come fa il Fondo nel suo ricorso, che la società statunitense è equiparabile ad una società di persone italiana e, quindi, che i suoi redditi sono redditi dei suoi soci, perché nel caso di specie la catena societaria è passata anche attraverso un altro soggetto - la Nippon Trust Bank Limited", la quale, per un verso è mandataria del Fondo, e, per altro verso, che è quello qui rilevante, è la proprietaria della partecipazione, peraltro solo maggioritaria, nella società statunitense. Il Fondo non è, dunque, proprietario della società statunitense e la preclusione all'applicazione della L. 18 dicembre 1972, n. 855, art. 10, comma 2, lett. b), deriva da una ragione diversa da quella prospettata e l'argomentazione addotta potrebbe condurre, al più, a ritenere che unica legittimata a chiedere il rimborso sarebbe stata la Nippon Trust Bank Limited, semprechè essa fosse un soggetto residente in (OMISSIS).

7. Le precedenti considerazioni conducono al rigetto del ricorso."

From the title of the OECD model tax convention I can suggest that the taxes covered by an agreement based on that Model are income taxes and capital taxes.[83]

It should be observed that Article 2 covers a very wide area, such the federal taxes, the country taxes, the city taxes, etc.; it should be noticed also that there is no distinction between taxes about the manner of the payment of them.

Furthermore, it does not require that the Contracting States must negotiate a new convention if they introduce new and similar taxes because of the text of Article 2 that speaks about "any identical or substantially similar taxes that are imposed after the date of signature of the Convention."

Actually, even though Article 2 provides this situation, it happens that the concluding states negotiate a new convention if there are important modifications in their tax systems.

Article 3 (General definitions).

This Article provides the definitions of the following important terms: person, company, enterprise, enterprise of a Contracting State, enterprise of the other Contracting State, international traffic, competent authority, national, and business.

Every Contracting States that decide to use the OECD income tax model must relate to the meaning dictated by Article 2 rather than the meaning included in their own internal legal system.

It should be noted that under the dispositions of the OECD model tax convention it is crucial to establish what the boundaries of the Contracting

[83] According to the OECD Commentary on Article 2 "this Article is intended to make the terminology and nomenclature relating to the taxes covered by the Convention more acceptable and precise, to ensure identification of the Contracting States' taxes covered by the Convention, to widen as much as possible the field of application of the Convention by including, as far as possible, and in harmony with the domestic laws of the Contracting States, the taxes imposed by their political subdivisions or local authorities, to avoid the necessity of concluding a new convention whenever the Contracting States' domestic laws are modified, and to ensure for each Contracting State notification of significant changes in the taxation laws of the other State."

State are, such as, for instance, if oil or gas sources are included or how much longer is the extension of the submarine areas.

Moreover, it must be pointed out that the term international traffic means a traffic that starts in one country and arrives in another country; in fact Article 3 specifies that it is not an international traffic "when the ship or aircraft is operated solely between places in the other Contracting State."

Finally, it should be emphasized that any terms not mentioned in Article 3 have the meaning attributed by the domestic law of the "State for the purposes of the taxes to which the Convention applies," and that meaning prevails on all other meanings.

Article 4 (Resident).

I have clarified the meaning of the term "person" for the purpose of the OECD model tax convention, but Article 1 also establishes that to apply the income tax agreement the person must be a resident "of one or both of the Contracting States."

As a consequence, it is fundamental to establish when a person can be considered, for the purpose of the Convention, a resident[84] of a Contracting States.

The concept of the residence is specified in Article 4, whose definition requires us to relate to the internal law of the state concerned to ascertain whether, under that law, a person can be considered a resident of the country, provided that the internal law establishes residence on the basis of the person's "domicile, residence, place of management or any other criterion of a similar nature."

Thus, it is important to determine when a person is considered a resident under the domestic law.

[84] According to paragraph 1, C(4), of the OECD Model Commentary, the residence is of importance in three cases:
"-in determining a convention's personal scope of application;
-in solving cases where double taxation arises in consequence of double residence;
-in solving cases where double taxation arises as a consequence of taxation in the State of residence and in the State of source or situs."

The method to establish it is the test of a person's residence. There are two different kinds of this method: the objective and the subjective test.

Some countries use a combination of both kinds of tests.

The objective test is typically based on a minimum fixed period of time in which a person is physically present in a country.[85]
To check that minimum fixed period of time it can use the person's visa or immigration status, the nationality, the citizenship, etc.

The subjective test is based on some facts and circumstances that are indicia of residence in a country because they demonstrate that an individual has established his or her allegiance to that country by joining to a sufficiently significant degree its economic and social life.
Examples of these facts and circumstances are a permanent home or habitual place of abode in the state, as well as the person's place of economic and social interests in that country.

The definition of this Article dictates two limitations of the concept of residence.

First of all, to be a resident of a state it requires that the person must be "under the laws of that State…..liable to tax therein by reason….." Thus, tax-exempt persons cannot be residents of a state for the purpose of the Convention because they are not "liable to tax therein" under the domestic law of the state.
It is possible that a person, who is not considered "resident of a Contracting State" for the purpose of the agreement, will pay taxes in the country of source, but it is sure that it will not pay taxes in the country of residence and

[85] See, for instance, Article 2 of the Italian law (Decreto del Presidente della Repubblica) 22th December 1986 no. 917, according to which: "1.Soggetti passivi dell'imposta sono le persone fisiche, residenti e non residenti nel territorio dello Stato.
2. Ai fini delle imposte sui redditi si considerano residenti le persone che per la maggior parte del periodo di imposta sono iscritte nelle anagrafi della popolazione residente o hanno nel territorio dello Stato il domicilio o la residenza ai sensi del codice civile.
2-bis. Si considerano altresì residenti, salvo prova contraria, i cittadini italiani cancellati dalle anagrafi della popolazione residente e trasferiti in Stati o territori diversi da quelli individuati con decreto del Ministro dell'economia e delle finanze, da pubblicare nella Gazzetta Ufficiale."

it will not pay taxes according to the convention, because it is not "liable to tax therein."

It is possible also that certain entities that are exempted from income tax in their country of residence are specifically considered by an income tax agreement so that they are not included by the definition of "resident" provided by Article 4 of the OECD model tax convention.

A person can be "liable to tax therein" even though the particular item of income to which the treaty is being applied is not in fact taxable in the hands of the recipient in the other state; in other words the text of residence pays attention to the person, not to the particular income, so it must establish if a person is liable to tax and it has not established if a person is liable to tax on that particular item of income.

The second limitation is provided from the last sentence of the Paragraph 1 according to which simply deriving income from a state or having capital in that state, so paying tax in that country on that income or capital, is not sufficient in itself to make the person a resident of that state.

Article 4(2) provides some criterions to solve the problem of the double residence for the purpose of the OECD model tax convention; in other words it is possible that a person can be considered resident of both Contracting States for the purpose of the OECD model tax convention.

While Article 4(2) is concerned about individuals, Article 4(3) is concerned about all other categories of persons. Thus, it deals with the residence of companies, trusts, etc., and it provides some criterions to solve the problem of their double residence.

It must be noted that despite of the several rules for individuals provided by Article 4(2), Paragraph 3 provides only one test for companies, the "place of effective management."

Article 5 (Permanent Establishment).

The term "permanent establishment" was originally invented by the law of the treaty, but now it is used under the domestic law of many countries that apply some version of the OECD model definition of that concept in their domestic law.[86]

A permanent establishment is not a resident, because in that case it falls within Article 4. According to the definition included in Article 5, a permanent establishment is "a fixed place of business through which the business of an enterprise is wholly or partly carried out."

In the common language it is usual to indicate a permanent establishment as a "branch" or an "agency," but it is not correct because the fact that a corporation has a branch in another country is not of direct relevance to the existence of a permanent establishment. This term has a particular tax meaning.

Article 5 must be read together with Article 7 (Business Profits). In fact, the mere existence of a permanent establishment in the source state is not enough for the source country to tax. In other words, Article 5 provides only a definition of the term "permanent establishment," while Article 7 provides the limits on the taxing rights of the country of source.

According to the basic rule provided by Article 5, a permanent establishment is a place of business, including any premises, facilities or installations which serve the business activities.

That place of business must be fixed, in a physical meaning and in a temporal meaning. Physical meaning means that the business activity for its nature must be located at a particular place and must remain in that place.

Temporal meaning means that a place of business must have a certain degree of permanency. In other words, it must be set up not for a temporary nature or related to some temporary conditions, even though it is possible that it exists only for a short period of time.

Paragraph 2 provides some examples of "permanent establishment," but it must be noted that being in the list of Paragraph 2 will not suffice to

[86] See, *ex plurimis*, about the Italian concept of "permanent establishment" Piergiorgio Valente, *La stabile organizzazione nelle disposizioni interne convenzionali e nella sentenza della Corte di Cassazione n.20597/2011*, 42 IL FISCO 6831 (2011).

be considered “permanent establishment” because it is necessary that the conditions of Paragraph 1 are present, as well.

Conversely, the list of Article 5(4) is fixed. In other words, even though the conditions laid down in Article 5(1) are present, or even though the Article 5(2) circumstances exist, the activities listed in Paragraph 4 cannot be “permanent establishment.”

It should be noticed that all the activities listed in Paragraph 4 are all of a preparatory or auxiliary nature for the enterprise, as a consequence I cannot speak about a “permanent establishment” if the activities are merely preparatory or auxiliary, such as if they are still being developed and they have not reached the production phase. If the activity is a fundamental part of the overall business activity of the company, it is not a preparatory or auxiliary activity.

Article 5(5) focuses on the role of the dependent agent while Article 5(6) is concerned about the independent agent.

If an enterprise cannot have its own fixed place of business in a country, it is feasible that it is doing business with the help of a party, called agent, which is or is almost dependent on that enterprise.

In this case it is not automatically considering the agent as a “permanent establishment” of the enterprise.

In fact, according to Paragraphs 5 and 6 of Article 5 the company will be taxable only if it has an “agency permanent establishment,” it means a “dependent agent,” that is legally and economically dependent.

“Legally dependent” means that the principal has the control over the agent or the power to infer in the business of the agent.

“Economically dependent” means that the agent does not conduct its own business with the entrepreneurial risk of each business.

In other words, an agent may constitute an agency permanent establishment if all the following conditions are respected:

-the agent is doing his job on behalf of an enterprise;

-the agent has its own and independent authority to conclude contracts in the name of the corporation;

-the agent habitually exercises the authority to conclude contracts in the name of the corporation; and

-unless the agent is an independent status acting in the ordinary course of its business.

It can be inferred from Article 5(6) that the OECD model tax convention would prevent an independent agent from constituting a permanent establishment even if the agent usually has an authority to enter into contracts on behalf of the principal, while the agent acts in the ordinary course of its business.

Actually it is not fundamental that the contracts are literally made in the name of the enterprise but it is important that the corporation is bound by those contracts, as well as the operation concluded by the agent must be a business proper and not merely an auxiliary activity. In fact, an agent who is simply authorized to negotiate contracts cannot be an agency permanent establishment.

Moreover, the authority to conclude contracts must cover agreements relating to the business of the corporation.

It is also not fundamental that the agent signs the contract, in fact according to OECD Commentary it is enough that the agent has the authority to negotiate all parts of the contract, even though someone else signs the contract in the name of the corporation.

In general, independent agents are not agency permanent establishment unless they act outside the ordinary course of their business; in other words, to constitute an agency permanent establishment they should perform a business activity that is extraordinary for them.

According to Article 5(7) the existence of a subsidiary company does not in itself constitute a permanent establishment of its parent, it could be if it is not an independent agent of its parent and usually exercises authority to conclude contracts in the name of its parent company.[87]

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[87] See on this topic Italian Supreme Court, case no. 7682, 2002, that has stated “innanzitutto, affinché la struttura nazionale non venga considerata dipendente (e cioè una stabile organizzazione) occorre: a) che essa abbia un'indipendenza giuridica ed economica; b) in secondo luogo, quando agisce per altra impresa, deve farlo nell'ambito del proprio ordinario settore di affari "... in the ordinary course of his business..." (punto 37). Il Commentario precisa, inoltre (punto 38), che un importante criterio che contraddistingue le strutture dipendenti è la non assunzione, da parte delle stesse, del rischio imprenditoriale per le attività esercitate nell'interesse dell'impresa. Deve, inoltre, rilevarsi che il Commentario assegna decisivo rilievo alla sostanza dei fenomeni, e non all'aspetto giuridico formale, nell'indagine sull'esistenza dei diversi requisiti della stabile organizzazione…………………L'art. 5, par. 4, del modello O.C.S.E. contiene un elenco di attività che non danno luogo a stabile organizzazione, prevedendo, in generale, che tali attività sono quelle aventi carattere preparatorio o ausiliario. Proprio l'inserimento di tale clausola generale rende non indispensabile - secondo il punto 23 del Commentario - un elencazione esaustiva di tali attività. Secondo il Commentario, tali attività non danno luogo a stabile organizzazione, anche se esercitate tramite un "fixed place of business", in quanto, pur contribuendo alla produttività dell'impresa, sono così lontane dalla effettiva realizzazione di profitti da rendere molto difficile il ricollegamento di profitti all'installazione. Vengono menzionate (sub art. 5, par. 4, punti 21 - 24) come esempi di attività ausiliarie o preparatorie le consulenze, la raccolta d'informazioni, la ricerca scientifica prestata ai fini della concessione di brevetti o la conclusione di contratti di know - how, escludendo da tale categoria quelle che rappresentano" una parte essenziale e significativa dell'impresa unitariamente considerata". Il Commentario prevede, più in generale (sub art. 5, par. 4, punto 24) che se un'impresa con ramificazioni internazionali affida ad un'installazione funzioni di controllo e di coordinamento delle attività svolte dalla stessa impresa ("supervisory and co-ordinating functions for alt the departments of the enterprise located within the region concerned") a tale struttura non potrà essere riconosciuto lo status di agente indipendente, ma di un "ufficio", secondo l'ipotesi prevista alla lettera e) del catalogo contenuto nel par. 2 dell'art. 5, costituendo una parte essenziale delle operazioni d'affari dell'impresa………………………………. Appare, inoltre, significativo rilevare che lo stesso Commentario (sub art. 5, par. 4, punto 25), menziona esplicitamente le attività di vendita di pezzi di ricambio e di assistenza alla clientela (c.d., after sale organisation, organizzazione post - vendita) come danti luogo - sotto il profilo funzionale - ad una organizzazione stabile, in quanto "realizzano una parte essenziale e significativa dei servizi di un'impresa nei confronti dei clienti"…………………………………. Secondo l'art. 5, par. 5, del mod. O.C.S.E., non possono ritenersi soggetti indipendenti le strutture aventi il potere di concludere contratti in nome dell'impresa ("an authority to conclude contracts in the name of the enterprise"). Tale potere, secondo il Commentario (sub art. 5, par. 5, punto 33), non deve essere inteso nel senso di una rappresentanza diretta, ma comprende anche tutte quelle attività che abbiano contribuito alla conclusione di contratti, anche se gli stessi siano stati conclusi in nome dell'impresa. Autorevole dottrina internazionale non ha mancato di sottolineare che l'espediente di separare la materiale attività di conclusione di contratti da quella di formale stipulazione degli stessi (split - up of business responsabilities on the hand and legal authority on the other) può essere considerata come elusione fiscale (tax circumvention), dovendosi ritenere prevalente, per l'applicazione del par. 5, la sostanza sulla forma. In altre parole, l'accertamento del potere di concludere contratti deve essere riferito alla reale situazione economica, e non alla legge civile, e lo stesso può riguardare anche singole fasi, come le trattative, e non necessariamente comprendere anche il potere di negoziare i termini del contratto…………………...................... seguenti principi di diritto:

I) una società di capitali con sede in Italia può assumere il ruolo di stabile organizzazione plurima di società estere appartenenti allo stesso gruppo e perseguienti una strategia unitaria. In tal caso la ricostruzione dell'attività posta in essere dalla società nazionale, al fine di accertare se si tratti o meno di attività ausiliaria o preparatoria, deve essere unitaria e riferita al programma del gruppo unitariamente considerato;

II) l'attività di controllo sulla esatta esecuzione di un contratto tra soggetto residente e soggetto non residente non può considerarsi - in principio - ausiliaria, ai sensi degli articoli 5, par. 4, del Mod.

It should be noted on this topic the sentence stated by the Court of Justice of the Eurpean Union in the case **C-253/03, CLT-UFA SA v. Finanzamt Köln-West**, in which it be claimed that “with its first question the national court judge is effectively asking whether Article 52 and Article 58 of the Treaty preclude a national law such as the one in dispute in the main proceedings which, in the case of a branch of a company which has its seat in another Member State, lays down a tax rate on the profits of that branch which is higher than that on the profits of a subsidiary of such a company where that subsidiary distributes its profits in full to its parent company. It must be remembered that Article 52 of the Treaty constitutes one of the fundamental provisions of Community law and has been directly applicable in the Member States (see, in particular, Case C-307/97 Saint-Gobain ZN [1999] ECR I-6161, paragraph 34). Under that provision, freedom of establishment for nationals of one Member State on the territory of another Member State includes the right to take up and pursue activities as self-employed persons and to set up and manage undertakings under the conditions laid down for its own nationals by the law of the country where such establishment is effected. The abolition of restrictions on freedom of establishment also applies to restrictions on the setting up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of another Member State (Case 270/83 Commission v France [1986] ECR 273, paragraph 13, and Case C-311/97 Royal Bank of Scotland

O.C.S.E. e 5, par. 3, lett. e) della convenzione tra Italia e Repubblica Federale di Germania contro la doppia imposizione del 18 ottobre 1989, ratificata e resa esecutiva in Italia con legge 24 novembre 1992, n. 459;
III) la partecipazione di rappresentanti o in caricati di una struttura nazionale ad una fase della conclusione di contratti tra società estera e altro soggetto residente può essere ricondotta al potere di concludere contratti in nome dell'impresa, anche al di fuori di un potere di rappresentanza;
IV) l'affidamento ad una struttura nazionale della funzione delle operazioni d'affari (management) da parte di società non avente sede in Italia, anche se riguardante una certa area di operazioni, comporta l'acquisto, da parte di tale struttura, della qualità di stabile organizzazione ai fini delle imposte sul reddito;
V) l'accertamento dei requisiti della stabile organizzazione, ivi compresi quello di dipendenza e quello di partecipazione alla conclusione di contratti, deve essere condotto non solo sul piano formale, ma anche - e soprattutto - su quello sostanziale.”

[1999] ECR I-2651, paragraph 22). The second sentence of the first paragraph of Article 52 expressly leaves traders free to choose the appropriate legal form in which to pursue their activities in another Member State and that freedom of choice must not be limited by discriminatory tax provisions (Commission v France, paragraph 22). Therefore, the freedom to choose the appropriate legal form in which to pursue activities in another Member State primarily serves to allow companies having their seat in a Member State to open a branch in another Member State in order to pursue their activities under the same conditions as those which apply to subsidiaries……………Article 52 of the EC Treaty (now, after amendment, Article 43 EC) and Article 58 of the EC Treaty (now Article 48 EC) preclude a national law such as the one in dispute in the main proceedings which, in the case of a branch of a company having its seat in another Member State, lays down a tax rate on the profits of that branch which is higher than that on the profits of a subsidiary of such a company where that subsidiary distributes its profits in full to its parent company."

The aforementioned sentence is very important because expresses the opinion of the Court of Justice of the European Union that could create some problems under the application of Article 7 of the OECD model tax convention.

Article 6 (Income from immovable property).

This Article attributes to the country of source the right to tax the income derived by using from a resident of one of Contracting States of immovable property.

It does not matter the legal base of the using, such as if the user is a private person or a corporation. The only important thing is that the immovable property produces some income.

It should be noted that Article 7 does not give only to a country of source the right to tax that income, so it is possible that the income is taxed also by the country of residence and it is possible, as a consequence, that some problems of double imposition could arise.

Article 7 (Business profits).

This Article has been totally modified under the last update of the OECD model tax convention.[88]

The new text has deleted Paragraphs 3, 4, 5 and 6 of the previous text and has introduced a new paragraph that replaces the other ones.

Thus, new Article 7 has only four paragraphs.

This Article provides a limitation of the right of the country of source to tax the business profits gained by the resident of the other country.

In fact it is necessary to establish when a country can tax the business profits of a corporation and how much it can tax them.

[88] The previous version of Article 7 was "1.The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.
4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other articles of this Convention, then the provisions of those articles shall not be affected by the provisions of this article."

According to Article 7(1) it is crucial to determine if the corporation acts by the permanent establishment, because the main rule is that business profits of an enterprise are only taxable in the country of residence, unless there is a permanent establishment in the other state. In that case Article 7(1) states that the country of source can tax only business profits related to the permanent establishment, so profits that are independent from this permanent establishment cannot be taxed by the country of source.

The concept of permanent establishment has been already clarified when I have written about Article 5.

The main rule dictated by Article 7(1) has not a force of attraction, in other words all revenue of the corporation originating in the country of source and related to the permanent establishment in that state, e.g. interest and dividends, will not be automatically attributed to the permanent establishment.

In fact, Article 7(2) states that the profits to be attributed to a permanent establishment are those which “it might be expected to make.”

Thus, for the purpose of the OECD model tax convention the permanent establishment is considered to be a separate enterprise, even though legally it is not a different entity than the corporation, and it is only a presence in the state of source (this is the separate entity approach).

The business profits of the permanent establishment are determined by considering it as a separate company, even though I have already clarified that legally it is not a different entity.

So it must relate to the accounts of the permanent establishment to determine the business profits.

Paragraph 3 focuses on the necessity to avoid a double taxation on the same profits, so it states that Contracting States should consult each other and provide some adjustments to avoid that the same business profits attributed to the same permanent establishment are taxed twice from two different countries.

Article 7(4) provides the rule that items of income covered by specific articles which accrue to a foreign corporation should be deemed in the country of source according to these articles, thus not as a business income.

It must be noted that Article 7 applies only if such income is linked with a permanent establishment of a foreign corporation in the country of source which has the right to tax the income.

Moreover, Paragraph 4 is a proof that Article 7 has not a force of attraction, so dividends, interest and royalties will not be taxed as income of the permanent establishment if there is no connection with it.

Article 8 (Shipping, inland waterways transport and air transport).

This Article focuses on profits from the operation of ships or aircraft in international traffic, including profits from the participation in a pool, a joint business or an international operating profit, as well as it focuses on profits from the operation of ships used in inland waterways transport.

It is much debated to establish precisely what profits are covered by Article 8, because many terms stated by this Article are not defined.

Article 8 can be deemed as a special disposition in connection with Article 7. In fact, Article 8 states that profits from the aforementioned operations are taxable in the country where the effective management is situated, but Article 7 dictates that to be taxable a profit needs to be related with a permanent establishment, about which there is no mention in Article 8.

The conflict is solved by Article 7(4), according to which it applies only if there are not other special Articles that cover other items of income.

Article 9 (Associated enterprises).

To understand the meaning of this Article I must say that it happens that goods, services and intangible property are transferred between associated enterprises, or between different parts of the same corporation that are located in different countries, at prices, called transfer prices, which are not the market prices.

It happens to manipulate the income and expenses of the related entities to minimize the overall tax liability by creating a level of profit most adapt to the tax system of the country in which the corporations act.

For these reasons many countries have inserted transfer pricing rules into their tax system that state to apply to those operations the arm's length market value that would apply to a similar transaction in similar circumstances between unrelated corporations in place of that transfer price.

In this context we can understand Article 9 according to it if some conditions listed in the first Paragraph of the Article happen, the administrative authority of each Contracting State can substitute the transfer price with the market price.

As a consequence, it can happen that the taxable income is increased in one of the Contracting States by the application of the rule stated in Article 9(1) and it can be a problem of double taxation.

In order to avoid this economic double taxation, as a result of the application of Article 9(1), the Paragraph 2 provides for a compensating adjustment. The competent authorities of each Contracting State must consult each other if necessary, to determine the amount of the adjustment.

For the purpose of Article 9, to establish whether the enterprises are associated is fundamental. It is not possible to find a definition in the OECD model, but the meaning of the sentence can be inferred by the conditions listed in Paragraph 1.

Thus, the corporations are related 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." Even though Paragraph 1 seems to clarify the idea of "associated enterprises," there is no explanation of the term "participate."

How can I establish whether or not an enterprise of a Contracting State participates in another enterprise of a different Contracting State?

In our point of view, it is necessary to relate to the domestic law to determine the limits of the participation.

In case of conflicts between the Contracting States about the idea of participation, that has an effect on the level of taxation, it is necessary to use the friendly procedures of dispute resolutions provided by the OECD model tax convention.

Article 10 (Dividends).

Dividends are formal payments, or transfer of value, by a corporation to its shareholders in proportion to their shares. Usually dividends are paid in cash, but it is possible that they are paid by issuing new shares. If the country of source and the country of residence are the same, there is no problem of double taxation.

Problems could arise when the dividends derived from a corporation that is resident in a country are paid to a person that is resident in another country. In this case the country of source is different than the country of residence, and Article 10(1) of the OECD model states as a general rule that those dividends can be taxed by the country of residence of the shareholders.

However, Article 10(2) adds that those dividends can be also taxed in the country of source according to the domestic law of that state, but this power is subject to some restrictions on the amount of the tax imposed.

It should be noted that Paragraph 2 of Article 10 works in favor of the state of residence. In fact, it limits the taxing right of the country of source that collects less taxes than it would have to if there were no restrictions.

The competent authorities of each Contracting State must establish by mutual agreement the mode of application of the aforementioned limitations.

Paragraph 2 relates to the concept of "beneficial owner of the dividends."

The notion of beneficial ownership was introduced by the 1977 OECD model to be an anti-voidance measure.[89]

In most cases the beneficial owner and the legal owner are the same person, but sometimes it can happen that the beneficial owner is different than the legal owner. In other words, sometimes the person that receives the dividends can be different than the legal owner, for instance, when it happens in a trust.

The link included in Article 10(2) to the beneficial owner has the first purpose to avoid that this distinction can be used to act some illegal activities.

In order to determine the tax in rights of the country of the source, Article 10(2) distinguishes between participation and portfolio investment dividends.

Article 10(2)(a) addresses the participation dividends, while Article 10(2)(b) focuses on portfolio dividends.

Article 10(3) provides a definition of dividends, and it includes all types of shares that take part in the profits of a corporation. The definition provided is very broad.

Article 10(4) states a special treatment of dividends received by a permanent establishment of a non-resident in the country of source.

The effect of that provision is that the dividends must be treated as business profits where the shareholding that creates them acts by a permanent establishment in the country of the source.

[89] See on the topic, *ex plurimis*, Marco Grazioli & Marco Thione, *Il "treaty shopping" e la clausola del beneficiario effettivo: casi operativi e recente giurisprudenza*, 17 IL FISCO 2649 (2010).

Thus, three different situations should be distinguished:

1) the permanent establishment is located in the country of residence of the holding of which it is part, but the country of the source is different;

2) the permanent establishment is located in the country of source, in other words it is located in the country where the entity that pays the dividends is resident, but the country of residence of the holding is different; and

3) the permanent establishment is located in a state different than the country of the source and the country of the residence.

The first case falls within Paragraphs 1 and 2 of Article 10, so either the country of residence or the country of source may tax the dividends.

The situation described in the second case falls within Article 10(4) that applies only when a corporation that is resident in a country carries on business through a permanent establishment situated in the country of source.

It must be pointed out that it is not important whether the dividends are paid to the permanent establishment or to another part of the company located in the country of residence. The only important thing is that the dividends arise in relation of a shareholding that is substantially linked with the permanent establishment in the country of source.

In the third case the income tax treaty is not applicable because the dividends are paid by a company that is resident in a third state, neither in the country of residence nor in the country of source.

Article 10(5) impairs the country of the source to tax dividends originated in that state by a non-resident company only on the reason that the profits are from that country.

The disposition has the purpose to prevent the country of source from taxing dividends simply because the profits have been originated from activities conducted by a non-resident company in the state of the source.

Article 11 (Interest).

The structure of this Article is very similar to that of Article 10, so either the country of residence or the country of source can tax the dividends.

There is again the special rule in case of the beneficial owner of the interest.

Paragraph 3 provides a very broad definition of interest, and it should be noted that it also includes mortgage interest, despite several domestic laws that include the interest from the loan in the income arising from immovable property.

Article 11(4) contains the link with the idea of permanent establishment, and replaces the same disposition stated in Article 10(4).

According to Paragraph 5, interest is treated to be generated in a Contracting State if one of the following two conditions is respected:

1) the payer must be a resident of that country;

2) the interest is generated by a permanent establishment in a Contracting State, in that case is treated to arise in the country of the permanent establishment, whether it is paid by it whether it is paid by its head office that is resident in another place.

The rule stated by Article 11(5) requires that there is an economic connection between the loan and the permanent establishment.

Article 11(6) refers to the operations between two related enterprises. In those cases if the contracting parts have established an amount of interest that is higher than the amount that they would established if there had been no connection between them, Article 11 will not apply to the excess interest.

This excess interest will be deemed under the provisions of the domestic law. So, if the domestic law considers it as a dividend, it will fall within Article 10 of the OECD model tax convention.

Article 12 (Royalties).

This Article diverges from Articles 10 and 11 because it states that royalties are only taxable in the country of residence of the beneficial owner.

According to Paragraph 2, royalties are:

1) 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;

2) payments of any kind received as a consideration for the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process; and

3) payments of any kind received as a consideration for information concerning industrial, commercial or scientific experience.

It must be pointed out that the definition provided by this Article is more complex than the definitions provided by Articles 10 and 11, in fact the term royalties could be more often the subject of some disputes because of its general and broad meaning.

At this time the importance of intellectual property is increasing in each country in the world, and there are more and more new inventions and processes; in addition, the growing of use of the World Wide Web complexes the legal context.

For instance, software transfers can have a variety of facets and involve several kinds of software that must be the commercial law form of a license and can generate, on this way, royalties.

However, OECD Commentary refuses the idea that all payments linked with software are royalties; in fact, it establishes that if there is the transfer of full ownerships, the payment is not deemed as royalties and Article 12 is not applicable.

Paragraphs 3 and 4 replaced Paragraphs 4 and 6 of Article 11.

Article 13 (Capital gains).

A capital gain is a profit that results from investment into a capital asset, such as stocks, bonds or real estate, when the profit exceeds the purchase price.

This Article applies to cross-border transactions that generate capital gains. In fact, if capital gains arise from the disposal of property located in the same country as the country of residence of the recipient, Article 13 does not apply.

To fall within this Article it is necessary that the country of the transaction and the country of residence of the recipient are different.

The general rule stated by the OECD model tax convention is that the right to tax capital gains belongs to the country that has the right to tax the property and the income derived from it (in other words to the country of source), as well as capital gains derived from the alienation of immovable property or movable property that are part of the business property of a permanent establishment.

“Property” includes either liabilities or assets; the concept of “alienation” includes partial alienation, expropriation, transfer, sale of the right, gift, and transmission upon death.

As is the disposition of Article 6(1), Article 13(1) establishes that the country of source does not have to, but may tax capital gains, as a consequence if it does not want to tax the gains, and the country of source wants to tax the gains, nothing can impair this situation.

About Article 10(2), it must be pointed out that it does not focus only on the gains from the movable property of the permanent establishment but also on the gains generated by the alienation of the permanent establishment itself, and it must be located in the country of source.

In fact, if the permanent establishment has properties that are located in the country of the residence of the head office or in a third country, the country of the source has not any right to tax the gains generated.

A special rule is provided by Article 10(3) about gains derived from the disposal of ships and aircrafts. In fact, in those cases the authority of the Contracting State where the effective management of enterprise is situated is competent.

This Paragraph states a very fixed rule, and provides a situation of favor for the operations acted in connection with international transportation, reflecting the objective to attribute to a unique state the right to tax the gains generated in those operations.

Article 13(4) extends the rule in Article 13(1) to the disposition of shares in real property owning companies, but it requires that more than 50% of the value of the shares must derive from immovable property situated in the country of source.

For the purpose of Article 13(4), the residence of the owner of the shares is not important, nor what kind of entity ownes them.

Article 13(5) is a “residual” disposition, meaning that any gains derived from the alienation of properties not included in the other Paragraphs of the Article will be taxable only by the country in which the alienator is a resident.

Article 15 (Income from employment).

The main rule provided by Paragraph 1 of this Article is that a person only pays taxes in the country of residence unless he works in another state. In a case where the employment is exercised in a country different than the country of residence the person can be taxed in that other state.

Article 15(2) states some exceptions to the main rule included in Paragraph 1. In fact, even though the employment is exercised in a country different that the country of residence, this state will tax the person if:

-he is present in the country of the employment for a period of time less than 183 days, it means that even if he stays only 1 day in the country of residence, it has the right to tax him;

-the employer is not a resident of the country of employment, but he is a resident of a third state; and

-the employer does not act in the country of employment by a permanent establishment.

Article 15 is a residual disposition, in other word it applies only if the situation will not fall within Articles 16 (Directors' fees), 18 (Artistes and sportsmen), and 19 (Government service).

It should be noted that Article 15 includes some words without explaining meaning, such as employer, salaries, wages, etc.

To understand the meaning of those words it must relate to OECD Commentary, according to which "member countries have generally understood the term 'salaries, wages and other similar remuneration' to include benefits in kind received in respect of an employment."

The minimum number of days could be interpreted as presence during the day, without consideration of the night.

Finally, Article 15(3) underlines the rule written in Article 8 (Shipping, inland waterways transport and air transport), Paragraph 1,[90] to avoid some conflicts between different dispositions of the same model tax convention.

Article 16 (Directors' fees).

This Article does not include any fixed rule, but it establishes that payments for directors and for members of the board of the company may be taxed by the country of residence of the corporation.

According to this Article it is also possible that they are taxed by the country of residence of the directors or of the members of the board of the company, but in this case it is necessary that this state allows a credit for the taxes paid in the other country.

[90] **Article 8(1)** of the OECD model states "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."

According to the OECD Commentary to Article 16 "member countries have generally understood the term 'fees and other similar payments' to include benefits in kind received by a person in that person's capacity as a member of the board of directors of a company."

So, if a person is an employee, it will be taxed according to Article 15 (Income from employment); if it is a director, it will be taxed according to Article 16 (Directors' fees); finally, if it is an adviser or a consultant, the remuneration will be taxed according to Article 7 (Business profits).

Article 17 (Artistes and sportsmen).

This Article provides a special rule for artists or sportspersons that are not taxed according to Articles 7 (Business profits) and 15 (Income from employment), even though they are employees. They will be taxed mainly by the country of source.

It must be pointed out that Article 17 does not include any link with the time of permanence in a state, so it is possible that the soccer player is taxed by the country of source even if he has played only one time there.

It should be noted that according to Paragraph 1 it is not mandatory that the source country must tax the remuneration gained by artists or sportspersons; in fact, Article 17 includes the word "may."

Moreover, it must be emphasized that the rule provided by Paragraph 1 makes the situation easier because if the right to tax belonged only to the state of residence, there would be problems to establish which it is.

Paragraph 2 underlines that the rule included in Paragraph 1 will apply even though the income is attributed to a different person.

Artists, entertainers and sportspersons are not defined in the OECD model tax convention, so the general rule provided by Article 3(2) must be applied.

As a consequence, those terms acquire the meanings under the domestic law of the state endeavoring to impose the tax.

Article 18 (Pensions).

This Article establishes a very fixed rule about pensions and other similar remuneration that are taxed by the country of residence.

Article 19(2) provides an exception to this disposition. In fact, if the person rendered its services to a Contracting State or a political subdivision or a local authority, in such situation it will only be taxable in that state except if the individual is a resident or national of the other state.

The provision of Article 18 includes every kind of “pensions” even not related to retirement, so it also covers widows’ and orphans’ pensions and other similar payments, except if the individual is a resident or national of the other country.

Article 19 (Government service).

The general rule provided by this Article is that the right to tax the remuneration paid to employees of the government of a country or of a political subdivision or of a local authority belongs to the state that is the payer.

Paragraph 1(b) establishes an exception to that rule, in fact the right to tax will belong to the state where the services are rendered if the individual is a citizen of that country or if it has residence in that state and the residence was not acquire only for the purpose of rendering the services. Thus, according to Article 19(1)(b) the sole right to tax is passed to the state where the government services are rendered if the employee has very strong connections with that country.

About Article 19(2) I have already written when I have treated Article 18.

According to Paragraph 3, Article 19 will not apply if the services provided are connected to a business carried on by a Contracting State or a political subdivision or local authority. In those cases Articles 15 (Income from employment), 16 (Directors’fees), 17 (Artistes and sportsmen) and 18 (Pensions) will apply.

Article 20 (Students).

This Article states a situation of favor of students or business apprentices. In fact, their payments shall not be taxed in the state where they are studying or training under the following conditions:

-if the payments are a compensation for the purpose of their maintenance, education or training; and

-if the payments arise from sources outside that country.

In those circumstances, they could be taxed by the country of residence, but usually they are not taxable according to the domestic law of many countries.

The same situation applies for visiting professors, teachers or researchers; in fact, many double tax conventions include some dispositions that exempt income generated by their activities from taxation in the country where they are conducting their research or where they are teaching classes, if their situation is temporary.

Article 21 (Other income).

This Article is very important because it provides the residual rule that must be applied to tax all income not otherwise covered in the treaty.

The general rule is that only the country of residence can tax it. The only exception included in Article 21 is when the non-resident has a permanent establishment in the country of source and acts through it. In that case the right to tax belongs to the source state according to Article 7 (Business profits) that will apply.

Article 22 (Capital).

Article 22 repeats the same rules stated by previous Articles of the OECD model tax convention, in fact Paragraph 1 reminds the rule written in Article 6 (Income from immovable property), Paragraph 1.

Paragraph 2 reminds the rule written in Article 5 (Permanent establishment), and Paragraph 3 reminds the disposition included in Article 8 (Shipping, inland waterways transport and air transport).

Finally, Paragraph 4 underlines the general rule provided by Article 21 (Other income), Paragraph 1.

Article 23 A (Exemption method) and Article 23 B (Credit method).

I have already written about the exemption method and the credit method when I have addressed the juridical double taxation and some mechanisms that have been found to avoid that juridical double taxation might have negative effects on cross-border transactions.[91]

It should be noted only that Articles 23 A and 23 B are designed to be alternatives.

Article 24 (Non-discrimination).

This Article provides the general principle of non-discrimination.

According to the *International Tax Glossary* "discrimination" is "the equal treatment of different cases or the unequal treatment of comparable cases. In an international tax context discrimination most often takes the form of different treatment of taxpayers whose situations are comparable except in respect of a characteristic such as nationality."[92]

Article 24 disallows each Contracting State from acting some discrimination between its citizens and corporations and those of another country.

Article 24 focuses on the nationality of taxpayers, and not on their residence.

As a consequence some discrimination between residents and non-residents seem to be acceptable, and if a Contracting State treats a national of another country less favorably for some reasons that are different than his/her nationality, there could be no violation of Article 24(1).

According to Article 3(1)(g) of the OECD model tax convention "the term 'national', in relation to a Contracting State, means:

[91] See *supra* § 1.2.
[92] B. LARKING (ed.), *supra* note 13, at 106.

(i) any individual possessing the nationality or citizenship of that Contracting State; and
(ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State."
So, the meaning of the term "national" is strongly related to the domestic law of each Contracting State.

It must be pointed out that the principle of non-discrimination stated in Article 24 applies even though the persons "are not residents of one or both of the Contracting States." It means that Article 24 offers a protection that goes beyond the one provided by the OECD model tax convention, according to its Article 1 "this Convention shall apply to persons who are residents of one or both of the Contracting States."

The extension of the protection offered by the OECD model is also acted by Paragraph 6. According to that Paragraph "the provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description."
It is clear the desire to overcome the limit imposed by Article 2 of the OECD model, according to it the tax convention shall cover only the taxes specifically indicated there.

Article 24(2) is concerned about stateless persons, and provides the same rule written in Paragraph 1. Clearly, in case of stateless persons the residence is important, so the principle of non-discrimination will apply between stateless persons who are resident in a Contracting State and national of another Contracting State.

Article 24(3) addresses permanent establishments, and repeats for them the same principle written in Paragraph 1.
It should be underlined that the concept of "permanent establishment" occurs again. It demonstrates that for the purpose of the OECD model tax convention that concept is very important.

Moreover, it must be pointed out that in spite of the disposition included in Article 24(1), Article 24(3) states that the permanent establishment has not to be “taxed less favorably” than a resident company, meaning that it could be treated differently.

Clearly, to establish if the principle of non-discrimination has been violated, the same activity sector must be considered.

The last sentence of Paragraph 3 allows for a Contracting State to establish whether or not to grant the individual personal allowances and reliefs.

Article 24(5) applies the principle of non-discrimination to deductions.

Finally, Article 24(6) disallows a Contracting Country to treat less favorably a company that is owned by non-residents.

Article 25 (Mutual agreement procedure).

Some conflicts may arise if the tax administrations of the Contracting States interpret differently some facts related to the taxpayer, or if they have different interpretations of the terms in the tax convention.

In these cases Article 25 provides some mechanism to solve the conflicts.

Especially it includes three kinds of solutions: specific case mutual agreements, interpretative mutual agreements, and arbitration.

According to Article 25(1-2), that provides the rules for the specific case mutual agreement, if a person thinks that the actions of the Contracting States are in contrast with some provisions of the tax convention, he can present his case to the authority of the country of residence. As a consequence the competent authorities of the Contracting States must reach some agreement about that particular situation.

The case must be presented to the competent authority within three years “from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.”

Clearly, the competent authorities are the tax authorities of the Contracting States.

Moreover, the mutual agreement procedure is totally informal; in fact, it may include communications and meetings between the parties, according Paragraph 4 of Article 25.

Article 25(3) addresses the interpretative mutual agreements. This kind of agreement is used to solve difficulties of a general nature that does not cause as their effect the renegotiation of the tax convention.

Particularly, they can be helpful to specify the meaning of the terms that are ambiguous, or to solve difficulties that can arise when one of the Contracting States has modified its internal law, or to establish the relationships between some particular domestic rules and some other particular rules included in the tax convention.

Finally, Article 25(5) states that when the procedure of specific case mutual agreements have no effects because the Contracting States cannot reach an agreement within two years from the presentation of the case to the competent authority "any unresolved issues arising from the case shall be submitted to arbitration if the person so requests."

That is the last kind of solution of conflicts (so called "arbitration") provided by Article 25, but there are two fundamental limits:

-the arbitration procedure must be approved by the person, so it must confirm the desire to submit the case to arbitration; and

-it is not possible to submit the case to arbitration if "a decision on this issue has already been rendered by a court or administrative tribunal of either State."

Article 26 (Exchange of information).

Article 26 provides one of the most effective anti-avoidance measures included in OECD model tax convention; in fact it gives to each

Contracting State the right to request to the others Contracting Countries some information about their taxpayers.[93]

A tax administration does not have to inform a resident that it has asked for some tax information about it to another tax authority.

It should be noted that Article 26 does not provide to the taxpayer any instrument to oppose the request formulated by its country.

The information that a tax authority can ask to another one is very different. In fact, for instance, it can ask some information about the amount of dividends, interests and royalties paid by a resident of a state to a resident of another state, or about taxpayers' profit allocations, or about the income that a resident declares, or about the fair value market prices of some commodity in a transaction.

The exchange of information between two Contracting States may also make easy to have some information about residents of third states, or about transactions acted in a tax haven jurisdiction.

There are two different kinds of exchange of information. In fact, a country can spontaneously give information about its residents when it believes that they can be helpful for a different country, or it can give the information only if they are required to give it.

Article 26 provides several limits to the exchange of information.

First of all, that instrument is possible if "the taxation there under is not contrary to the Convention."

Moreover, the information provided is covered by the same secret as it would have under the domestic law. They can be revealed only in public court proceedings or in judicial decisions.

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[93] See, on the topic, Saverio Capolupo, *Nuove regole sullo scambio di informazioni e sulla cooperazione internazionale*, 12 CORR. TRIB. 974 (2010); Piergiorgio Valente, *Lo scambio di informazioni su richiesta nelle fonti comunitarie*, 31 IL FISCO 4987 (2010); *id.*, *Lo scambio di informazioni spontaneo nelle fonti internazionali e sovranazionali*, 32 IL FISCO 5170 (2010); *id.*, *I Tax Information Exchange Agreements (TIEAs) Disposizioni OCSE su scambio di informazioni con paradisi fiscali*, 35 IL FISCO 5781 (2009).

A Contracting State cannot use the instrument provided by Article 26 either to get information that it would not have been able to obtain under its domestic law or to have information in violation of the domestic law of the Contracting State.

Furthermore, according to Paragraph 3, in no case can the instrument of exchange of information compel the other Contracting State to violate its domestic rules, or to reveal information covered by secret for trade, business, industrial, commercial or professional reasons, or to reveal information that is contrary to public policy.

Article 27 (Assistance in the collection of taxes).

Under the point of view of a country, it is very hard to recover taxes acting on the assets situated overseas.

In fact, it can happen that taxpayers transfer their property to a foreign country to impair tax recovery by the state of residence.

On this topic, Article 27 requires the Contracting States to assist "each other in the collection of revenue claims."

This obligation of assistance goes beyond the limitations provided by Articles 1 (Persons covered) and 2 (Taxes covered). As a consequence the states can assist each other to collect taxes from taxpayers that are not residents of one of the Contracting Countries, and taxes can be different than those listed in Article 2 (Taxes covered).

The state that receives a request on assistance from another state must proceed according to the rules of its domestic law.

It should be noted that Article 27 provides part of the same limitations as those Article 26 includes about the exchange of information. In fact, according to Paragraph 7, in no case can a Contracting State be compelled to adopt measures that violate its domestic rules or that are contrary to public policy.

Moreover, in no case can a Contracting State be obliged to assist another country if the advantage that it will have is less than its disadvantage, and if the required country has not adopted all the reasonable measures to collect taxes or conservancy assets of taxpayers.

Paragraph 5 underlines that the request of assistance in the collection of taxes will not have any priority in the received country under its domestic law.

Finally, assistance in tax recovery can have several forms, such as, the exchange of documents, the exchange of information, the conservancy of assets, the seizures of assets, etc.

Article 28 (Members of diplomatic missions and consular posts).

This Article confirms the special *status* recognized to "members of diplomatic missions or consular posts" that under the provisions of the tax convention cannot suffer a treatment worse than that one they have under the general rules of international law or under the provisions of other special agreements.

Article 29 (Territorial extension).

According to this Article, the Contracting States can agree to extend some or all provisions included in their tax convention to third states that are strictly related to one of the States of the Convention.

The only limitation provided by Article 29 is that the third state must impose "taxes substantially similar in character to those to which the Convention applies."

The Contracting States must agree to all conditions of such extension, including the duration.

Article 30 (Entry into force) and **Article 31 (Termination)** focus on the ratification of the tax convention, its termination, and the procedures for each.

In conclusion of our analysis of the dispositions of the OECD model tax convention, I want to underline the relationship of them and the Italian domestic law, mentioning a sentence of the Italian Supreme Court., case no. 112, 2000, in which we can be read "quanto al modello OCSE in materia di doppie imposizioni, esso non contiene norme direttamente applicabili nell'ordinamento interno ma, come ritenuto dalla Corte di Giustizia CE (sentenza 12 maggio 1998, C - 336-96, punto 24 della motivazione) proprio in relazione ai problemi suscitati dall'inserimento delle convenzioni sulla doppia imposizione nel sistema comunitario, costituisce, appunto, soltanto un modello che può ispirare gli Stati membri nella conclusione di convenzioni bilaterali. Nè può riconoscersi un principio "della nazione più favorita", il quale, secondo la controricorrente, determinerebbe l'automatica estensione al caso di specie di altre convenzioni bilaterali contro la doppia imposizione, nelle quali è prevista espressamente la loro applicabilità all'ILOR. Il diritto internazionale consuetudinario non conosce, infatti, una simile estensione, al di fuori di una specifica clausola inserita nei trattati, clausola che non esiste nella Convenzione de qua. Nè pare condivisibile la tesi, sostenuta da isolata dottrina, che tutte le convenzioni bilaterali in materia di doppia imposizione concluse tra Paesi membri della Comunità Europea contengano implicitamente una simile clausola. In definitiva, soltanto il diritto positivo nazionale può fornire la risposta al quesito, non potendo riconoscersi, nè al modello OCSE, nè al Protocollo, una funzione qualificatoria riservata al diritto nazionale." [94]

3.3 The United Nations (UN) model tax convention.

The last update of the "UN Model Double Taxation Convention between Developed and Developing Countries" was released in 2001,[95] thus almost ten years before the last update of the OECD model.

Its structure is almost the same as the structure of the OECD model tax convention, and its content is similar.[96]

[94] Italian Supreme Court (Corte di Cassazione), case no. 112, 2000, in Boll.Trib. 2000, at 1026.
[95] It should be noted that a panel of experts is working towards a revised UN Model Double Taxation Convention, including the Commentaries.

Similar to the OECD model, the UN model consists of seven chapters, each including one or a group of articles.[97]

Our intention is analyzing only the remarkable differences from the OECD model tax convention dispositions.

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[96] See, on the topic, IFA, UN DRAFT MODEL TAX CONVENTION (1979); W. Wijnen & M. Magenta, *The U.N. Model in Practice,* BULL. INT'L FISC. DOC. 574 (1997); J. Owens, *The Main Differences between the OECD and the United Nations Model Conventions, in* OECD PROCEEDINGS: TAX TREATIES-LINKEAGES BETWEEN OECD MEMBER COUNTRIES AND DYNAMIC NON MEMBER-ECONOMIES (1996); E. van Der Bruggen, *Preliminary look at the new UN Model Tax Convention,* BRIT. TAX REV. 119 (2002).

[97] Summary of the convention:
"Title and Preamble
Chapter I: Scope of the Convention
Article 1 Persons covered
Article 2 Taxes covered
Chapter II : Definitions
Article 3 General definitions
Article 4 Resident
Article 5 Permanent establishment
Chapter III: Taxation of income
Article 6 Income from immovable property
Article 7 Business profits
Article 8 Shipping, inland waterways transport and air transport (alternative A)
Article 8 Shipping, inland waterways transport and air transport (alternative B)
Article 9 Associated enterprises
Article 10 Dividends
Article 11 Interest
Article 12 Royalties
Article 13 Capital gains
Article 14 Independent personal services
Article 15 Dependent personal services
Article 16 Directors' fees and remuneration of top-level managerial officials
Article 17 Artistes and sportspersons
Article 18 Pensions and social security payments (alternative A)
Article 18 Pensions and social security payments (alternative B)
Article 19 Government service
Article 20 Students
Article 21 Other income
Chapter IV: Taxation of capital
Article 22 Capital
Chapter V: Methods for elimination of double taxation
Article 23 A Exemption method
Article 23 B Credit method
Chapter VI: Special provisions
Article 24 Non-discrimination
Article 25 Mutual agreement procedure
Article 26 Exchange of information
Article 27 Members of diplomatic missions and consular posts
Chapter VII: Final provisions
Article 28 Entry into force
Article 29 Termination."

Article 3 (General definitions).

Different than the same article of the OECD model tax convention, Article 3 of the UN model does not provide any definition of the terms "enterprise" and "business." However, the definition of "enterprise" is included in the definition of "enterprise of a Contracting State" and the definition of "business" is written in other articles of the UN model.

Article 4 (Resident).

The only difference in respect of the same article of the OECD model is that according to Article 4 of the UN model the place of incorporation is relevant to establish the residence of a person.

Article 5 (Permanent establishment).

This Article presents some differences from the same article of the OECD model. Paragraph 3 includes in the definition of "permanent establishment" supervisory activities, as well as, the furnishing of services (including consultancy services), if they continue for a period of more than six months.

Moreover, Paragraph 4 excludes from the definition of "permanent establishment" the activity of delivery of goods or merchandise belonging to the enterprise.

Article 5(5) of the UN model extends the ambit of the dependent agent permanent establishment by including the situation where the agent "has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise."

Furthermore, Article 5(6) provides a special rule for insurance agents.[98]

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[98] Article 5(6) states "notwithstanding the preceding provisions of this article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies."

Article 5(7) of the UN model is similar to Article 5(6) of the OECD model, but it offers further specifications, clarifying “however, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, he will not be considered an agent of an independent status within the meaning of this paragraph.”

Article 5(8) of the UN model is equal to Article 5(7) of the OECD model.

Article 6 (Income from immovable property).

Article 6(4) of the UN model extends the OECD version of the same Paragraph “to income from immovable property used for the performance of independent personal services.”

Article 7 (Business profits).

Article 7 of the UN model is similar to the previous version of Article 7 of the OECD model,[99] but it should be considered that the UN model is under revision.

However, the most important difference between Article 7 of the OECD model and the same one of the UN model is that Article 7 of the UN model includes a “force of attraction” rule,[100] which means that, differently than the OECD model, it contains a disposition which is intended to impair a non-resident, that acts through a permanent establishment, to operate some transactions overseas, without using the permanent establishment.

[99] Article 7 of the OECD model has been totally modified under the last update of the OECD model tax convention. For the previous version of Article 7 of the OECD model see *supra* note 88.
[100] According to B. LARKING (ed.), *supra* note 13 “force of attraction” is a “concept under which a permanent establishment is taxed by the country in which it is located not only on the income and property, but also on all income derived by its foreign head office from sources in, and all property owned by the foreign head office situated in the country where the permanent establishment is located.”

To attack such avoidance activities, Article 7(1) of the UN model allows the country of source to tax, as profits of the permanent establishment, sales or other business activities carried on in the country of source and that are of "the same or similar kind as those effected through that permanent establishment."

Article 8 (Shipping, inland waterways transport and air transport).

The UN model includes two alternatives for Article 8.

Alternative A is equal to Article 8 of the OECD model.

Alternative B, differently than Article 8 of the OECD model, distinguishes the treatment of aircraft from the one of ships. In fact, it states that when the shipping activities in a Contracting State, that is different than the one in which the place of effective management of the enterprise is situated, arising from the operation of ships in international traffic are more than casual, in that case "such profits may be taxed in that other State."[101]

Article 9 (Associated enterprises).

Article 9 of the UN model adds one more paragraph to the text of Article 9 of the OECD model.

In fact, Paragraph 3 of Article 9 of the UN model declares that the adjustment rule provided by Paragraph 2 shall not apply if a legal proceeding has stated that "one of the enterprises concerned is liable to penalty with respect to fraud, gross negligence or willful default."

Article 10 (Dividends).

Different than the same article of the OECD model, Article 9 of the UN model allows the Contracting States to establish through bilateral

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[101] Article 8 (alternative B)(2) states: "Profits from the operation of ships in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated unless the shipping activities arising from such operation in the other Contracting State are more than casual. If such activities are more than casual, such profits may be taxed in that other State. The profits to be taxed in that other State shall be determined on the basis of an appropriate allocation of the overall net profits derived by the enterprise from its shipping operations. The tax computed in accordance with such allocation shall then be reduced by ___ per cent. (The percentage is to be established through bilateral negotiations.)".

negotiations the percentage of the gross amount of the dividends "if the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends" and "in all other cases."

Moreover, Article 10 of the UN model considers the situation in which the beneficial owner acts through a permanent establishment or performs independent personal services from a fixed base equal.

Finally, it should be noted that Article 10 of the UN model contains a link to Article 14; this link has been deleted in the OECD model.

Article 11 (Interest).

The same considerations written on Article 10 can be reported on Article 11.

Article 12 (Royalties).

The same considerations written on Article 10 can be reported on Article 12.

Moreover, it should be noted that different than the same Article of the OECD model, Article 12 of the UN model allows the country of residence to tax foreign royalties derived by its residents. At the same time it also allows the country of source to tax the same royalties, but subject to some restrictions on the tax amount.

Article 12(3) of the UN model extends the definition of the term "royalties," also including "films or tape used for radio or television broadcasting" and "for the use of, or the right to use, industrial, commercial or scientific equipment."

Different from the OECD model, the UN model includes a paragraph[102] in which it deals with the meaning of the words "arising in."

[102] **Article 12(5)** of the UN model states "royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such

Article 13 (Capital gains).

Article 13 of the UN model contains a regulation of the gains from the alienation of shares derived from immovable property situated in the country of source partially different than that provided by Article 13 of the OECD model.

In fact, Article 13 of the UN model includes in the same context either shares derived from immovable property situated in the country of source either "an interest in a partnership, trust or estate," and provides the only limit that the property of both of them must "consist directly or indirectly principally of immovable property situated" in the country of source.

Thus, this Article contains a "principally" test, whose meaning is clarified in Paragraph 4(2), according to that "for the purposes of this paragraph, "principally" in relation to ownership of immovable property means the value of such immovable property exceeding 50 per cent of the aggregate value of all assets owned by the company, partnership, trust or estate."

Article 13(5) of the UN model states that in case of gains from the alienation of shares other than those covered by Article 13(4), it must apply the residual rule provided by Article 13(6) of the UN model, according to that the right to tax belongs to the country of residence.

Finally, Article 13(6) of the UN model is equal to Article 13(5) of the OECD model.

Article 14 (Independent personal services).

This Article[103] has been deleted in the OECD model because under the point of view of the "OECD Committee on Fiscal Affairs" income

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royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated."

[103] **Article 14** of the UN model states "1.Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:

derived from independent personal services, meaning personal services that are independent from an employment relationship, are one kind of business income, thus they fall within Article 7 (Business profits).

However, as Article 15 provides the rule about taxation of income arising from an employment relationship, it is very common that Contracting States include in their tax conventions an article that provides the rule about taxation of income arising from cross-border independent personal services.

The main rule provided by Article 15 is that the right to tax income derived by independent personal services belongs to the country of residence. There are some exceptions to the main rule. In fact, the country of source may tax these activities if they are performed from a fixed base, or if the resident that provides these services stays in the country of source "for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned."

In those cases the right of taxing of the country of source is limited; in fact, it can tax only income that is attributable to the fixed base, and only income that is derived from the activities performed in the country of source.

Article 14(2) provides the definition of "professional services" for the purpose of the OECD model tax convention, but does not provide a definition of "fixed base," that should be obtained from the domestic tax law of the country of source.

(a) If he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or

(b) If his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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).

This article is almost equal to Article 15 of the OECD model. The title is different; in fact, Article 15 of the OECD model is titled “income from employment.”

Moreover, in Article 15 of the UN model the concept of “fixed place” is associated with the concept of “permanent establishment.”

Article 16 (Directors’ fees and remuneration of top-level managerial officials).

This Article provides the same rule written in Article 16 of the OECD model, but distinguishes between “board of directors” and “top-level managerial position,” which may both be taxed in the state of residence of the company.

In fact, Paragraph 2 of this Article addresses the taxation of the remuneration of top-level managerial officials.

Consequently, different than the same Article of the OECD model the title of Article 16 of the UN model also includes “remuneration of top-level managerial officials.”

Article 17 (Artistes and sportspersons).

The only difference with Article 17 of the OECD model is that in Article 17 of the UN model there is a link to Article 14 that has been deleted in the OECD model.

Article 18 (Pensions and social security payments).

The UN Model includes two alternatives for Article 18.

Different than the same Article of the OECD model, Article 18 of the UN model in both alternative texts addresses pensions, as well as, social security payments.

Moreover, in both alternative texts the main rule is that the right of taxing belongs to the country of residence, and in both alternative texts the country of source has the right to tax “pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political subdivision or a local authority."

Article 18 (alternative B) adds to the text of Article 18 (alternative A) "pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment" may be also taxed in the country of source "if the payment is made by a resident of that other State or a permanent establishment situated therein."

Article 19 (Government service).

In a way different than the same Article of the OECD model, Article 19 of the UN model expressly excludes pensions from the rule established in its Paragraph 1, but it addresses them in the Paragraph 2 without associating them to "other similar remuneration," as done by Article 19 of the OECD model.

Article 20 (Students).

The only difference in respect to the same Article of the OECD model is that Article 20 of the UN model also mentions "business trainee" in addition to "student" and "business apprentice."

Article 21 (Other income).

Different than the same Article of the OECD model, in Article 21 of the UN model the concept of "fixed base" is associated with the concept of "permanent establishment."

Moreover, there is a link to Article 14 that has been deleted in the OECD model.

Finally, it also allows the country of source to tax "items of income of a resident of a Contracting State not dealt with in the foregoing articles of this Convention and arising in the" country of source.

Article 22 (Capital).

Similar to other articles of the UN model, Article 22 associates the concepts of "fixed base" and "independent personal services performed from a fixed base" with the concept of "permanent establishment."

Furthermore, there is a link to Article 14 that has been deleted in the OECD model.

Article 22(4) of the UN model adds to Article 22(4) of the OECD model that bilateral negotiations must regulate “the question of the taxation of the capital represented by immovable property and movable property and of all other elements of capital of a resident of a Contracting State.”

Article 25 (Mutual agreement procedure).

This Article of the UN model adds to the same Article of the OECD model encouragement to the competent authorities of the Contracting States to implement the mutual agreement procedures provided for in this Article by developing either appropriate bilateral or appropriate unilateral procedures, conditions, methods and techniques.

Article 25 of the UN model omits Paragraph 5 of Article 25 of the OECD model that includes the procedure of “arbitration.”

Article 26 (Exchange of information).

The content of Article 26 of the UN model is substantially the same as that of Paragraphs 1, 2 and 3 of Article 26 of the OECD model, but it is written differently.

Article 26 of the UN model omits Paragraphs 4 and 5 of Article 26 of the OECD model. As a result, some restrictions to the instrument of exchange of information are not present.

Nevertheless, Article 26 of the UN model, similar to Article 25 of the UN model, adds to the same Article of the OECD model encouragement to the competent authorities of the Contracting States to “develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchanges of information shall be made, including, where appropriate, exchanges of information regarding tax avoidance.”

Article 27 (Members of diplomatic missions and consular posts).

This article is equal to Article 28 of the OECD model.

Finally, it must be pointed out that in the UN model there is no mention of the assistance in the collection of taxes. In fact, Article 27 (Assistance in the collection of taxes) is not present. Moreover, Article 29 (Territorial extension) of the OECD model is not included in the UN model.

Consequently, the UN model contains only twenty nine articles.

Article 28 (Entry into force) of the UN model is equal to Article 30 of the OECD model; and **Article 29 (Termination)** is equal to Article 31 of the OECD model**.**

CHAPTER 4

THE U.S. MODEL INCOME TAX CONVENTION: THE EXAMPLE OF THE CONVENTION BETWEEN THE UNITED STATES AND ITALY

4.1 The United States (U.S.) model income tax convention.

The last update of the U.S. model income tax convention was released on November 15, 2006.

Different than the OECD model tax convention and the UN model double taxation convention, the U.S. model income tax convention has no chapters. It consists of twenty nine articles,[104] and its content presents several differences from the OECD and the UN models.

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[104] Summary of the convention:
"Article 1 General scope
Article 2 Taxes covered
Article 3 General definitions
Article 4 Resident
Article 5 Permanent establishment
Article 6 Income from real property
Article 7 Business profits
Article 8 Shipping and air transport
Article 9 Associated enterprises
Article 10 Dividends
Article 11 Interest
Article 12 Royalties
Article 13 Capital gains
Article 14 Income from employment
Article 15 Directors' fees
Article 16 Entertainers and sportsmen
Article 17 Pensions, social security, annuities, alimony, and child support
Article 18 Pension funds
Article 19 Government service
Article 20 Students and trainees
Article 21 Other income
Article 22 Limitation on benefits
Article 23 Relief from double taxation
Article 24 Non-discrimination
Article 25 Mutual agreement procedure
Article 26 Exchange of information and administrative assistance
Article 27 Members of diplomatic missions and consular posts
Article 28 Entry into force
Article 29 Termination."

As I have done for the UN model, our intention is analyzing only the remarkable differences from the OECD model tax convention dispositions.[105]

Article 1 (General scope).

The title of this Article, as well as its content, is different than the same article of the OECD model. In fact, Paragraphs 2,3,4,5, and 6 are not present in the OECD model.

It should be noted that Paragraph 1 contains a rule of exception, meaning that according to it the convention "shall apply only to persons who are residents of one or both of the Contracting States, except as otherwise provided in the Convention."

Paragraph 2 establishes the supremacy of the domestic law and any other agreement to which the Contracting States are parties, except to some dispositions of the General Agreement on Trade in Services specified in Paragraph 3.

Paragraph 4 says that a Contracting State can tax its residents or its citizens as if the tax convention between U.S. and Italy had never existed; at the same time it provides the chance that a former citizen or a former long-term resident of a Contracting State can ask to be taxed "in accordance with the laws of that Contracting State," even if no longer a resident or a citizen.

The power given to a Contracting State by Paragraph 4 is limited by Paragraph 5, which lists some dispositions that cannot be infringed.

Paragraph 6 addresses the issue of entities that are fiscally transparent, such as partnerships and some trusts. This Paragraph applies to any resident of a Contracting State who is entitled to income derived

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[105] See, on the topic, Yoseph Edrey & Shmuel Shani, *The U.S. Taxation of Aliens*, 21 CAP. U. L. REV. 121 (1992); Charles H. Gustafson, *Tax Treaties in the Americas: The United States Experience, in* INTERNATIONAL TAX LAW (Andrea Amatucci ed., 2006), at 183; Roberto D. Klock, *The Role of United States Income Tax Treaties: Two Spheres of Negotiations*, 13 TEX. INT'L L. J. 387 (1977-1978); William J. Nolan, Jr., *The Tax Reform Act of 1976: Treatment of Foreign Income and Effects on U.S. Development of Foreign Mineral Resources*, 6 DENV. J. INT'L L. & POL'Y 635 (1976-1977); Martin Norr, *supra* note 2, at 431.

through an entity that is treated as fiscally transparent under the laws of either Contracting State.[106]

Article 2 (Taxes covered).

The main differences from the same Article of the OECD model are that in Article 2 of the U.S. model the link to the "taxes on capital" is not present, as well as the link to the "political subdivisions or local authorities."

Article 3 (General definitions).

The definition of "person" provided by Paragraph 1 of this Article includes "an estate, a trust, a partnership."

The definition of "company" contains a link to the definition provided by the domestic law of the state in which it is organized.

In the definition of "enterprise of a Contracting State" the link to the entity "that is treated as fiscally transparent" is present.

In the U.S. model there is the definition of "pension fund"[107] that is not present in the OECD model.

Finally, Paragraph 2 of Article 3 of the U.S. model states the chance that the competent authorities of the Contracting States can agree to a common meaning of a term included in the Convention.

Article 4 (Resident).

According to this Article, the concepts of "citizenship" and "place of incorporation" are relevant to establish if a person is "resident of a Contracting State" for the purpose of the U.S. model tax convention.

Paragraph 2 specifies that a pension fund or organization that has religious, charitable, scientific, artistic, cultural, or education purposes must be treated as a "resident of a Contracting State."

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[106] See TECHNICAL EXPLANATION ACCOMPANYING THE UNITED STATES MODEL INCOME TAX CONVENTION OF NOVEMBER 15, 2006, at 6.

[107] "The term "pension fund" means any person established in a Contracting State that is:
i) generally exempt from income taxation in that State; and
ii) operated principally either:
A) to administer or provide pension or retirement benefits; or
B) to earn income for the benefit of one or more persons described in clause A)."

Paragraphs 4 and 5 are not present in the OECD model. Especially, Paragraph 4 addresses the issue of a double resident company and Paragraph 5 addresses the issue of a double resident person other than an individual or a company. In both cases "the competent authorities of the Contracting States shall endeavor to determine the mode of application of the Convention."

Article 6 (Income from real property).

This Article uses the term "real property" instead of "immovable property."

Moreover, Article 6 of the U.S. model adds one more paragraph to the text of the same Article of the OECD model. In fact Paragraph 5 provides for the chance that a resident of one Contracting State, that derives real property income from the other, has decided, for any taxable year, to be subject to taxes in that other state on a net basis.

Article 7 (Business profits).

Similar to the same Article of the UN model, Article 7 of the U.S. model is similar to the previous version of Article 7 of the OECD model,[108] but it should be considered that the last update of the U.S. model income tax convention is previous to the last update of the OECD model.

The main rule dictated by Article 7(1) has not a "force of attraction;" in other words, all revenue of the corporation originating in the country of source and related to the permanent establishment in that state, e.g. interest and dividends, will not be automatically attributed to the permanent establishment. In fact, Article 7(2) states that the profits to be attributed to a permanent establishment are those which "it might be expected to make."

Thus, for the purpose of the U.S. model tax convention the permanent establishment is considered to be a separate enterprise, even

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[108] Article 7 of the OECD model has been totally modified under the last update of the OECD model tax convention. For the previous version of Article 7 of the OECD model see *supra* note 88.

though legally it is not a different entity than the corporation, and it is only a presence in the state of source (this is the separate entity approach).

The business profits of the permanent establishment are determined by considering it as a separate company, even though I have already clarified that legally it is not a different entity.

Paragraph 7 provides for a special provision that is not included in the same Article of the OECD model, according to which the effects of the operations acted by a permanent establishment can be taxable in the Contracting State where such permanent establishment was situated, even if the permanent establishment no longer exists. This rule applies with respect to Paragraphs 1 and 2 of Article 7 (Business Profits), Paragraph 6 of Article 10 (Dividends), Paragraph 4 of Article 11 (Interest), Paragraph 3 of Articles 12 (Royalties) and 13 (Gains) and Paragraph 2 of Article 21 (Other Income).

Article 8 (Shipping and air transport).

This Article is different than the same Article of the OECD model because in the U.S. model there is no link to the concept of "place of effective management." As a consequence the general rule provided by Article 4 should be applied to establish the state of the enterprise that obtains profits from the operation of ships or aircraft.

Paragraph 2 contains a list of activities that must be treated as "profits from the operation of ships and aircraft."

Paragraph 3 states an exception to the general rule provided by Paragraph 1 in case of containers that are "used for transport solely between places within the other Contracting State." In that case profits derived by the operations involved those containers are not taxable by the state of the enterprise but they are taxable by the state within which the transportation happens.

Article 10 (Dividends).

This Article, as well, is different than the same Article of the OECD model. Firstly, in Paragraph 2 the partnership is not mentioned, meaning that it is included in the concept of “company.”

The percentage of the voting stock of the company paying the dividends that the corporation must own directly, in order to apply the rule provided by Paragraph 2, is different than the one included in the same Article of the OECD model.

The general rule according to which dividends can be taxed by the country of residence of the shareholders is the same as the one stated in Article 10 of the OECD model. Paragraphs 5 and 6 of Article 10 of the U.S. model have the same content as Paragraphs 3 and 4 of Article 10 of the OECD model.

Article 10 of the U.S. model adds three more paragraphs to the text of the same Article of the OECD model; in fact, Paragraphs 3 and 4 of Article 10 of the U.S. model list some exceptions to the rule provided in Paragraph 2.

The main difference between the U.S. model and the OECD model concerns the “branch profit tax.” Different from the OECD model, Paragraph 7 of the U.S. model states the supremacy of the rule included in Paragraph 8 that expressly provides the chance to impose a branch profits tax on profits of a foreign permanent establishment, similarly to the tax on dividends given by a subsidiary to its parent.[109]

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[109] Article 10 (8) of the U.S. model states “a) A company that is a resident of one of the States and that has a permanent establishment in the other State or that is subject to tax in the other State on a net basis on its income that may be taxed in the other State under Article 6 (Income from Real Property) or under paragraph 1 of Article 13 (Gains) may be subject in that other State to a tax in addition to the tax allowable under the other provisions of this Convention.
b) Such tax, however, may be imposed:
i) on only the portion of the business profits of the company attributable to the permanent establishment and the portion of the income referred to in subparagraph a) that is subject to tax under Article 6 or under paragraph 1 of Article 13 that, in the case of the United States, represents the dividend equivalent amount of such profits or income and, in the case of -------, is an amount that is analogous to the dividend equivalent amount; and
ii) at a rate not in excess of the rate specified in paragraph 2 a)”.

Article 11 (Interest).

This Article contains some differences from the same Article of the OECD model. In fact, even thought the main rule provided by Paragraph 1 is the same, the term "paid to a resident of the other Contracting State" is replaced by the term "beneficially owned by a resident of the other Contracting State;" as a consequence the effect of the main rule broadens.

Moreover, Article 11(2)[110] of the U.S. model provides two anti-abuse exceptions to the main rule written in Paragraph 1. The first exception concerns the so-called "contingent interest." The second exception concerns the real estate mortgage investment.[111]

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[110]Article 11(2) of the U.S. model states "notwithstanding the provisions of paragraph 1:
a) interest arising in ---------- that is determined with reference to receipts, sales, income, profits or other cash flow of the debtor or a related person, to any change in the value of any property of the debtor or a related person or to any dividend, partnership distribution or similar payment made by the debtor or a related person may be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the beneficial owner is a resident of the other Contracting State, the interest may be taxed at a rate not exceeding 15 percent of the gross amount of the interest;
b) interest arising in the United States that is contingent interest of a type that does not qualify as portfolio interest under United States law may be taxed by the United States but, if the beneficial owner of the interest is a resident of ----------, the interest may be taxed at a rate not exceeding 15 percent of the gross amount of the interest; and
c) interest that is an excess inclusion with respect to a residual interest in a real estate mortgage investment conduit may be taxed by each State in accordance with its domestic law".

[111] See "Technical explanation accompanying the United States model income tax convention of November 15, 2006", p.39, in which it is possible to read: "Paragraph 2 provides anti-abuse exceptions to the source-country exemption in paragraph 1 for two classes of interest payments.
The first class of interest, dealt with in subparagraphs (a) and (b) is so-called "contingent interest." With respect to the other Contracting State, such interest is defined in subparagraph (a) as any interest arising in that State that is determined by reference to the receipts, sales, income, profits or other cash flow of the debtor or a related person, to any change in the value of any property of the debtor or a related person or to any dividend, partnership distribution or similar payment made by the debtor or a related person. Any such interest may be taxed in that Contracting State according to the laws of that State. If the beneficial owner is a resident of the other Contracting State, however, the gross amount of the interest may be taxed at a rate not.
exceeding 15 percent. With respect to interest arising in the United States, subparagraph (b) refers to contingent interest of a type that does not qualify as portfolio interest under U.S. domestic law. The cross-reference to the U.S. definition of contingent interest, which is found in section 871(h)(4) of the Code, is intended to ensure that the exceptions of section 871(h)(4)(c) will be applicable.
The second class of interest is dealt with in subparagraph c) of paragraph 2. This exception is consistent with the policy of Code sections 860E(e) and 860G(b) that excess inclusions with respect to a real estate mortgage investment conduit (REMIC) should bear full U.S. tax in all cases. Without a full tax at source foreign purchasers of residual interests would have a competitive advantage over U.S. purchasers at the time these interests are initially offered. Also, absent this rule, the U.S. Fisc would suffer a revenue loss with respect to mortgages held in a

The definition of the term “interest” provided in Paragraph 3 expressly includes “all other income that is subjected to the same taxation treatment as income from money lent by the taxation law of the Contracting State in which the income arises;” in addition it expressly excludes “income dealt with in Article 10 (Dividends).”

Finally, any link to the permanent establishment is deleted, because of the absence of Paragraph 5 of Article 11 of the OECD model.

Article 12 (Royalties).

The only difference with the same Article of the OECD model is that the U.S. model includes in the definition of the term “royalties” provided by Paragraph 2 “gain derived from the alienation of any property described in subparagraph a), to the extent that such gain is contingent on the productivity, use, or disposition of the property.”

Article 13 (Capital gains).

This Article is totally different. The term “immovable property” is always replaced by the term “real property.”

Paragraph 2 provided a definition of the term “real property situated in the other Contracting States” that is not present in the OECD model.[112]
Paragraphs 3 and 6 of Article 13 of the U.S. model have the same content as Paragraphs 2 and 5 of Article 13 of the OECD model.

Article 13 of the U.S. model adds two more paragraphs to the text of the same Article of the OECD model.

REMIC because of opportunities for tax avoidance created by differences in the timing of taxable and economic income produced by these interests”.

[112] Article 13 (2) of the U.S. Model states: “For the purposes of this Article the term "real property situated in the other Contracting State" shall include:
a) real property referred to in Article 6 (Income from Real Property);
b) where that other State is the United States, a United States real property interest; and
c) where that other State is ------,
i) shares, including rights to acquire shares, other than shares in which there is regular trading on a stock exchange, deriving their value or the greater part of their value directly or indirectly from real property referred to in subparagraph a) of this paragraph situated in --------; and
ii) an interest in a partnership or trust to the extent that the assets of the partnership or trust consist of real property situated in --------, or of shares referred to in clause i) of this sub-paragraph.”

In fact, Paragraph 4 regulates gains derived by the alienation of ships or aircraft, and Paragraph 5 concerns gains derived by the alienation of containers.

Article 16 (Entertainers and sportsmen).

After expressing the main rule according to which entertainers and sportsmen, though employees, are not taxed according to Articles 7 and 14, but rather by the country of source, Article 16 of the U.S. model provides an exception different than the same Article of the OECD model.

In fact, it states that the main rule will not apply if "the amount of the gross receipts derived by such entertainer or sportsman, including expenses reimbursed to him or borne on his behalf, from such activities does not exceed twenty thousand United States dollars ($20,000) or its equivalent in ---------- for the taxable year of the payment."

Paragraph 2 provides one more exception in case that "the contract pursuant to which the personal activities are performed allows that other person to designate the individual who is to perform the personal activities."

Article 17 (Pensions, social security, annuities, alimony, and child support).

Article 18 of the OECD model includes a very short regulation of "pensions."

The U.S. model addresses the issue of pensions in two different Articles (17 and 18), which provide a very detailed regulation of "pensions, social security, annuities, alimony, and child support" (Article 17)[113] and

[113] **Article 17** (Pensions, social security, annuities, alimony, and child support) states "1.a) Pensions and other similar remuneration beneficially owned by a resident of a Contracting State shall be taxable only in that State.
b) Notwithstanding subparagraph a), the amount of any such pension or remuneration arising in a Contracting State that, when received, would be exempt from taxation in that State if the beneficial owner were a resident thereof shall be exempt from taxation in the Contracting State of which the beneficial owner is a resident.
2. Notwithstanding the provisions of paragraph 1, payments made by a Contracting State under provisions of the social security or similar legislation of that State to a resident of the other

"pension funds" (Article 18).[114]

Contracting State or to a citizen of the United States shall be taxable only in the first-mentioned State.
3. Annuities derived and beneficially owned by an individual resident of a Contracting State shall be taxable only in that State. The term "annuities" as used in this paragraph means a stated sum paid periodically at stated times during a specified number of years, or for life, under an obligation to make the payments in return for adequate and full consideration (other than services rendered).
4. Alimony paid by a resident of a Contracting State to a resident of the other Contracting State shall be taxable only in that other State. The term "alimony" as used in this paragraph means periodic payments made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, which payments are taxable to the recipient under the laws of the State of which he is a resident.
5. Periodic payments, not dealt with in paragraph 4, for the support of a child made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, paid by a resident of a Contracting State to a resident of the other Contracting State, shall be exempt from tax in both Contracting States".

[114] **Article 18** (Pension funds) states: "1. Where an individual who is a resident of one of the States is a member or beneficiary of, or participant in, a pension fund that is a resident of the other State, income earned by the pension fund may be taxed as income of that individual only when, and, subject to the provisions of paragraph 1 of Article 17 (Pensions, Social Security, Annuities, Alimony and Child Support), to the extent that, it is paid to, or for the benefit of, that individual from the pension fund (and not transferred to another pension fund in that other State).
2. Where an individual who is a member or beneficiary of, or participant in, a pension fund that is a resident of one of the States exercises an employment or self-employment in the other State:
a) contributions paid by or on behalf of that individual to the pension fund during the period that he exercises an employment or self-employment in the other State shall be deductible (or excludible) in computing his taxable income in that other State; and
b) any benefits accrued under the pension fund, or contributions made to the pension fund by or on behalf of the individual's employer, during that period shall not be treated as part of the employee's taxable income and any such contributions shall be allowed as a deduction in computing the taxable income of his employer in that other State.
The relief available under this paragraph shall not exceed the relief that would be allowed by the other State to residents of that State for contributions to, or benefits accrued under, a pension plan established in that State.
3. The provisions of paragraph 2 of this Article shall not apply unless:
a) contributions by or on behalf of the individual, or by or on behalf of the individual's employer, to the pension fund (or to another similar pension fund for which the first-mentioned pension fund was substituted) were made before the individual began to exercise an employment or self-employment in the other State; and
b) the competent authority of the other State has agreed that the pension fund generally corresponds to a pension fund established in that other State.
4. a) Where a citizen of the United States who is a resident of ------ exercises an employment in ------- the income from which is taxable in -------, the contribution is borne by an employer who is a resident of ------- or by a permanent establishment situated in -----, and the individual is a member or beneficiary of, or participant in, a pension plan established in -----,
i) contributions paid by or on behalf of that individual to the pension fund during the period that he exercises the employment in --------, and that are attributable to the employment, shall be deductible (or excludible) in computing his taxable income in the United States; and
ii) any benefits accrued under the pension fund, or contributions made to the pension fund by or on behalf of the individual's employer, during that period, and that are attributable to the employment, shall not be treated as part of the employee's taxable income in computing his taxable income in the United States.
b) The relief available under this paragraph shall not exceed the lesser of:
i) the relief that would be allowed by the United States to its residents for contributions to, or benefits accrued under, a generally corresponding pension plan established in the United States;

The main rule is the same, meaning that pensions and other similar remuneration shall be taxed only by the country of residence.

Different than Article 18 of the OECD model, Article 17 of the U.S. model contains in Paragraph 1(b) and in Paragraph 2 some exceptions to the main rule.

Paragraph 3 provides for annuities the same general rule stated for pensions. It also includes a definition of annuities.

Paragraph 4 addresses in the same way the issue of the “alimony,” while Paragraph 5 addresses the issue of “periodic payments,” like child support, which, different than the other remuneration, are exempt from tax in each Contracting States.

Article 18 (Pension funds).

This Article extends the provisions of Article 18(6) of 1996 U.S. model. It addresses the issue of “pension funds,” and establishes three fundamental rules:

-cross-deductibility of pension contributions;

-tax exemption of pension plan earnings until distribution; and

-exemption of rollovers and transfers between plans.

It should be noted that the first rule is limited by three obligations: 1) the individual must predate in the other state his participation in the plan; 2) the plan must be comparable to pension plans in the other state; and 3) the effect of the provisions of the treaty must be more favorable than the benefits accorded by the other country.

The second rule (tax exemption of pension plan earnings until distribution) has no limitations. The third rule (exemption of rollovers and

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ii) the amount of contributions or benefits that qualify for tax relief in --------.
c) For purposes of determining an individual’s eligibility to participate in and receive tax benefits with respect to a pension plan established in the United States, contributions made to, or benefits accrued under, a pension plan established in ------ shall be treated as contributions or benefits under a generally corresponding pension plan established in the United States to the extent relief is available to the individual under this paragraph.
d) This paragraph shall not apply unless the competent authority of the United States has agreed that the pension plan generally corresponds to a pension plan established in the United States.”

transfers between plans) applies only to domestic transactions, not to cross-border ones.

Article 19 (Government service).

The main difference between the U.S. model and the OECD model is that Article 19 of the U.S. model expressly overrides Articles 14 (Income from Employment), 15 (Directors' Fees), 16 (Entertainers and Sportsmen), 17(1) (Pensions, Social Security, Annuities, Alimony, and Child Support), and 20 (Students and Trainees).

Article 20 (Students and trainees).

Even though this Article seems to extend its application with respect to the same Article of the OECD model, because it also applies to an apprentice or business trainee, its effects are more limited.

In fact, different than the same Article of the OECD model, Article 20 of the U.S. model requires that students, apprentice and business trainee must attend a full-time education or trainee.

Moreover, after stating the main rule according to which the payments of the students, apprentices and business trainees shall not be taxed in the state where they are studying or training, it limits the exemption for the last two categories to no more than one year from the date when they arrive in the country for the purpose of their training.

Paragraph 2 provides one more limitation stating that “a student or business trainee within the meaning of paragraph 1 shall be exempt from tax by the Contracting State in which the individual is temporarily present with respect to income from personal services in an aggregate amount equal to $9,000 or its equivalent in [ ] annually.”

Finally, Paragraph 3 includes a definition of a “business trainee” for the purpose of the U.S. model income tax convention.

Article 22 (Limitation on benefits).

This Article[115] includes a very singular provision of the U.S. model,

[115] **Article 22** of the U.S. model states "1.Except as otherwise provided in this Article, a resident of a Contracting State shall not be entitled to the benefits of this Convention otherwise accorded to residents of a Contracting State unless such resident is a "qualified person" as defined in paragraph 2.

2. A resident of a Contracting State shall be a qualified person for a taxable year if the resident is:

a) an individual;

b) a Contracting State, or a political subdivision or local authority thereof;

c) a company, if:

i) the principal class of its shares (and any disproportionate class of shares) is regularly traded on one or more recognized stock exchanges, and either:

A) its principal class of shares is primarily traded on one or more recognized stock exchanges located in the Contracting State of which the company is a resident; or

B) the company's primary place of management and control is in the Contracting State of which it is a resident; or

ii) at least 50 percent of the aggregate vote and value of the shares (and at least 50 percent of any disproportionate class of shares) in the company is owned directly or indirectly by five or fewer companies entitled to benefits under clause i) of this subparagraph, provided that, in the case of indirect ownership, each intermediate owner is a resident of either Contracting State;

d) a person described in paragraph 2 of Article 4 of this Convention, provided that, in the case of a person described in subparagraph a) of that paragraph, more than 50 percent of the person's beneficiaries, members or participants are individuals resident in either Contracting State; or

e) a person other than an individual, if:

i) on at least half the days of the taxable year, persons who are residents of that Contracting State and that are entitled to the benefits of this Convention under subparagraph a), subparagraph b), clause i) of subparagraph c), or subparagraph d) of this paragraph own, directly or indirectly, shares or other beneficial interests representing at least 50 percent of the aggregate voting power and value (and at least 50 percent of any disproportionate class of shares) of the person, provided that, in the case of indirect ownership, each intermediate owner is a resident of that Contracting State, and

ii) less than 50 percent of the person's gross income for the taxable year, as determined in the person's State of residence, is paid or accrued, directly or indirectly, to persons who are not residents of either Contracting State entitled to the benefits of this Convention under subparagraph a), subparagraph b), clause i) of subparagraph c), or subparagraph d) of this paragraph in the form of payments that are deductible for purposes of the taxes covered by this Convention in the person's State of residence (but not including arm's length payments in the ordinary course of business for services or tangible property).

3. a) A resident of a Contracting State will be entitled to benefits of the Convention with respect to an item of income derived from the other State, regardless of whether the resident is a qualified person, if the resident is engaged in the active conduct of a trade or business in the first-mentioned State (other than the business of making or managing investments for the resident's own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance company or registered securities dealer), and the income derived from the other Contracting State is derived in connection with, or is incidental to, that trade or business.

b) If a resident of a Contracting State derives an item of income from a trade or business activity conducted by that resident in the other Contracting State, or derives an item of income arising in the other Contracting State from a related person, the conditions described in subparagraph a) shall be considered to be satisfied with respect to such item only if the trade or business activity carried on by the resident in the first-mentioned Contracting State is substantial in relation to the trade or business activity carried on by the resident or such person in the other Contracting State. Whether a trade or business activity is substantial for the purposes of this paragraph will be determined based on all the facts and circumstances.

c) For purposes of applying this paragraph, activities conducted by persons connected to a person shall be deemed to be conducted by such person. A person shall be connected to another if one the so called "limitation on benefits" (LOB) clause.[116]

This disposition is intended to block the practice of the "treaty shopping," tolerated for many years by the U.S. Government.[117]

According to the *International Tax Glossary*,[118] treaty shopping "has been described as the situation where a person who is not entitled to the benefits of a tax treaty makes use - in the widest meaning of the word - of an individual or of a legal person in order to obtain those treaty benefits that are not available directly."

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possesses at least 50 percent of the beneficial interest in the other (or, in the case of a company, at least 50 percent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or another person possesses at least 50 percent of the beneficial interest (or, in the case of a company, at least 50 percent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in each person. In any case, a person shall be considered to be connected to another if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same person or persons.
4. If a resident of a Contracting State is neither a qualified person pursuant to the provisions of paragraph 2 nor entitled to benefits with respect to an item of income under paragraph 3 of this Article the competent authority of the other Contracting State may, nevertheless, grant the benefits of this Convention, or benefits with respect to a specific item of income, if it determines that the establishment, acquisition or maintenance of such person and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under this Convention.
5. For purposes of this Article:
a) the term "recognized stock exchange" means:
i) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under the U.S. Securities Exchange Act of 1934;
ii) stock exchanges of -------; and
iii) any other stock exchange agreed upon by the competent authorities;
b) the term "principal class of shares" means the ordinary or common shares of the company, provided that such class of shares represents the majority of the voting power and value of the company. If no single class of ordinary or common shares represents the majority of the aggregate voting power and value of the company, the "principal class of shares" are those classes that in the aggregate represent a majority of the aggregate voting power and value of the company
c) the term "disproportionate class of shares" means any class of shares of a company resident in one of the Contracting States that entitles the shareholder to disproportionately higher participation, through dividends, redemption payments or otherwise, in the earnings generated in the other State by particular assets or activities of the company; and
d) a company's "primary place of management and control" will be in the Contracting State of which it is a resident only if executive officers and senior management employees exercise day-to-day responsibility for more of the strategic, financial and operational policy decision making for the company (including its direct and indirect subsidiaries) in that State than in any other state and the staff of such persons conduct more of the day-to-day activities necessary for preparing and making those decisions in that State than in any other state."

[116] See on the topic, *ex plurimis*, Charles H. Gustafson, *supra* note 105, at 210.

[117] See on the topic, *ex plurimis*, William P. Streng, *"Treaty Shopping": Tax Treaty "Limitation of Benefits" issues*, 15 HOUS. J. INT'L L. 1 (1992-1993).

[118] B. LARKING (ed.), *supra* note 13.

According to the *Internal Revenue Service of the United States* “limitations on benefits provisions generally prohibit third country residents from obtaining treaty benefits. For example, a foreign corporation may not be entitled to a reduced rate of withholding unless a minimum percentage of its owners are citizens or residents of the United States or the treaty country.”

In spite of its length, Article 22 of the U.S. model contains a very simple main concept, according to which only a resident of a Contracting State, who is at the same time a “qualified person,” is entitled to treaty benefits.

Paragraph 2 clarifies the concept of “qualified person.” Unlike individuals, corporation or other entities may present some problems.

Paragraph 2(c and e) lists the conditions that a “company” and each “person other than an individual” must respect in order to be entitled to treaty benefits. It should be noted that a company (or other entity) that is a resident of a Contracting State is a “qualified person” if any one of the limitations written in Paragraph 2(c and e) are respected.

Especially, Paragraph 2(c)(i) addresses the issue of the “public corporations,” while Paragraph 2(c)(ii) and Paragraph 2(e) address the issue of the “private corporation” (corporation, partnership, or other entity), which will be a “qualified person” when both “the resident ownership test” and the so-called “base erosion test” are met.

Paragraph 2(d) states the conditions for pensions and the charities.

Paragraph 3 provides some exceptions to the general rule written in Paragraph 1. In fact, a resident of a Contracting State can claim the treaty benefits even though he or she is not a “qualified resident” if those benefits are connected to a trade or a business conducted by that taxpayer in the Contracting State.

The same rule applies even if the foreign taxpayer does not directly conduct the trade or business activity, but parties connected to that taxpayer conduct the activity. Paragraph 3 also clarifies when a person must be considered connected to another.

Paragraph 4 includes a "safety rule;" the competent authorities of each Contracting States can allow a foreign taxpayer the treaty benefits, even though it is not a "qualified person" according to Paragraph 2, and even though it does not fall under the conditions stated in Paragraph 3. This power is subjected to the limitation that "the establishment, acquisition or maintenance of such person and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under this Convention."

Paragraph 5 contains some definitions which are important for purposes of this Article.

Finally, it should be noted that LOB clauses could have strong interactions with the European Union law, as many times the Court of Justice of the European Union has underlined.[119]

Article 23 (Relief from double taxation).

I have already written about the main double taxation relief methods, when I have addressed the juridical double taxation and the mechanisms that have been found to avoid it.[120]

I also have already underlined that the OECD model offers the Contracting States the chance to decide between the exemption method, stated by Article 23 A, and the credit method, stated by Article 23 B. Under the OECD model these Articles are designed to be alternatives.

The U.S. model uses only the credit method, but Article 23 of the U.S. model is totally different from Article 23B of the OECD model;[121] it

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[119] See, *ex plurimis*, cases Open Skies C-466/98, C-467/98, C-468/98, C-469/98, C-471/98 and C-472/98.

[120] See *supra* § 1.2.

[121] **Article 23** of the U.S. model states "1.In the case of -------, double taxation will be relieved as follows:

2. In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the

follows the foreign tax credit provisions included in §§ 901 through 908 of the Internal Revenue Code.

Article 23(1 and 2) of the U.S. model allows a U.S. resident a credit against U.S. tax for the appropriate amount of tax paid to the other Contracting State. This credit must be in accordance with IRC and its limitation, as they are amended from time to time.

According to Paragraph 2(b) if a U.S. corporation owns at least 10 percent of the voting stock of a non-resident company, it is allowed on dividends generated from that company the same aforementioned credit; it is subjected to the same IRC limitations.

Moreover, Paragraph 2 underlines that for foreign tax credit purposes "the taxes referred to in paragraphs 3 a) and 4 of Article 2 (Taxes Covered) shall be considered income taxes."

United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income applicable to residents and citizens:
a) the income tax paid or accrued to ------ by or on behalf of such resident or citizen; and
b) in the case of a United States company owning at least 10 percent of the voting stock of a company that is a resident of -------- and from which the United States company receives dividends, the income tax paid or accrued to ------- by or on behalf of the payer with respect to the profits out of which the dividends are paid.
For the purposes of this paragraph, the taxes referred to in paragraphs 3 a) and 4 of Article 2 (Taxes Covered) shall be considered income taxes.
3. For the purposes of applying paragraph 2 of this Article, an item of gross income, as determined under the laws of the United States, derived by a resident of the United States that, under this Convention, may be taxed in ----- shall be deemed to be income from sources in -----.
4. Where a United States citizen is a resident of -------:
a) with respect to items of income that under the provisions of this Convention are exempt from United States tax or that are subject to a reduced rate of United States tax when derived by a resident of ------ who is not a United States citizen, ------- shall allow as a credit against -------- tax, only the tax paid, if any, that the United States may impose under the provisions of this Convention, other than taxes that may be imposed solely by reason of citizenship under the saving clause of paragraph 4 of Article 1 (General Scope);
b) for purposes of applying paragraph 2 to compute United States tax on those items of income referred to in subparagraph a), the United States shall allow as a credit against United States tax the income tax paid to -------- after the credit referred to in subparagraph a); the credit so allowed shall not reduce the portion of the United States tax that is creditable against the ----------- tax in accordance with subparagraph a); and
c) for the exclusive purpose of relieving double taxation in the United States under subparagraph b), items of income referred to in subparagraph a) shall be deemed to arise in ------- to the extent necessary to avoid double taxation of such income under subparagraph b)."

According to Paragraph 3, the corresponding credits must be given by the other Contracting State for U.S. taxes paid under the same circumstances.

Paragraph 4 provides some special rules for the tax treatment of income of U.S. citizens who are resident in the other Contracting State. These special rules are fundamental because the U.S. uses the "worldwide principle" to tax the income of its citizens; thus U.S. taxes them even though they are not residents.

Article 24 (Non-discrimination).

This Article replicates the content of the same Article of the OECD model, but it adds two important concepts.

Paragraph 1 underlines that "however, for the purposes of United States taxation, United States nationals who are subject to tax on a worldwide basis are not in the same circumstances as nationals of --------- who are not residents of the United States."

This statement is very important if we consider that Paragraph 2 of Article 24 of the OECD model, according to which "stateless persons who are residents of a Contracting State shall not be subjected in either Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of the State concerned in the same circumstances, in particular with respect to residence, are or may be subjected," is not present in the U.S. model.

Thus, it can be inferred from the text of Article 24 of the U.S. model that for the purposes of United States taxation the concept of "residence" does not have the same value as the concept of "nationality."

As an effect, according to Article 24(1) a difference of treatment between nationals and residents could be possible for the purposes of United States taxation.

Furthemore, Article 24(6) states the supremacy of Article 10(8) on the principle of non-discrimination, so nothing can diminish the power of the State to tax the dividends of a company according to Article 10(8).

Article 25 (Mutual agreement procedure).

This Article, as well, takes a slightly different approach to the "mutual agreement procedure." First of all, there is no fix time limitation to the power of a person to present its case to the competent authority, because it depends on the domestic law.

Moreover, the person is not required to present his or her case to the competent authority of the country of residence, because he can present its case to either Contracting States.

As I have already written,[122] Article 25 of the OECD model provides some mechanism to solve the conflicts that may arise if the tax administrations of the Contracting States interpret differently some facts related to the taxpayer, or if they have different interpretations of the same terms in the tax convention.

Specifically, it includes three kinds of solution: specific case mutual agreements, interpretative mutual agreements, and arbitration.

In Article 25 of the U.S. model only the first two methods are present; "arbitration" is not mentioned.

It should be noted that Article 25 of the U.S. model states that "assessment and collection procedures shall be suspended during the period that any mutual agreement proceeding is pending." Moreover, it specifies the content of the solution of the "interpretative mutual agreements," establishing guidelines as to what the competent authorities of the Contracting States may agree.[123]

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[122] See *supra* at page 118.

[123] **Article 25(3)** of the U.S. model states "in particular the competent authorities of the Contracting States may agree:

a) to the same attribution of income, deductions, credits, or allowances of an enterprise of a Contracting State to its permanent establishment situated in the other Contracting State;

b) to the same allocation of income, deductions, credits, or allowances between persons;

Finally, a special type of "interpretative mutual agreements" is provided by Paragraph 4, according to which "the competent authorities also may agree to increases in any specific dollar amounts referred to in the Convention to reflect economic or monetary developments."

Article 26 (Exchange of information and administrative assistance).

First of all, the title of this Article adds to the title of the same Article of the OECD model the words "administrative assistance," meaning that in the point of view of the U.S. model "exchange of information" and "administrative assistance" are strictly connected.

Article 26(1) of the U.S. model includes an exemplification of some information which can be exchanged by the competent authorities of the Contracting States. That exemplification is not present in the OECD model. The U.S. model adds three more paragraphs with respect to the same Article of the OECD model.[124]

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c) to the settlement of conflicting application of the Convention, including conflicts regarding:
i) the characterization of particular items of income;
ii) the characterization of persons;
iii) the application of source rules with respect to particular items of income;
iv) the meaning of any term used in the Convention;
v) the timing of particular items of income;
d) to advance pricing arrangements; and
e) to the application of the provisions of domestic law regarding penalties, fines, and interest in a manner consistent with the purposes of the Convention."

[124] "6. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts, and writings).

7. Each of the Contracting States shall endeavor to collect on behalf of the other Contracting State such amounts as may be necessary to ensure that relief granted by the Convention from taxation imposed by that other State does not inure to the benefit of persons not entitled thereto. This paragraph shall not impose upon either of the Contracting States the obligation to carry out administrative measures that would be contrary to its sovereignty, security, or public policy.

8. The requested State shall allow representatives of the requesting State to enter the requested State to interview individuals and examine books and records with the consent of the persons subject to examination.

8. The competent authorities of the Contracting States may develop an agreement upon the mode of application of this Article, including agreement to ensure comparable levels of assistance to each of the Contracting States, but in no case will the lack of such agreement relieve a Contracting State of its obligations under this Article."

In fact, Article 26(6) specifies some special forms that the competent authorities of a Contracting State can use to provide information, if specifically requested by the competent authority of the other Country. The scope is to guarantee that the information collected can be used as evidence in juridical processes.

Paragraph 7 provides for assistance in collection of taxes to the extent necessary to ensure that treaty benefits are enjoyed only by persons entitled to those benefits under the terms of the Convention. This Paragraph also makes clear that the Contracting State asked to collect taxes is not obliged, in the process of providing collection assistance, to carry out administrative measures that are different from those used in the collection of its own taxes, or "that would be contrary to its sovereignty, security or public policy."[125]

Paragraph 8 describes "administrative assistance," allowing representative of one Contracting State to get in the other state to "interview individuals and examine books and records with the consent of the persons subject to examination."

According to the final Paragraph, the competent authorities are authorized to contract some agreements on the application of this Article.

Article 27 (Members of diplomatic missions and consular posts).

This Article is equal to Article 28 of the OECD model. Similar to the UN model, the U.S. model, besides the administrative assistance included in Article 26, does not contain any mention of assistance in the collection of taxes. In fact, Article 27 (Assistance in the collection of taxes) is not present. Moreover, Article 29 (Territorial extension) of the OECD model is not included in the U.S. model.

Consequently, the U.S. model contains only twenty nine articles.

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[125] See TECHNICAL EXPLANATION ACCOMPANYING THE UNITED STATES MODEL INCOME TAX CONVENTION OF NOVEMBER 15, 2006, at 89.

Article 28 (Entry into force).

Different than Article 30 of the OECD model, Article 28 of the U.S. model includes a link to the internal procedures of ratification of each Contracting State.

Moreover, it fixes the date of effect of the provisions of the U.S. model, distinguishing between “taxes withheld at source” and “other taxes.”

Finally, Paragraph 2 states that in any case Article 26 (Exchange of Information and Administrative Assistance) “shall have effect from the date of entry into force of this Convention.”

Article 29 (Termination).

Different than Article 31 of the OECD model, Article 29 of the U.S. model, similar to the previous Article 28, distinguishes the date of the effects of termination between “taxes withheld at source” and “other taxes.”

4.2 Convention between the Government of the United States of America and the Government of the Italian Republic for the avoidance of double taxation with respect to taxes on income and the prevention of fraud or fiscal evasion.

The first tax convention between the United States of America and Italy was signed at Washington on March 30, 1955.[126] It consisted of twenty one articles, without any division in chapters. This convention has been modified twice, the first time in 1984 and the second in 1999.

The first update was signed at Rome on April 17, 1984. It introduced some new articles and the protocol, clarifying and supplementing the convention.

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[126] See, on the topic, ALAN R. RADO & VICTOR UCKMAR, THE TAX CONVENTION BETWEEN THE UNITED STATES AND ITALY (1958).

The second and last update was signed at Washington on August 25, 1999.[127] It has kept the division in twenty nine articles,[128] as well as the protocol, like the 1984 update.

If I compare it with the U.S. models, the U.S.-Italy tax convention differs slightly from the 1996 U.S. model income tax convention, and broadly from the 2006 update. Moreover, the 1999 U.S.-Italy tax convention has some articles substantially similar to the ones of the 1996 U.S. model tax convention, and other articles similar to some articles of the OECD Model. That makes it special.

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127 See, on the topic, CARLO GARBARINO (ed.), CONVENZIONE ITALIA-USA CONTRO LE DOPPIE IMPOSIZIONI (2001); Alex Gilardini & Marcello Moretti, *Il sistema fiscale negli USA*, 7 COMM. INT. (2003); Carlo P. Paolella & Edward Barret, *New income tax treaty between the United States and Italy*, 28 INTERTAX 3 (2000); Giovanni Rolle & Alessandro Turina, *Condizioni applicative e profili temporali della Convenzione Italia-USA*, 11 CORR. TRIB. 888 (2010); Piergiorgio Valente, *Convenzione Italia-USA Rassegna delle principali novità*, 35 IL FISCO 5678 (2010); P. Valente, M. Magenta & G. Rolle, *La nuova Convenzione Italia-Usa. Analisi delle principali disposizioni riguardanti i flussi transnazionali di reddito*, 18 IL FISCO (1999).

128 Summary of the convention:
"Article 1 Personal scope
Article 2 Taxes covered
Article 3 General definitions
Article 4 Resident
Article 5 Permanent establishment
Article 6 Income from immovable property
Article 7 Business profits
Article 8 Shipping and air transport
Article 9 Associated enterprises
Article 10 Dividends
Article 11 Interest
Article 12 Royalties
Article 13 Capital gains
Article 14 Independent personal services
Article 15 Dependent personal services
Article 16 Directors' fees
Article 17 Artistes and athletes
Article 18 Pensions, etc.
Article 19 Government service
Article 20 Professors and teachers
Article 21 Students and trainees
Article 22 Other income
Article 23 Relief from double taxation
Article 24 Non-discrimination
Article 25 Mutual agreement procedure
Article 26 Exchange of information
Article 27 Diplomatic agents and consular officials
Article 28 Entry into force
Article 29 Termination."

In the previous paragraph of this Ph.D. thesis I have written about the 2006 “United States Model Income Tax Convention” and its differences from the 2010 “OECD Model Tax Convention on Income and on Capital” and the 2001 “United Nations Model Double Taxation Convention between Developed and Developing Countries.”

In this paragraph, on analyzing all articles in turn, I will underline the main differences between the last U.S.-Italy tax convention and the 1996 “U.S. Model Income Tax Convention,” as well as the main new dispositions introduced by it with respect to the 1984 U.S.-Italy tax convention. It should be noted that I will relate to the 1996 update of the “U.S. Model Income Tax Convention” because at the time of the signature of the last U.S.-Italy tax convention there was the 1996 update of the “U.S. Model Income Tax Convention.”

However, I will underline some fundamental differences from the 2006 update of the “U.S. Model Income tax Convention,” as well. I also want to clarify that a generic mention of the “U.S. Model Income Tax Convention” means that my speech is common to both updates of the U.S. model.

Article 1 (Personal scope).

This Article defines the scope of the U.S.-Italy tax convention in terms of the persons it applies to. Firstly, it should be noted that the title is a bit different than the one of the same Article of the U.S. model. In fact, Article 1 of the U.S.-Italy tax convention is titled “Personal scope,” instead of “General scope.”

Article 1 of the U.S.-Italy tax convention is divided into three paragraphs, which substantially replace the same content as Paragraphs 1, 4 and 5 of the U.S. model.

According to Paragraph 1, taxpayers must be “persons” who also are “residents” at least in one of the countries that are parts of the tax agreement.

Paragraph 2 contains a “saving clause,” allowing each Contracting State to tax its residents and citizens “as if there were no convention between the government of the United States of America and the government of the Italian Republic for the avoidance of double taxation with respect to taxes on income and the prevention of fraud or fiscal evasion.” This power can never override the disposition included in Paragraph 3.

Different than the U.S. model, in Article 1 of the U.S.-Italy tax convention, the link to the supremacy of the domestic law and any other agreement, which the Contracting States are parties of (related in Paragraph 2 of Article 1 of the U.S. model), is not present, as well as the General Agreement on Trade in Services (related in Paragraph 3(b) of Article 1 of the U.S. model).

Moreover, there is no chance that a former citizen or a former long-term resident of a Contracting State can ask to be taxed “in accordance with the laws of that Contracting State,” even if he/she is no longer a resident or a citizen.[129]

Article 2 (Taxes covered).

This Article contains a list of “existing taxes” which the Convention applies to.

They are “(a) in the case of the United States: the Federal income taxes imposed by the Internal Revenue Code (but excluding social security taxes), and the Federal excise taxes imposed on insurance premiums paid to foreign insurers and with respect to private foundations (hereinafter referred to as "United States tax");

(b) in the case of Italy:

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

(ii) the corporation income tax (l'imposta sul reddito delle persone giuridiche); and

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[129] See Article 1(4) of the U.S. model.

(iii) the regional tax on productive activities (l'imposta regionale sulle attività produttive), but only that portion of such tax that is considered to be an income tax pursuant to paragraph 2(c) of Article 23 (Relief from Double Taxation)."

The introduction of the "IRAP" in the Italian tax system is one of the main reasons because the U.S.-Italy tax convention has been updated. In fact, it states that the Italian regional tax on productive activities (IRAP) is relevant for the purposes of the Convention only limited to the portion that is considered to be an income tax pursuant to Paragraph 2(c) of Article 23 (Relief from Double Taxation).

Paragraph 3 specifies, similar to the U.S. model tax convention that "the Convention shall apply also to any identical or substantially similar taxes." It states, in addition, the obligation of the Contracting States to notify each others any changes in their tax laws, as well as to transmit any "official published material" related to the application of the Convention.

This last power of the competent authorities is present only in the 1996 update of the U.S. model, as it has been deleted under the 2006 update.

Article 3 (General definitions).

This Article contains a list of definitions of main concepts, for the purposes of the Convention. Especially, the following terms are defined: "person," "company," "enterprise of a Contracting State" and "enterprise of the other Contracting State," "international traffic," "competent authority," "nationals," "qualified governmental entity." Moreover, "United States" and "Italy" are defined.

According to Paragraph 2, any terms not defined in Article 3 have the meaning attributed by the domestic law of the "State concerning the taxes to which this Convention applies."

It must be pointed out that even though Article 3(1)(a) includes a "trust" in the concept of "person," also similar to *section* 7701(a)(1) of the

U.S. Internal Revenue Code,[130] some problems of interpretation could arise, because of the different regulation between U.S. and Italy. In fact, the idea of "trust" in the Common law, which firstly introduced it, is slightly different than the one in the Civil law.[131]

Different than the same Article of the U.S. model, Article 3 of the U.S.-Italy tax convention does not state the chance that the competent authorities of the Contracting States can agree to a common meaning of a term included in the Convention.

Article 4 (Resident).

This Article addresses the meaning of the term "resident of a Contracting State."

It is divided into three Paragraphs. The first one is substantially similar to Paragraphs 1 of the OECD model and the U.S. model, but different than the U.S. model there is no mention of the concept of "citizenship," as well as "permanent establishment."

Moreover, there is no mention of "pension fund" and "organization with religious, charitable, scientific, artistic, cultural, or education purposes."

It must be pointed out that, different than the U.S. model, Article 4(1)(b) of the U.S.-Italy tax convention clarifies that "in the case of income derived or paid by a partnership, estate, or trust, this term applies only to the extent that the income derived by such partnership, estate, or trust is subject to be taxed in that State, either in its hands or in the hands of its partners or beneficiaries."

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[130] "(a)When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof –
(1)Person: The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation."

[131] See, on the topic, Nicola Lanteri, *Il trust e la clausola di limitazione soggettiva, in* CONVENZIONE ITALIA-USA CONTRO LE DOPPIE IMPOSIZIONI 43 (Carlo Garbarino ed., 2001).

It should be noted that Paragraph 1(b) mentions expressly the term "partnership," solving a long dispute in this way.[132]

Paragraph 2 provides some criterions to solve the problem of the double residence for the purpose of the U.S.-Italy tax convention; those are the same criterions used by the OECD model and the U.S. model.

Paragraph 3 allows the competent authorities of the Contracting States in case of a double resident person other than an individual "by mutual agreement….to settle the question and to determine the mode of application of the Convention to such person."

Finally, different than the U.S. model, the U.S.-Italy tax convention does not state anything about dual resident companies.

Article 5 (Permanent establishment).

According to the definition included in this Article, a permanent establishment is "a fixed place of business through which the business of an enterprise is wholly or partly carried out."

This Article is substantially the same as Articles 5 of the U.S. model and the OECD model, so I can relate to that I have written about them.

It should be noted only that different than the OECD model and the U.S. model, the U.S.-Italy tax convention does not exclude "the preparatory or auxiliary activities" from the idea of "permanent establishment."[133]

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[132] The U.S. IRC contains at *section* 761(a) an express definition of "partnership" for the tax purposes, in fact "for purposes of this subtitle, the term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a corporation or a trust or estate." It should be noted that in the Italian tax code (TUIR) there is no definition of "società di persone" for the tax purposes. See, on this topic, Arianna Maronese, *L'inserimento delle società di persone tra i soggetti a cui è applicabile la convenzione, in* CONVENZIONE ITALIA-USA CONTRO LE DOPPIE IMPOSIZIONI, *supra* note 127, at 64.

[133] The U.S. model contains a general clause that excludes the preparatory or auxiliary activities" from the idea of "permanent establishment"; in fact, Article 5(4)(e) of the U.S. model states "notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
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."

Article 6 (Income from immovable property).

Different than the U.S. model, and similar to the OECD model, this Article uses only the term “immovable property.”

In fact, the 1996 update of the U.S. model uses both terms (immovable property and real property), different than the 2006 update which uses only the term “real property.”

Article 6(4) contains, similar to the 1996 U.S. model, the idea of “independent personal services,” establishing that “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.”

The mention of the “independent personal services” has been deleted under the 2006 update of the U.S. model.

Finally, even though Article 6(5) of the U.S. model provides for the chance that a resident of one Contracting State, that derives real property income from the other one, must decide, for any taxable year, to be subject to tax in that other State on a net basis, this power is not recognized under the U.S.-Italy tax convention.

Article 7 (Business profits).

This Article is totally different than the same Article of the OECD model, but it is equal to the same Article of the U.S. model, with one only difference.

In fact, Article 7(2) of the U.S.-Italy tax convention generically states that the profits of the permanent establishment must be treated as it were “wholly independently with the enterprise of which it is a permanent establishment and other associated enterprises,” while Article 7(2) of the 1996 U.S. model specifies that “the business profits to be attributed to the permanent establishment shall include only the profits derived from the assets or activities of the permanent establishment."[134]

Article 8 (Shipping and air transport).

Even though this Article expresses the same main rule as the same Article of the U.S. model, according to which "profits of an enterprise of a Contracting State from the operation in international traffic of ships or aircraft shall be taxable only in that State," it does not contain either the list of activities that must be treated as "profits from the operation of ships and aircraft,"[135] or the exception to the aforementioned general rule in case of containers.[136]

Article 9 (Associated enterprises).

This Article is equal to the same Articles of the U.S. model and the OECD model.

Article 10 (Dividends).

This Article is divided into ten paragraphs; its content is partially different than the one of the same Article of the U.S. model.[137]

Article 10(1) provides the same general rule stated in the U.S. model and in the OECD model, meaning that dividends can be taxed by the shareholders residence country.

However, Article 10(2) adds that those dividends can be also taxed in the country of source according to the domestic law of that state, but this power is subject to some restrictions on the amount of the tax imposed.

The first difference between the U.S.-Italy tax convention and the U.S. model is about the percentage of the voting stock of the company paying the dividends that the corporation must own directly in order to

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[134] The 2006 update of the U.S. model further clarifies "the profits to be attributed to the permanent establishment shall include only the profits derived from the assets used, risks assumed and activities performed by the permanent establishment."
[135] They are contained in Article 8(2) of the U.S. model.
[136] It is written in Article 8(3) of the U.S. model.
[137] See on the topic Adabella Gratani, *La Cassazione individua i presupposti per tassare i dividendi erogati in Italia ad una società americana*, 7 RIV. GIUR. TRIB. 600 (2000); Piergiorgio Valente, *La tassazione dei dividendi nella nuova Convenzione Italia-USA*, 37 IL FISCO 6004 (2010).

apply the rule provided by Paragraph 2. In fact that percentage is different than the one included in the same Article of the U.S. model.[138] Moreover, on this topic the U.S.-Italy tax convention adds one more time restriction, establishing that the voting stock must be owned "for a 12 month period ending on the date the dividend is declared."

Article 10(3) of the U.S.-Italy tax convention provides a definition of dividends, and it includes all types of shares that take part in the profits of a corporation. The definition provided is very broad.

Paragraph 4 states a special treatment of dividends received by a permanent establishment of a non-resident in the country of source. The effect of this provision is that the dividends must be treated as business profits where the shareholding, creating them, acts by means of permanent establishment in the country of the source.

Different than the 2006 U.S. model, but similar to the 1996 U.S. model, Article 10(4) of the U.S.-Italy tax convention states that the special treatment must also apply to dividends to a resident who "performs in that other State independent personal services from a fixed base situated therein."

Furthermore, Article 10(4) of the U.S.-Italy tax convention does not include any link to Article 7 (Business Profits), but it establishes directly that "in such case, the dividends are taxable in that other Contracting State according to its own laws."

Article 10(5) impairs the country of source to tax dividends originated in that state by a non-resident company only on the reason that the profits are from that country.

The disposition has the purpose to prevent the country of source from taxing dividends simply because the profits have been originated from activities conducted by a non-resident company in the state of source. In this case the country of source can tax those dividends if they are paid to its

[138] About the concept of "beneficial owner of the dividends" see *supra* at page 106.

resident or if they are connected to a permanent establishment or a fixed base in that state.

Paragraphs 6 and 7 have been introduced under the 1999 U.S.-Italy tax convention; they are not present in the 1984 update. They contain the so called “branch profits tax.”

The system of “branch taxation” was introduced in the U.S. legal system, in partial substitution of the tax on dividends, by the Tax Reform Act of 1986; that is the reason because the “branch profits tax” is not present in the 1984 U.S.-Italy tax convention, but only in the 1999 update.
Under this system, foreign corporations that are involved in a U.S. trade or business through a permanent establishment are taxed on a basis similar than the ones of foreign corporations which act their business in U.S. through a U.S. branch.

The branch taxation system is regulated under the U.S. Internal Revenue Code (IRC) *section* 884, according to which

“(a) Imposition of tax

In addition to the tax imposed by section 882 for any taxable year, there is hereby imposed on any foreign corporation a tax equal to 30 percent of the dividend equivalent amount for the taxable year.

(b) Dividend equivalent amount

For purposes of subsection (a), the term "dividend equivalent amount" means the foreign corporation's effectively connected earnings and profits for the taxable year adjusted as provided in this subsection:

(1) Reduction for increase in U.S. net equity

If –

(A) the U.S. net equity of the foreign corporation as of the close of the taxable year, exceeds

(B) the U.S. net equity of the foreign corporation as of the close of the preceding taxable year, the effectively connected earnings and profits for the taxable year shall be reduced (but not below zero) by the amount of such excess.

(2) Increase for decrease in net equity

(A) In general

If –

(i) the U.S. net equity of the foreign corporation as of the close of the preceding taxable year, exceeds

(ii) the U.S. net equity of the foreign corporation as of the close of the taxable year, the effectively connected earnings and profits for the taxable year shall be increased by the amount of such excess.

(B) Limitation

(i) In general

The increase under subparagraph (A) for any taxable year shall not exceed the accumulated effectively connected earnings and profits as of the close of the preceding taxable year.

(ii) Accumulated effectively connected earnings and profits

For purposes of clause (i), the term "accumulated effectively connected earnings and profits" means the excess of -

(I) the aggregate effectively connected earnings and profits for preceding taxable years beginning after December 31, 1986, over

(II) the aggregate dividend equivalent amounts determined for such preceding taxable years.

(c) U.S. net equity

For purposes of this section -

(1) In general

The term "U.S. net equity" means -

(A) U.S. assets, reduced (including below zero) by

(B) U.S. liabilities.

(2) U.S. assets and U.S. liabilities

For purposes of paragraph (1) -

(A) U.S. assets

The term "U.S. assets" means the money and aggregate adjusted bases of property of the foreign corporation treated as connected with the conduct of a trade or business in the United States under regulations prescribed by the Secretary. For purposes of the preceding sentence, the adjusted basis of any property shall be its adjusted basis for purposes of computing earnings and profits.

(B) U.S. liabilities

The term "U.S. liabilities" means the liabilities of the foreign corporation treated as connected with the conduct of a trade or business in the United States under regulations prescribed by the Secretary.

(C) Regulations to be consistent with allocation of deductions

The regulations prescribed under subparagraphs (A) and (B) shall be consistent with the allocation of deductions under section 882(c)(1).

(d) Effectively connected earnings and profits

For purposes of this section -

(1) In general

The term "effectively connected earnings and profits" means earnings and profits (without diminution by reason of any distributions made during the taxable year) which are attributable to income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business within the United States.

(2) Exception for certain income

The term "effectively connected earnings and profits" shall not include any earnings and profits attributable to -

(A) income not includible in gross income under paragraph (1) or (2) of section 883(a),

(B) income treated as effectively connected with the conduct of a trade or business within the United States under section 921(d) or 926(b),

(C) gain on the disposition of a United States real property interest described in section 897(c)(1)(A)(ii),

(D) income treated as effectively connected with the conduct of a trade or business within the United States under section 953(c)(3)(C), or

(E) income treated as effectively connected with the conduct of a trade or business within the United States under section 882(e). Property and liabilities of the foreign corporation treated as connected with such income under regulations prescribed by the Secretary shall not be taken into account in determining the U.S. assets or U.S. liabilities of the foreign corporation.

(e) Coordination with income tax treaties; etc.

(1) Limitation on treaty exemption

No treaty between the United States and a foreign country shall exempt any foreign corporation from the tax imposed by subsection (a) (or reduce the amount thereof) unless -

(A) such treaty is an income tax treaty, and

(B) such foreign corporation is a qualified resident of such foreign country.

(2) Treaty modifications

If a foreign corporation is a qualified resident of a foreign country with which the United States has an income tax treaty-

(A) the rate of tax under subsection (a) shall be the rate of tax specified in such treaty -

(i) on branch profits if so specified, or

(ii) if not so specified, on dividends paid by a domestic corporation to a corporation resident in such country which wholly owns such domestic corporation, and

(B) any other limitations under such treaty on the tax imposed by subsection (a) shall apply.

(3) Coordination with withholding tax

(A) In general

If a foreign corporation is subject to the tax imposed by subsection (a) for any taxable year (determined after the application of any treaty), no tax shall be imposed by section 871(a), 881(a), 1441, or 1442 on any dividends paid by such corporation out of its earnings and profits for such taxable year.

(B) Limitation on certain treaty benefits

If -

(i) any dividend described in section 861(a)(2)(B) is received by a foreign corporation, and

(ii) subparagraph (A) does not apply to such dividend, rules similar to the rules of subparagraphs (A) and (B) of subsection (f)(3) shall apply to such dividend.

(4) Qualified resident

For purposes of this subsection -

(A) In general

Except as otherwise provided in this paragraph, the term "qualified resident" means, with respect to any foreign country, any foreign corporation which is a resident of such foreign country unless -

(i) 50 percent or more (by value) of the stock of such foreign corporation is owned (within the meaning of section 883(c)(4)) by individuals who are not residents of such foreign country and who are not United States citizens or resident aliens, or

(ii) 50 percent or more of its income is used (directly or indirectly) to meet liabilities to persons who are not residents of such foreign country or citizens or residents of the United States.

(B) Special rule for publicly traded corporations

A foreign corporation which is a resident of a foreign country shall be treated as a qualified resident of such foreign country if -

(i) the stock of such corporation is primarily and regularly traded on an established securities market in such foreign country, or

(ii) such corporation is wholly owned (either directly or indirectly) by another foreign corporation which is organized in such foreign country and the stock of which is so traded.

(C) Corporations owned by publicly traded domestic corporations

A foreign corporation which is a resident of a foreign country shall be treated as a qualified resident of such foreign country if -

(i) such corporation is wholly owned (directly or indirectly) by a domestic corporation, and

(ii) the stock of such domestic corporation is primarily and regularly traded on an established securities market in the United States.

(D) Secretarial authority

The Secretary may, in his sole discretion, treat a foreign corporation as being a qualified resident of a foreign country if such corporation establishes to the satisfaction of the Secretary that such corporation meets such requirements as the Secretary may establish to ensure that individuals who are not residents of such foreign country do not use the treaty between such foreign country and the United States in a manner inconsistent with the purposes of this subsection.

(5) Exception for international organizations

This section shall not apply to an international organization (as defined in section 7701(a)(18)).

(f) Treatment of interest allocable to effectively connected income

(1) In general

In the case of a foreign corporation engaged in a trade or business in the United States (or having gross income treated as effectively connected with the conduct of a trade or business in the United States), for purposes of this subtitle -

(A) any interest paid by such trade or business in the United States shall be treated as if it were paid by a domestic corporation, and

(B) to the extent that the allocable interest exceeds the interest described in subparagraph (A), such foreign corporation shall be liable for tax under section 881(a) in the same manner as if such excess were interest paid to such foreign corporation by a wholly owned domestic corporation on the last day of such foreign corporation's taxable year. To the extent provided in regulations, subparagraph (A) shall not apply to interest in excess of the amounts reasonably expected to be allocable interest.

(2) Allocable interest

For purposes of this subsection, the term "allocable interest" means any interest which is allocable to income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.

(3) Coordination with treaties

(A) Payor must be qualified resident

In the case of any interest described in paragraph (1) which is paid or accrued by a foreign corporation, no benefit under any treaty between the United States and the foreign country of which such corporation is a resident shall apply unless -

(i) such treaty is an income tax treaty, and

(ii) such foreign corporation is a qualified resident of such foreign country.

(B) Recipient must be qualified resident

In the case of any interest described in paragraph (1) which is received or accrued by any corporation, no benefit under any treaty between the United States and the foreign country of which such corporation is a resident shall apply unless -

(i) such treaty is an income tax treaty, and

(ii) such foreign corporation is a qualified resident of such foreign country.

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations providing for appropriate adjustments in the determination of the dividend equivalent amount in connection with the distribution to shareholders or transfer to a controlled corporation of the taxpayer's U.S. assets and other adjustments in such determination as are necessary or appropriate to carry out the purposes of this section."

That *section* provides for three different kinds of branch taxes: the "branch profits tax," the "branch interest tax," and the "branch level tax on excess interest."

Rosembloom H.D. & Katz J.L. have written[139] "article 10(6) permits the United States to impose a branch profits tax on an Italian corporation (or

[139] H. David Rosembloom & Jessica L. Katz, *La cosiddetta "branch profits tax"*, *in* CONVENZIONE ITALIA-USA CONTRO LE DOPPIE IMPOSIZIONI, *supra* note 127, at 121.

vice versa) if the corporation has income attributable to a U.S. permanent establishment, derives income from real property in the United States that is taxed on a net basis under Article 6, or realizes gain from the disposition of interests in real property that is taxable in the United States under Article 13(1). The tax may only be imposed, however, on the portion of such income or gain that is included in the “dividend equivalent amount”, as defined in Internal Revenue Code section 884 and described above. Furthermore, Article 10(7) provides that the rate at which the branch profits tax is imposed may not exceed the rate of 5 percent specified in Article 10(2)(a), which is the rate applicable to direct investment dividends (i.e. dividends beneficially owned by a company that holds at least 25 percent of the voting stock of the paying company. Internal Revenue Code section 884(e), discussed above, does not override Articles 10(6) and 10(7) of the 1999 Treaty because the treaty will enter into force after 1986. Thus, an Italian corporation need not be a “qualified resident” within the meaning of section 884(e) in order to obtain the benefits of Article 10(6) and 10(7), though it must satisfy the similar requirements set out in the limitation on benefits provision of the 1999 Treaty, which appears in Article 2 of the Protocol.”

It should be noted that the 1996 U.S. model differs from the 2006 update, because, besides the “permanent establishment,” it also applies the rule of the “branch profit tax” if the resident “performs in that other State independent personal services from a fixed base situated there in.” This mention is not present in the U.S.-Italy tax convention.

Article 10(8) provides an exception to Paragraph 2 of the same Article “if the beneficial owner of the dividends is a resident of the other Contracting State that is a qualified governmental entity that holds, directly or indirectly, less than 25 percent of the voting stock of the company paying the dividends.” It must be pointed out that this exception is present in

Article 10(4) of the 1996 U.S. model,[140] but it is not present in the 2006 update. Moreover, this exception is not present in the 1984 U.S.-Italy tax convention.

Article 10(9) provides one more exception to the rule stated in Paragraph 2; in fact, it contains a special regulation for United States Regulated Investment Company (RIC), and for United States Real Estate Investment Trust (REI). This special disposition, which is not present in the 1984 U.S.-Italy tax convention, is justified by the less taxation to which both these kinds of companies are subjected under the U.S. Internal Revenue Code.[141] Thus, it can be said that this special disposition has an anti-avoidance goal.

Finally, Article 10(10) contains one more anti-avoidance measure,[142] which is present neither in the 1984 U.S.-Italy tax convention nor in the U.S. model.

According to this *major purpose test* "the provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights with respect to which the dividend is paid to take advantage of this Article by means of that creation or assignment."

Article 11 (Interest).

The regulation of interests was introduced by the 1984 U.S.-Italy tax convention; in fact there is no mention of it in the 1955 first convention.

This Article is more similar to Article 10 of the OECD model than to Article 10 of the U.S. model. It is divided into nine Paragraphs. The structure of Article 11 is very similar to that of Article 10, so either the country of residence or the country of source can tax the dividends.

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[140] See Article 10(4) of the 1996 U.S. Model.

[141] See on this topic Antonello Lupo & Carmine Rotondaro, *"Regulated Investment Companies" and "Real Estate Investment Trusts"*, *in* CONVENZIONE ITALIA-USA CONTRO LE DOPPIE IMPOSIZIONI, *supra* note 127, at 124.

[142] See on this topic Piermauro Carabellese & Federico Trutalli, *Le nuove diposizioni anti-abuso in materia di dividendi, interessi, royalties e altri redditi*, *in* CONVENZIONE ITALIA-USA CONTRO LE DOPPIE IMPOSIZIONI, *supra* note 127, at 137.

Especially, Paragraph 1 includes a main rule, according to which the right to tax belongs firstly to the country of residence. Different than the same Article of the U.S. model the term "beneficially owned by a resident of the other Contracting State" is replaced by the term "paid to a resident of the other Contracting State;" as a consequence the effect of the main rule is reduced.

According to Article 11(2) of the U.S.-Italy tax convention, the right to tax belongs to the country of source, as well. However, there is the same special rule contained in Article 10(2) about dividends, according to which if the beneficial owner of the interest "is a resident of the other Contracting State," in this case "the tax so charged shall not exceed 10 percent of the gross amount of the interest." It should be noted that Article 11 of the U.S. model does not allow, as general rule, the country of source to tax interest.

Paragraph 3 provides some exceptions to the right of the country of source to tax, written in Paragraph 2.[143]

Paragraph 4 contains a very broad definition of interest, and it must be pointed out that it also includes mortgage interest, despite of several domestic laws that include the interest from the loan in the income arising from immovable property.

Article 11(5) contains the link with the idea of permanent establishment and fixed base, and replaces the same dispositions stated in Article 10(4)[144] about dividends.

According to Paragraph 6, interest is treated to be generated in a Contracting State if one of the following two conditions is respected:

1) the payer must be a resident of that country;

2) the interest is generated by a permanent establishment in a Contracting State, or the beneficial owner "performs in that other State independent

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[143] See on the topic, especially on the relation between the 1996 U.S. model and the 2006 update, Luigi Belluzzo & Paolo Giacometti, *Le nuove fattispecie di esenzione di interessi transnazionali*, *in* CONVENZIONE ITALIA-USA CONTRO LE DOPPIE IMPOSIZIONI, *supra* note 127, at 155.
[144] See *supra* at page 166.

personal service from a fixed base situated therein;" in those cases the interest is treated to arise in the country of the permanent establishment, whether it is paid by it whether it is paid by its head office, resident in another place.

The rule stated by Article 11(6) requires that there is an economic connection between the loan and the permanent establishment or the fixed place.

It must be pointed out that the rule included in Paragraph 6 is not present in the U.S. model, but is similar to the rule written in Article 11(5) of the OECD model.

Article 11(7) refers to the operations between two related enterprises. In those cases if the contracting parts have established an amount of interest that is higher than the amount that they would have established if there had been no connection between them, Article 11 will not apply to the excess interest. This excess interest will be deemed under the provisions of the domestic law of each Contracting State, so if the domestic law considers it as a dividend, it will fall within Article 10 of the U.S.-Italy tax convention.

Article 11(8) specifies the treatment of this excess interest in the case of the United States,[145] stating that "the excess, if any, of the amount of interest allocable to the profits of a company resident in the other Contracting State that are either attributable to a permanent establishment in the United States or subject to tax in the United States under Article 6 (Income from Immovable Property) or paragraph 1 of Article 13 (Capital Gains) over the interest paid by that permanent establishment or trade or business in the United States shall be deemed to arise in the United States and be beneficially owned by a resident of the other Contracting State. The tax imposed under this Article on such interest shall not exceed the rate specified in paragraph 2."

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[145] See on the topic H. David Rosembloom & Jessica L. Katz, *La "branch-level tax" sugli interessi in eccedenza*, *in* CONVENZIONE ITALIA-USA CONTRO LE DOPPIE IMPOSIZIONI, *supra* note 127, at 161.

I have already clarified the three different kinds of branch taxes contained in U.S. Internal Revenue Code (IRC) *section* 884,[146] which are: the "branch profits tax," the "branch interest tax,"[147] and the "branch level tax on excess interest."

Moreover, I have already written about the "branch profits tax" when I have analyzed Article 10(6-7) of the U.S.-Italy tax convention.

Article 11(8) regulates the "branch level tax on excess interest," which "is intended to replicate the U.S. tax imposed on interest – paid by a U.S. subsidiary on a loan from foreign parent to the subsidiary."[148] It is not present in the 1984 U.S.-Italy tax convention, because it was enacted by the Tax Reform Act of 1986.

Finally, Article 11(9) contains the same anti-avoidance measure[149] written in Article 10(10), which is present neither in the 1984 U.S.-Italy tax convention nor in the U.S. model.
According to this other *major purpose test* "the provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim with respect to which the interest is paid to take advantage of this Article by means of that creation or assignment."

Article 12 (Royalties).

This Article is divided into eight paragraphs.[150] Its structure is similar to those ones of Articles 10 and 11, so both the country of residence and the country of source can tax the dividends. Especially, Paragraph 1

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[146] See *supra* at pages 167 *et seq*.
[147] See H. David Rosembloom & Jessica L. Katz, *supra* note 145, at 161 "the branch interest tax applies to interest deemed to have been paid by the U.S. branch of a foreign corporation to foreign lenders. This tax is intended to replicate the source-based tax imposed on interest received by a foreign creditor on loans to a U.S. subsidiary."
[148] H. David Rosembloom & Jessica L. Katz, *supra* note 145.
[149] See on this topic Piermauro Carabellese & Federico Trutalli, *supra* note 142.
[150] See on the topic of the relationship between royalties and ILOR, *ex plurimis*, Alberto Pozzo, *Principio di non discriminazione ed imponibilità ai fini ILOR delle royalties corrisposte a residenti negli Stati Uniti e nel Regno Unito*, 8 RIV. GIUR. TRIB. 713 (2002); *id.*, *Nuovamente al vaglio della Corte di Cassazione l'imponibilità ai fini ILOR delle "royalties" corrisposte a soggetti residenti negli Stati Uniti*, 12 RIV. GIUR. TRIB. 1125 (2002).

includes a main rule according to which the right to tax belongs to the country of residence firstly. Different than the same Article of the U.S. model, the term “beneficially owned by a resident of the other Contracting State” is replaced by the term “paid to a resident of the other Contracting State;” as a consequence the effect of the main rule reduces.

According to Article 12(2) of the U.S.-Italy tax convention, the right to tax belongs to the country of source, as well, but there is the same special rule contained in Articles 10(2) and 11(2) in case of the beneficial owner of the royalties; in this case ”the tax so charged shall not exceed: (a) 5 percent of the gross amount in the case of royalties for the use of, or the right to use, computer software or industrial, commercial, or scientific equipment; and (b) 8 percent of the gross amount in all other cases.”

It should be noted that neither Article 12 of the U.S. model nor Article 12 of the OECD model allow, as general rule, the country of source to tax royalties. Moreover, Article 12(2) of the 1999 U.S.-Italy tax convention is slightly different than the one of the 1984 update,[151] which is more detailed.

Paragraph 3 provides some exceptions to the right of the country of source to tax, written in Paragraph 2.[152] It must be pointed out that these exceptions are not present in the 1984 U.S.-Italy tax convention.

Paragraph 4 contains a definition of royalties for the purpose of the convention; it should be noted that this definition is slightly different than

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[151] Article 12(2) of the 1984 U.S.-Italy tax convention states “however, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed:
a) 5 percent of the gross amount of the royalties in respect of 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;
b) 8 percent of the gross amount of the royalties in respect of payments of any kind received as a consideration for the use of, or the right to use, motion pictures and films, tapes or other means of reproduction used for radio or television broadcasting;
c) 10 percent of the gross amount of the royalties in all other cases.”

[152] See on the topic, especially on the regulation of software, Silvia Sardi, *Imposizione dei canoni derivanti dai diritti d’autore e trattamento del software, in* CONVENZIONE ITALIA-USA CONTRO LE DOPPIE IMPOSIZIONI, *supra* note 127, at 165.

the one included in Article 12(2) of the 1996 U.S. model, because clearly it includes "payments of any kind received as a consideration for the use, or the right to use, […] industrial, commercial, or scientific equipment." Moreover, different than the U.S. model, Paragraph 4 of the U.S.-Italy tax convention does not include in the definition of royalties "gain derived from the alienation of any property described in subparagraph (a), provided that such gain is contingent on the productivity, use, or disposition of the property."

Article 12(5) contains the link with the idea of permanent establishment and fixed base, and replaces the same dispositions stated in Articles 10(4) and 11(5).[153]

According to Paragraph 6, interest is treated to be generated in a Contracting State if one of the following two conditions is respected:

1) the payer must be a resident of that country;

2) the interest is generated by a permanent establishment in a Contracting State, or the beneficial owner "performs in that other State independent personal service from a fixed base situated therein;" in those cases the royalties are treated to arise in the country of the permanent establishment or the fixed place.

The rule stated by Article 12(6) requires that there is an economic connection between "the obligation to pay the royalties" and the permanent establishment or the fixed place.

It must be pointed out that the rule included in Paragraph 6 is not present in the U.S. model, but it is similar to the rule written in Article 11(5) of the OECD model about interest.

Article 12(6) of the U.S.-Italy tax convention replaces the same disposition contained in Article 11(6) of the convention, with one difference; in fact, Article 12(6) provides an exception to its main rule stated in Paragraph 1 according to which "royalties with respect to the use of, or the right to use,

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[153] See *supra* at pages 166 and 178.

rights or property within a Contracting State may be deemed to arise within that State."

Article 12(7) refers to the operations between two related enterprises, and expresses the same rule contained in Article 11(7).[154]

Finally, Article 12(8) contains the same anti-avoidance measure[155] written in Articles 10(10) and 11(9), which is present neither in the 1984 U.S.-Italy tax convention nor in the U.S. model.

According to this other *major purpose test* "the provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights with respect to which the royalties are paid to take advantage of this Article by means of that creation or assignment."

Article 13 (Capital gains).

This Article is similar to the same Article of the U.S. model. A capital gain is a profit resulting from investments into a capital asset, such as stocks, bonds or real estate, in case of it exceeds the purchase price.[156]

This article is divided into four paragraphs.

The first one addresses the issue of the capital gains derived from the alienation of immovable property.

The second one focuses on capital gains derived by the alienation of movable property.

Paragraph 3 states about capital gains derived from the alienation of ships or aircraft. The last Paragraph contains a residual rule.

The general rule written in Paragraphs 1 and 2 is that the right to tax capital gains belongs to the country that has the right to tax the property and the income derived from it, in other words to the country of source.

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[154] See *supra* at page 178.
[155] See on this topic Piermauro Carabellese & Federico Trutalli, *supra* note 142.
[156] See, on the topic, Francesco Nobili & Stefano Graidi, *La disciplina del capital gains, in* CONVENZIONE ITALIA-USA CONTRO LE DOPPIE IMPOSIZIONI, *supra* note 127, at 177.

Article 13 presents some differences with respect to the same Article of the U.S. model.

It does not include a definition of the term "real property situated in the other Contracting State," meaning that for the purposes of the U.S.-Italy tax convention the only definition is the one provided in Article 6 (Income from immovable property).

Furthemore, there is no rule about gains derived from the alienation of containers, which is reasonable if it is underlined that, different than the U.S. model, the idea of containers has been deleted in Article 8 (Shipping and air transport) of the U.S.-Italy tax convention.

Article 8(2) of the U.S.-Italy tax convention states that the general rule also applies to gains derived from the alienation "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."[157] This rule is present in the 1996 update of the U.S. model, but it has been deleted under the 2006 update of the U.S. model.

Finally, Article 13(4) of the U.S.-Italy tax convention expresses the same residual rule written in Article 13(5) of the 1996 U.S. model, according to which "gains from the alienation of any property other than that referred to in paragraphs 1, 2, and 3 shall be taxable only in the Contracting State of which the alienator is a resident."

Article 14 (Independent personal services).

This Article is present only in the 1996 U.S. model,[158] as it has been deleted in the update of 2006. Article 14 applies the general rule written in Article 7(1) about "business profits" to the "independent personal services."

In fact, the main rule is that the power of taxing belongs to the country of residence, unless there is a fixed base in the other state. In this

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[157] The idea of "independent personal services", related with the concept of "fixed base", appears again in this Article afterword its mention in Article 6 (Income from immovable property).

[158] See, on the topic, A. Marinello & E. Angellotto, *I redditi derivanti dall'esercizio di professioni indipendenti*, *in* CONVENZIONE ITALIA-USA CONTRO LE DOPPIE IMPOSIZIONI, *supra* note 127, at 189.

case Article 14(1) states that the country of source can tax only income related to the fixed base, so income that is independent from it cannot be taxed by the country of source.

Even though the term "fixed base" is not defined in the U.S.-Italy tax convention, it could be considered the same as the concept of "permanent establishment," but the first one is related to the "independent personal services," the other one is related to "business profits."

Article 14(2) of the U.S.-Italy tax convention contains the definition of "personal services in an independent capacity" according to which it "includes, but is not limited to, scientific, literary, artistic, educational, and teaching activities as well as independent activities of physicians, lawyers, engineers, architects, dentists, and accountants." This definition is not present in the 1996 U.S. model.

Article 15 (Dependent personal services).

This Article is equal to the same Article of the U.S. model. It should be noted that under the 2006 update of the U.S. model it has been numbered and titled differently.[159]

It addresses the treatment of income from employment, instead of "independent personal services" regulated by Article 14 of the U.S.-Italy tax convention.

Article 16 (Directors' fees).

This Article is equal to the same Article of the 1996 U.S. model.[160]

Article 17 (Artistes and athletes).

The content of this Article, as well as, the rule written there, is different than the one of Article 17 of the 1996 U.S. model.[161] First of all, the title is different; in fact the U.S.-Italy tax convention uses the term

[159] Article 14 of the 2006 U.S. model is titled "Income from employment."
[160] Under the 2006 updated of the U.S. model this Article is number 15th.
[161] Under the 2006 update of the U.S. model this Article is number 16th.

"athletes" instead of the term "sportsmen." This different term is also used in the entire text of the Article.[162]

Paragraph 1 expresses the main rule by which artistes and athletes are not taxed according to Articles 14 (independent personal services) and 15 (dependent personal services), but they will be taxed mainly by the country of source.

Different than the U.S. model, this main rule is subjected to one more condition "(a) the amount of the gross receipts derived by such entertainer or athlete, including expenses reimbursed to him or borne on his behalf, from such activities exceeds twenty thousand United States dollars ($20,000) or its equivalent in Italian currency for the fiscal year concerned; or (b) such entertainer or athlete is present in that other State for a period or periods aggregating more than 90 days in the fiscal year concerned."

Paragraph 2 states that the same main rule will apply if the income of an entertainer or an athlete accrues to another person. Paragraph 2 clarifies that such income "shall be deemed not to accrue to another person if it is proved by the entertainer or athlete that neither he nor persons related to him participate directly or indirectly in the profits of such other person in any manner."

This clarification is present only in the 1996 update of the U.S. model, as it has been deleted under the 2006 update.

Article 18 (Pensions, etc.).

The U.S.-Italy tax convention and the 1996 U.S. model contain only one Article (no. 18) dedicated to the issue of the pensions and other periodical payments.

In the 2006 update of the U.S. model this topic is spread in two different articles,[163] having added a new article to which the entire regulation of "pension funds" has converged.

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[162] It should be noted that the 2006 updated of the U.S. model uses the term "entertainers" instead of "artistes".

However, our writing shall mainly focus on the relation between the U.S.-Italy tax convention and the 1996 update of the U.S. model.

As I have written previously, the U.S.-Italy tax convention addresses the topic of the pensions and other periodical payments solely in Article 18, titled “Pensions, etc.”[164]

It divides into six paragraphs.

The first one provides for pensions and other similar remuneration the general rule, according to which they shall be taxed only by the country of residence.

On this topic, different than the U.S.-Italy tax convention, the 1996 U.S. model clarifies that the power of taxing of the country of residence is limited “only to the extent not included in taxable income in the other Contracting State prior to the distribution.”

Article 18(2) states the application of the main rule stated in Paragraph 1 to the payments made under provisions of the social security or similar legislation.

Article 18(3) of the U.S.-Italy tax convention addresses a special situation not considered by the same Article of the 1996 U.S. model; in fact, it provides a rule in case a resident of a Contracting State becomes a resident of the other Contracting State.[165]

Paragraph 4 provides for annuities the same general rule stated for pensions. It also includes a definition of annuities.

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[163] Article 17 (Pensions, social security, annuities, alimony, and child support) and Article 18 (Pension funds).

[164] The same Article of the 1996 U.S. model is differently titled “Pensions, social security, annuities, alimony, and child support”.

[165] **Article 18(3)** of the tax convention states “notwithstanding the provisions of paragraph 1, if a resident of a Contracting State becomes a resident of the other Contracting State, lump-sum payments or severance payments (indemnities) received after such change of residence that are paid with respect to employment exercised in the first-mentioned State while a resident thereof, shall be taxable only in that first-mentioned State. For purposes of this paragraph, the term “severance payments (indemnities)” includes any payment made in consequence of the termination of any office or employment of a person”.

In the same way Paragraph 5 addresses the issue of "alimony" and the one of "child support." It should be noted that the 1996 U.S. model addresses the two aforementioned topics in two different paragraphs.

Article 18(6) of the U.S.-Italy tax convention focuses entirely on the regulation of "pension plan." As I have mentioned previously, in the 2006 update of the U.S. model this regulation has entirely converged to a new Article, titled "Pension funds."[166]

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[166] **Article 18** (Pension funds) of the 2006 U.S. model states "1. Where an individual who is a resident of one of the States is a member or beneficiary of, or participant in, a pension fund that is a resident of the other State, income earned by the pension fund may be taxed as income of that individual only when, and, subject to the provisions of paragraph 1 of Article 17 (Pensions, Social Security, Annuities, Alimony and Child Support), to the extent that, it is paid to, or for the benefit of, that individual from the pension fund (and not transferred to another pension fund in that other State).
2. Where an individual who is a member or beneficiary of, or participant in, a pension fund that is a resident of one of the States exercises an employment or self-employment in the other State:
a) contributions paid by or on behalf of that individual to the pension fund during the period that he exercises an employment or self-employment in the other State shall be deductible (or excludible) in computing his taxable income in that other State; and
b) any benefits accrued under the pension fund, or contributions made to the pension fund by or on behalf of the individual's employer, during that period shall not be treated as part of the employee's taxable income and any such contributions shall be allowed as a deduction in computing the taxable income of his employer in that other State.
The relief available under this paragraph shall not exceed the relief that would be allowed by the other State to residents of that State for contributions to, or benefits accrued under, a pension plan established in that State.
3. The provisions of paragraph 2 of this Article shall not apply unless:
a) contributions by or on behalf of the individual, or by or on behalf of the individual's employer, to the pension fund (or to another similar pension fund for which the first-mentioned pension fund was substituted) were made before the individual began to exercise an employment or self-employment in the other State; and
b) the competent authority of the other State has agreed that the pension fund generally corresponds to a pension fund established in that other State.
4. a) Where a citizen of the United States who is a resident of ------ exercises an employment in ------- the income from which is taxable in -------, the contribution is borne by an employer who is a resident of ------- or by a permanent establishment situated in -----, and the individual is a member or beneficiary of, or participant in, a pension plan established in -----,
i) contributions paid by or on behalf of that individual to the pension fund during the period that he exercises the employment in --------, and that are attributable to the employment, shall be deductible (or excludible) in computing his taxable income in the United States; and
ii) any benefits accrued under the pension fund, or contributions made to the pension fund by or on behalf of the individual's employer, during that period, and that are attributable to the employment, shall not be treated as part of the employee's taxable income in computing his taxable income in the United States.
b) The relief available under this paragraph shall not exceed the lesser of:
i) the relief that would be allowed by the United States to its residents for contributions to, or benefits accrued under, a generally corresponding pension plan established in the United States; and
ii) the amount of contributions or benefits that qualify for tax relief in --------.

It must be pointed out that Article 18(6) of the U.S.-Italy tax convention mainly has the same content as the same Paragraph of the 1996 U.S. model. Article 18(6) of the 1996 U.S. model includes only two more sentences, according to which "b) Income earned but not distributed by the plan shall not be taxable in the other State until such time and to the extent that a distribution is made from the plan.

c) Distributions from the plan to the individual shall not be subject to taxation in the other Contracting State if the individual contributes such amounts to a similar plan established in the other State within a time period and in accordance with any other requirements imposed under the
laws of the other State."

Article 19 (Government service).

The general rule provided by this Article is the same as the one of the U.S. model, according to which the right to tax the remuneration paid to employees of the government of a country or of a political subdivision or of a local authority belongs to the payer state.

Different than the U.S. model, the U.S.-Italy tax convention does not override Articles 14 (Independent personal services), 15 (Dependent Personal Services), 16 (Directors' Fees), and 17 (Artistes and Sportsmen).

Paragraph 1(b) establishes an exception to the general rule, in fact the right to tax will belong to the state where the services are rendered if the individual is a national of that country or if it has the residence in that state and the residence was not acquire only for the purpose of rendering the services.

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c) For purposes of determining an individual's eligibility to participate in and receive tax benefits with respect to a pension plan established in the United States, contributions made to, or benefits accrued under, a pension plan established in ------ shall be treated as contributions or benefits under a generally corresponding pension plan established in the United States to the extent relief is available to the individual under this paragraph.
d) This paragraph shall not apply unless the competent authority of the United States has agreed that the pension plan generally corresponds to a pension plan established in the United States."
On the topic see *supra* at pages 144 *et seq*.

Thus, according to Article 19(1)(b) the sole right to tax is passed to the state where the government services are rendered if the employee has much stronger connections with that country.

Different than the U.S. model, Article 19(1) of the U.S.-Italy tax convention clarifies that the aforementioned exception “shall not apply to the spouse or dependent children of an individual who is receiving remuneration to which the provisions of subparagraph (a) apply and who does not come within the terms of clause (i) or (ii).”

About Article 19(2) of the U.S.-Italy tax convention see *supra* at page 146 where I have treated Article 18 of the U.S. model.

Article 19 of the U.S.-Italy tax convention contains one paragraph more than the same Article of the 1996 U.S. model, according to which the rule stated in Article 19 will not apply if the services are provided linked with a business carried on by a Contracting State or a political subdivision or local authority. In those cases Articles 14, 15, 16, 17 or 18 will apply. This new Paragraph has been included under the 2006 update of the U.S. model.

Article 20 (Professors and teachers).

This Article is not present in the U.S. model. It regulates the condition of visiting professors, teachers and researchers, establishing that they are exempted by taxes in the country of source “for a period not exceeding two years.”

Beyond that period of time, they should pay taxes in the visited country.

Article 20(2) provides an exception to the general rule contained in Paragraph 1 in case that the research conducted is not “in the general interest but primarily for the private benefit of a specific person or persons.”

It should be noted that it is not easy to distinguish when a research is conducted mainly in the general interest or mainly in the private interest, because both interests often match in the same research.

Article 21 (Students and trainees).

This Article addresses the same topic as Article 20 of the U.S. model.

Different than the previous Article 20 (Professors and teachers) of the U.S.-Italy tax convention, it regulates the situation of the students, apprentice, and business trainee who are in a country for the purpose of their full-time education or full-time training.

The main rule, according to which payments of the students, apprentices and business trainees shall not be taxed in the state where they are studying or training, is the same.

Different than the 1996 U.S. model, there is no mention of the "full-time education" and the "full-time training," being the disposition included in the U.S.-Italy tax convention more general than the same one in the U.S. model.

The 2006 U.S. model adds two more paragraphs to the text of the 1996 U.S. model. Besides the limitation of the exemption to no more than one year from the date when they arrive in the country for the purpose of their training, the 2006 U.S. model includes one more limitation in Paragraph 2, according to which "a student or business trainee within the meaning of paragraph 1 shall be exempt from tax by the Contracting State in which the individual is temporarily present with respect to income from personal services in an aggregate amount equal to $9,000 or its equivalent in [ ] annually."

Finally, Paragraph 3 of the 2006 U.S. model contains a definition of "a business trainee" for the purposes of the U.S. model income tax convention, which is not present in the 1996 U.S. model, as well as in the U.S.-Italy tax convention.

Article 22 (Other income).

This Article is very important because it provides the residual rule that must be applied to tax all income not otherwise covered in the treaty.

The general rule is that only the country of residence can tax it. The U.S.-Italy tax convention adds to the text of Article 21 of the U.S. model one more paragraph, according to which "the provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights with respect to which the income is paid to take advantage of this Article by means of that creation or assignment."

It should be noted that the 1996 U.S. model clarifies one more concept than the U.S.-Italy tax convention, stating that in case of exception contained in Paragraph 2 "the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply."

Finally, different than the 1996 U.S. model, Paragraph 2 of the 2006 U.S. model has deleted any mention to the independent personal services performed from a fixed base.

Article 23 (Relief from double taxation).

I have already written about the main double taxation relief methods when I have addressed the juridical double taxation and the mechanisms that must be found in order to avoid that juridical double taxation might have negative effects on cross-border transactions.[167]

I also have already underlined that the OECD model offers the Contracting States the chance to decide between the exemption method, stated by Article 23 A, and the credit method, stated by Article 23 B. Under the OECD model these Articles are designed to be alternatives.

The U.S. model uses only the credit method, but Article 23 of the U.S. model is totally different from Article 23B of the OECD model;[168] it

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[167] See *supra* § 1.2.

[168] **Article 23** of the U.S. model states "1.In the case of -------, double taxation will be relieved as follows:

2. In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the

follows the foreign tax credit provisions included in §§ 901 through 908 of the Internal Revenue Code.

The U.S.-Italy tax convention follows the same approach as the U.S. model.

Article 24 (Non-discrimination).

This Article is substantially the same as Article 24 of the U.S. model.

Article 25 (Mutual agreement procedure).

This Article is more similar to Article 25 of the OECD model than to Article 25 of the U.S. model, even though some differences are present.
In fact, Article 25(4) of the U.S.-Italy tax convention adds to Article 25(4) of the OECD model one more sentence, according to which "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."

United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income applicable to residents and citizens:
a) the income tax paid or accrued to ------ by or on behalf of such resident or citizen; and
b) in the case of a United States company owning at least 10 percent of the voting stock of a company that is a resident of -------- and from which the United States company receives dividends, the income tax paid or accrued to ------- by or on behalf of the payer with respect to the profits out of which the dividends are paid.
For the purposes of this paragraph, the taxes referred to in paragraphs 3 a) and 4 of Article 2 (Taxes Covered) shall be considered income taxes.
3. For the purposes of applying paragraph 2 of this Article, an item of gross income, as determined under the laws of the United States, derived by a resident of the United States that, under this Convention, may be taxed in ----- shall be deemed to be income from sources in -----.
4. Where a United States citizen is a resident of -------:
a) with respect to items of income that under the provisions of this Convention are exempt from United States tax or that are subject to a reduced rate of United States tax when derived by a resident of ------ who is not a United States citizen, ------- shall allow as a credit against -------- tax, only the tax paid, if any, that the United States may impose under the provisions of this Convention, other than taxes that may be imposed solely by reason of citizenship under the saving clause of paragraph 4 of Article 1 (General Scope);
b) for purposes of applying paragraph 2 to compute United States tax on those items of income referred to in subparagraph a), the United States shall allow as a credit against United States tax the income tax paid to -------- after the credit referred to in subparagraph a); the credit so allowed shall not reduce the portion of the United States tax that is creditable against the ----------- tax in accordance with subparagraph a); and
c) for the exclusive purpose of relieving double taxation in the United States under subparagraph b), items of income referred to in subparagraph a) shall be deemed to arise in ------- to the extent necessary to avoid double taxation of such income under subparagraph b)."

Furthermore, even if Article 25(5) of the U.S.-Italy tax convention contains, similar to the OECD model, the chance to submit the case for the arbitration procedure,[169] the regulation of that procedure is different from the OECD model.

Article 26 (Exchange of information).

This Article is different from the same Article of the U.S. model. It replaces Paragraphs 1, 2, and 3 of the same Article of the OECD model.[170] Moreover, it has the same title as Article 26 of the OECD model.

Article 27 (Diplomatic agents and consular officials).

This Article is equal to Article 27 of the U.S. model. The only difference is that it uses the word "consular officials" instead of "consular officers."

Article 28 (Entry into force).

Different than the same Article of the 1996 U.S. model, Article 28 of the U.S.-Italy tax convention includes the instrument of the exchange of ratifications.

Moreover, it adds two more paragraphs to the text of Article 28 of the 1996 U.S. model.

In fact, Paragraph 3 provides a privilege to a person who would have been entitled to any greater relief from tax under the 1984 U.S.-Italy tax convention. Such person continues to be subjected to the same effects "for a twelve-month period from the date on which the provisions of this Convention would otherwise have effect."

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[169] **Article 25(5)** of the U.S.-Italy tax convention states "if an agreement cannot be reached by the competent authorities pursuant to the previous paragraphs of this Article, the case may, if both competent authorities and the taxpayer agree, be submitted for arbitration, provided that the taxpayer agrees in writing to be bound by the decision of the arbitration board. The competent authorities may release to the arbitration board such information as is necessary for carrying out the arbitration procedure. The award of the arbitration board shall be binding on the taxpayer and on both States with regard to that case. The procedures shall be finalized by the Contracting States by means of notes to be exchanged through diplomatic channels after consultation between the competent authorities. The provisions of this paragraph shall not have effect until the date specified in the exchange of diplomatic notes."

[170] See *supra* at pages 119 and 120.

Article 28(4) of the 1999 U.S.-Italy tax convention contains a termination clause of the previous 1984 update; in fact, it states "the provisions of the prior Convention shall cease to have effect when corresponding provisions of this Convention take effect in accordance with paragraphs 2 and 3, and the prior Convention shall terminate on the last date on which it has effect in accordance with the foregoing provisions of this paragraph."

Different than the 1996 update, the 2006 U.S. model includes the instrument of the exchange of ratifications, similar to the 1999 U.S.-Italy tax convention.

Article 29 (Termination).

Different from U.S. model, Article 29 of the U.S.-Italy tax convention provides a limitation of the right of each Contracting State to terminate the Convention; in fact, such a right can be acted only "after 5 years from the date on which the Convention enters into force provided that at least 6 months' prior notice of termination."

Protocol (Articles 1-8).

The Protocol attached to the U.S.-Italy tax convention includes several rules which complete the dispositions contained in Articles 1-29 of the Convention.

Especially, Article 1 provides several definitions which are important for the purposes of the Convention.

Article 2[171] expresses the "limitation on benefits" (LOB) clause which is included in Article 22 of the U.S. model.

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[171] "1.A resident of a Contracting State shall be entitled to benefits otherwise accorded to residents of a Contracting State by the Convention only to the extent provided in this Article.
2. A resident of a Contracting State shall be entitled to all the benefits of the Convention if the resident is:
(a) an individual;
(b) a qualified governmental entity;
(c) a company, if:
(i) all the shares in the class or classes of shares representing more than 50 percent of the voting power and value of the company are regularly traded on a recognized stock exchange, or

As I have already written, this disposition is intended to block the practice of the "treaty shopping," tolerated for many years by the U.S. Government.

(ii) at least 50 percent of each class of shares in the company is owned directly or indirectly by five or fewer companies entitled to benefits under clause (i), provided that in the case of indirect ownership, each intermediate owner is a person entitled to benefits of the Convention under this paragraph;
(d) described in subparagraph 5(a)(i) of Article 1 of this Protocol;
(e) described in subparagraph 5(a)(ii) of Article 1 of this Protocol, provided that more than 50 percent of the person's beneficiaries, members or participants are individuals resident in either Contracting State; or
(f) a person other than an individual, if:
(i) On at least half the days of the taxable year persons described in subparagraphs (a), (b), (c), (d) or (e) own, directly or indirectly (through a chain of ownership in which each person is entitled to benefits of the Convention under this paragraph), at least 50 percent of each class of shares or other beneficial interests in the person, and (ii) less than 50 percent of the person's gross income for the taxable year is paid or accrued, directly or indirectly, to persons who are not residents of either Contracting State (unless the payment is attributable to a permanent establishment situated in either State), in the form of payments that are deductible for income tax purposes in the person's State of residence.
3. (a) A resident of a Contracting State not otherwise entitled to benefits shall be entitled to the benefits of this Convention with respect to an item of income derived from the other State, if:
(i) the resident is engaged in the active conduct of a trade or business in the first-mentioned State,
(ii) the income is connected with or incidental to the trade or business, and
(iii) the trade or business is substantial in relation to the activity in the other State generating the income.
(b) For purposes of this paragraph, the business of making or managing investments will not be considered an active trade or business unless the activity is banking, insurance or securities activity conducted by a bank, insurance company or registered securities dealer.
(c) Whether a trade or business is substantial for purposes of this paragraph will be determined based on all the facts and circumstances. In any case, however, a trade or business will be deemed substantial if, for the preceding taxable year, or for the average of the three preceding taxable years, the asset value, the gross income, and the payroll expense that are related to the trade or business in the first-mentioned State equal at least 7.5 percent of the resident's (and any related parties') proportionate share of the asset value, gross income and payroll expense, respectively, that are related to the activity that generated the income in the other State, and the average of the three ratios exceeds 10 percent.
(d) Income is derived in connection with a trade or business if the activity in the other State generating the income is a line of business that forms a part of or is complementary to the trade or business. Income is incidental to a trade or business if it facilitates the conduct of the trade or business in the other State.
4. A resident of a Contracting State not otherwise entitled to benefits may be granted benefits of the Convention if the competent authority of the State from which benefits are claimed so determines.
5. For purposes of this Article the term "recognized stock exchange" means:
(a) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under the U.S. Securities Exchange Act of 1934;
(b) any stock exchange constituted and organized according to Italian laws; and
(c) any other stock exchanges agreed upon by the competent authorities of both Contracting States."

In fact, LOB clause is not present in the 1955 U.S.-Italy tax convention. It has been introduced under the 1984 update, but it has been broadened only under the last update (1999).

According to the *International Tax Glossary*,[172] treaty shopping "has been described as the situation where a person who is not entitled to the benefits of a tax treaty makes use -in the widest meaning of the word- of an individual or of a legal person in order to obtain those treaty benefits that are not available directly."

According to the *Internal Revenue Service of the United States* "limitations on benefits provisions generally prohibit third country residents from obtaining treaty benefits. For example, a foreign corporation may not be entitled to a reduced rate of withholding unless a minimum percentage of its owners are citizens or residents of the United States or the treaty country."

In spite of its length, Article 2 of the Protocol contains a very simple main concept,[173] according to which "a resident of a Contracting State shall be entitled to benefits otherwise accorded to residents of a Contracting State by the Convention only to the extent provided in this Article."

It should be noted the U.S.-Italy tax convention contains a positive approach, which is equal to the one of the 1996 U.S. model, but is different than the negative approach of the 2006 U.S. model. In fact, the 2006 U.S. model states that "a resident of a Contracting State shall not be entitled to the benefits of this Convention otherwise accorded to residents of a Contracting State unless such resident is a "qualified person" as defined in paragraph 2" (*negative approach*), while the 1996 U.S. model and the U.S.-Italy tax convention says that "a resident of a Contracting State shall be

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[172] B. LARKING (ed.), *supra* note 13.

[173] See on the topic Alessandro Adelchi Rossi, *The Saving Clause of Pending US-Italy Tax Treaty*, 13 TAX N INT'L 1351 (2003); Piergiorgio Valente & Marco Magenta, *Analysis of Certain Anti-Abuse Clauses, in* THE TAX TREATIES CONCLUDED BY ITALY 41 (2000); FÉLIX ALBERTO VEGA BORREGO, LIMITATION ON BENEFITS CLAUSES IN DOUBLE TAXATION CONVENTIONS (2005); Piergiorgio Valente, *La "Limitation on Benefits clause", in* CONVENZIONE ITALIA-USA CONTRO LE DOPPIE IMPOSIZIONI, *supra* note 127, at 236.

entitled to benefits otherwise accorded to residents of a Contracting State by the Convention only to the extent provided in this Article" (*positive approach*). In the U.S.-Italy tax convention there is no mention of the concept of "qualified person."

The text of Article 2 of the Protocol of the U.S.-Italy tax convention is equal to the text of Article 22 of the 1996 U.S. model. Besides the different approach, in the meaning that I have already explained, Article 22 of the 2006 U.S. model has the same structure and content as those of them.

Article 2(2) of the Protocol states when a resident shall be entitled to all benefits of the Convention.[174]

Paragraph 2 includes some "tests" that are important to establish if a resident is entitled to all benefits of the Convention. These tests are:

-the so called "publicly traded test,"[175] according to which a company is entitled to the benefits of the Convention if "all the shares in the class or classes of shares representing more than 50 percent of the voting power and value of the company are regularly traded on a recognized stock exchange, or;"

-the so called "subsidiary of publicy traded test,"[176] according to which a company is entitled to the benefits of the Convention if "at least 50 percent of each class of shares in the company is owned directly or indirectly by five or fewer companies entitled to benefits under clause (i), provided that in the case of indirect ownership, each intermediate owner is a person entitled to benefits of the Convention under this paragraph;"

-the so called "ownership test,"[177] according to which a person other than an individual is entitled to the benefits of the Convention if "on at least half the days of the taxable year persons described in subparagraphs (a), (b), (c), (d) or (e) own, directly or indirectly (through a chain of ownership in

[174] See *supra* at page 147 *et seq*.
[175] This test is espressed in Article 2(c)(ii) of the Protocol.
[176] This test in espressed in Article 2(c)(i) of the Protocol.
[177] This test is espressed in Article 2(f)(ii) of the Protocol.

which each person is entitled to benefits of the Convention under this paragraph), at least 50 percent of each class of shares or other beneficial interests in the person;" and

-the so called "base erosion test,"[178] according to which a person other than an individual is entitled to the benefits of the Convention if "less than 50 percent of the person's gross income for the taxable year is paid or accrued, directly or indirectly, to persons who are not residents of either Contracting State (unless the payment is attributable to a permanent establishment situated in either State), in the form of payments that are deductible for income tax purposes in the person's State of residence."

Paragraph 3 provides some exceptions to the general rule written in Paragraph 1. In fact, it contains one more test, the so called "active trade or business test," according to which a resident of a Contracting State can claim the treaty benefits even though it is not entitled to them if it is engaged in a trade or a business conducted by itself in the Contracting State.

The same rule applies even thought the foreign taxpayer does not directly conduct the trade or business activity, but the income is connected to a trade or a business directly conducted by that taxpayer. Different than the 2006 U.S. model, the concept of "person connected to another" has been substituted by the concept of "income related to trade or business."

In addition, Paragraph 3 clarifies when the income is connected with a trade or business directly conducted by that taxpayer. It must be pointed out that if the tests contained in Article 2(2) of the Protocol are satisfied, the taxpayer will be entitled to all benefits of the Convention, while if the test written in Article 2(3) of the Protocol is satisfied, the taxpayer could be entitled only to some benefits of the Convention.

Paragraph 4 includes a "safety rule;" the competent authorities of the Contracting States can allow a foreign taxpayer the treaty benefits, even if it

[178] This test is espressed in Article 2(f)(ii) of the Protocol.

is not entitled according to Article 2 of the Protocol, and if it does not fall under the conditions stated there. Different than the 2006 U.S. model, this power is not subjected to any limitation.

At last, Article 2(5) of the Protocol contains the definition of the term “recognized stock exchange” for the purposes of this Article. It must be pointed out that Article 22 of the 2006 U.S. model adds some more important definitions to the texts of Article 22 of the 1996 U.S. model and Article 2 of the Protocol of the U.S.-Italy tax convention.

Article 3 of the Protocol, attached to the U.S.-Italy tax convention, completes Articles 23 (Relief from double taxation), 24 (Non-discrimination), and 25 (Mutual agreement procedure).

Article 4 of the Protocol provides a special credit to “a United States citizen resident in Italy who is partner of a partnership that is national of the United States.”

Article 5 expresses the right to refund taxes withheld at the source by each Contracting States to the taxpayer, if the right to collect those taxes “is limited by the provisions of the Convention.”

Article 6 of the Protocol states the right of each Contracting States to “collect on behalf of the other Contracting State such amounts as may be necessary to ensure that relief granted by the Convention from taxation imposed by such other State does not enure to the benefit of persons not entitled thereto.”

Article 7 of the Protocol contains the ability that the competent authorities of each Contracting States can consult each other in order to implement the Convention.

Finally, Article 8 of the Protocol includes in favor of Italy a special disposition according to which “if any State or locality of the United States imposes tax on profits of enterprises of Italy from the operation in international traffic of ships or aircraft, Italy may impose its regional tax on productive activities (l’imposta regionale sulle attività produttive) on such profits of enterprises of the United States, notwithstanding the provisions of subparagraph 2(b)(iii) of Article 2 (Taxes Covered) and Article 8 (Shipping and Air Transport) of the Convention."

CHAPTER 5

CONCLUSION

In the last chapter of this thesis, I will try to present some essential and concise conclusions.

The last convention between the government of the United States and the government of the Republic of Italy (adopted to avoid double taxation and the prevention of fraud or fiscal evasion), signed in 1999, recently entered into force (December 16, 2009), and become effective on January 1, 2010, and on February 2, 2010 for certain provisions, already needs some new modifications because of some important changes occurred in the tax systems of Italy and the U.S. in the last ten years between its signing and its entering into force.

In fact, from Italy side, the law on fiscal federalism (Legge delega n.42/2009) was approved on May 5, 2009.

This law is a fundamental step in the implementation of the reform of the Title V of the Italian Constitution, especially of Article 119 according to which “municipalities, provinces, metropolitan cities and regions shall have revenue and expenditure autonomy.

Municipalities, provinces, metropolitan cities and regions shall have independent financial resources. They set and levy taxes and collect revenues of their own, in compliance with the Constitution and according to the principles of coordination of State finances and the tax system. They share in the tax revenues related to their respective territories.

State legislation shall provide for an equalization fund -with no allocation constraints- for the territories having lower per-capita taxable capacity.

Revenues raised from the above-mentioned sources shall enable municipalities, provinces, metropolitan cities and regions to fully finance the public functions attributed to them.

The State shall allocate supplementary resources and adopt special measures in favor of specific municipalities, provinces, metropolitan cities and regions to promote economic development along with social cohesion and solidarity, to reduce economic and social imbalances, to foster the exercise of the rights of the person or to achieve goals other than those pursued in the ordinary implementation of their functions.

Municipalities, provinces, metropolitan cities and regions have their own properties, which are allocated to them pursuant to general principles laid down in State legislation. They may resort to indebtedness only as a means of funding investments. State guarantees on loans contracted for this purpose are not admissible."[179]

Article 119 of the Italian Constitution has got no implementation until the approval of the law on fiscal federalism, which gives legislative powers and administrative functions to local governments.

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[179] The Italian text is "I Comuni, le Province, le Città metropolitane e le Regioni hanno autonomia finanziaria di entrata e di spesa.

I Comuni, le Province, le Città metropolitane e le Regioni hanno risorse autonome. Stabiliscono e applicano tributi ed entrate propri, in armonia con la Costituzione e secondo i principi di coordinamento della finanza pubblica e del sistema tributario. Dispongono di compartecipazioni al gettito di tributi erariali riferibile al loro territorio.

La legge dello Stato istituisce un fondo perequativo, senza vincoli di destinazione, per i territori con minore capacità fiscale per abitante.

Le risorse derivanti dalle fonti di cui ai commi precedenti consentono ai Comuni, alle Province, alle Città metropolitane e alle Regioni di finanziare integralmente le funzioni pubbliche loro attribuite.

Per promuovere lo sviluppo economico, la coesione e la solidarietà sociale, per rimuovere gli squilibri economici e sociali, per favorire l'effettivo esercizio dei diritti della persona, o per provvedere a scopi diversi dal normale esercizio delle loro funzioni, lo Stato destina risorse aggiuntive ed effettua interventi speciali in favore di determinati Comuni, Province, Città metropolitane e Regioni.

I Comuni, le Province, le Città metropolitane e le Regioni hanno un proprio patrimonio, attribuito secondo i principi generali determinati dalla legge dello Stato. Possono ricorrere all'indebitamento solo per finanziare spese di investimento. E' esclusa ogni garanzia dello Stato sui prestiti dagli stessi contratti."

The Italian process of fiscal devolution started in the middle of 1990s, but with the law on fiscal federalism it has encountered an important step towards its total implementation thanks to the law on fiscal federalism.
The law no.42 is a frame law, so it has required several legislative decrees to allow the practical application of the provisions established by it. The process is not completed yet, but it is changing the entire Italian tax system, dividing the tax competences between the State and the sub-national governments, and giving them more responsibilities.

As a consequence, local governments will have financing resources to perform their tasks; they will be given other resources on the basis of standard costs of production.

Tax autonomy will allow sub-national governments to introduce own taxes and modify tax rates.

Thus, local governments will be financed by three kinds of revenues:

- own taxes;
- shares of national tax revenues; and
- shares of common pool funds.

At the end of the process, which must take place in five years after the approval of the frame law no.42, the Italian tax system will be totally different than the one now in force, and it will require a new update of the U.S.-Italy tax convention in order to adapt it to the new situation.
Because of the new powers that sub-national governments are obtaining, in some way they must be involved in the process of the approval of a tax convention between Italy and another country; without any coordination, in fact, they might do something in contrast with the statements included in a tax convention involving Italy.

From the United States side, it should be considered that after the last update (1999) of the U.S.-Italy tax convention, the U.S. model income tax convention, which the Convention is based on, has again been modified (2006).

The last U.S. model income tax convention (2006) is different from the previous 1996 update in several provisions, as I have already written in the chapter four.

For examples, some important differences are:

Article 1 (General Scope).

The 1996 U.S. model does not address the issue of entities that are fiscally transparent, such as partnerships and some trusts. Nevertheless, these entities are regulated in Article 1(6) of the 2006 U.S. model, which is not present in the 1996 update.

Article 6(4) (Income from real property).

The mention of the “independent personal services” is present in the 1996 U.S. model, and it has been deleted under the 2006 update.

Article 7 (Business profits).

The definition of “business profits” for the purposes of the U.S. model is present only in the 1996 update, not in the 2006 update.

Article 10 (Dividends).

It should be noted that the 1996 U.S. model differs from the 2006 update because it does not only apply the rule of the “branch profit tax” if there is a “permanent establishment,” but if the resident “performs in that other State independent personal services from a fixed base situated there in,” as well.

Moreover, Paragraph 4 of Article 10 is present only in the 1996 U.S. model.

Article 11 (Interest).

Paragraph 2 of the 2006 U.S. model addresses the same issue as Paragraph 5 of the 1996 update, but in a different way.

Article 14 (Independent personal services) of the 1996 U.S. model. This Article is not present in the 2006 U.S. model.

Article 17 (Artistes and sportsmen) of the 1996 U.S. model.

This Article replaces Article 16 of the 2006 U.S. model, but with some differences.

In fact, Paragraph 2 states that the same main rule included in Paragraph 1 will apply if the income of an entertainer or a sportsman accrues to another person. Furthermore, Paragraph 2 clarifies that such income "shall be deemed not to accrue to another person if it is proved by the entertainer or athlete that neither he nor persons related to him participate directly or indirectly in the profits of such other person in any manner."

This clarification is present only in the 1996 update of the U.S. model, as it has been deleted under the 2006 update.

Article 18 (Pensions, social security, annuities, alimony, and child support) of the 1996 U.S. model.

In the 2006 update of the U.S. model the regulation of pensions has entirely converged to a new Article, titled "Pension funds," while in the 1996 update it is included in the same Article regulating "social security, annuities, alimony, and child support."

Article 20 (Students and trainees).

The 2006 U.S. model adds two more paragraphs to the text of the 1996 U.S. model.

In fact, besides the limitation of the exemption to no more than one year from the date when students and trainees arrive in the country for the purpose of their training, the 2006 U.S. model includes one more limitation in Paragraph 2, according to which "a student or business trainee within the meaning of paragraph 1 shall be exempt from tax by the Contracting State in which the individual is temporarily present with respect to income from personal services in an aggregate amount equal to $9,000 or its equivalent in [ ] annually."

Finally, Paragraph 3 of the 2006 U.S. model contains a definition of a "business trainee" for the purpose of the U.S. model income tax convention, which is not present in the 1996 U.S. model.

Article 21 (Other income).

Different from the 1996 U.S. model, Paragraph 2 of the 2006 U.S. model has deleted any mention to the independent personal services performed from a fixed base.

Article 28 (Entry into force).

Different than the 1996 U.S. model, the 2006 update states the obligation of the exchange of ratifications.

On analyzing its provisions, the last U.S.-Italy tax convention is more similar to the 1996 U.S. model than to the 2006 update.

Thus, the U.S.-Italy tax convention needs to be modified to be adapted to some important changes in the last U.S. model (2006).

Furthermore, from the United States side one more important event is the Camp international tax reform.

Dave Camp is the Chairman of the Ways and Means Committee that has unveiled an international tax reform discussion draft as part of a comprehensive tax reform.

The main objectives of the Ways and Means discussion draft are:

-reducing the corporate tax rate to 25 percent. In fact, the U.S. combined federal-state corporate tax rate is 39.2 percent, which is one of the highest in the industrialized countries. Reducing the tax rate is fundamental to foster a faster economic recovery; and

-switching from a worldwide system of taxation to a territorial-based system.

In this perspective, the United States are one of the few countries in the world still using the worldwide system of taxation. It is a trace from the Cold War, and was introduced in economical conditions that were very different from the present ones. In the opinion of the Committee, this system does not encourage the U.S. companies to bring their profits back home creating new jobs because the U.S. employers must pay additional taxes if they bring their foreign profits back to invest in the United States.

Reinvesting their profits overseas is more convenient for the U.S. companies than investing them in the United States.

Furthermore, all most industrialized countries in the world are changing their international tax codes, creating territorial fiscal systems.

The U.S. tax reform establishes to exempt 95 percent of foreign profits from U.S. taxation when they are brought back to the United States.

Finally, from the United States side a further important element to be considered is the recent approval of FATCA (Foreign Account Tax Compliance Act). This law was approved on March 18, 2010, but it has not become effective yet.

FATCA will enter into force on January 1, 2013, but we should wait for the publication of the interpretative guide by the U.S. tax competent authority in order to have a better comprehension of its practical effects.

The FATCA unites a series of very important anti-avoidance measures, such as the obligation for non American financial qualified intermediaries to point out financial information concerning their American clients or, alternatively, to pay a 30% tax of the income made from the investments of their American clients in replacement of such obligation of information.

The aforementioned rule is destined to have a significant effect on the worldwide market, because it does not only levy a tax in order to oblige the intermediaries to fiscal collaboration, but it also acts on the whole organizational structure of the qualified intermediaries, which will have to adapt themselves to different standards and satisfy different requirements.

With the FATCA system the United States are going towards the creation of a worldwide system of exchanging information on American fiscal taxpayers, creating greater transparency.

FATCA is destined to have a significant effect on the other Nations, as well. All countries will have to create a system of exchanging

information very similar to that created in the United States in order to satisfy the requirements imposed by the U.S. law.
In fact, new rules do not concern only the U.S. citizens who act directly in the financial market, but also the U.S. nationals who act indirectly through entities which are not established in the United States.
Paying a 30% tax of the income made from the investments is a strong deterrent, which will oblige all financial qualified intermediaries (mainly banks and insurance companies) to adopt the new standards imposed by FATCA in order to avoid an excessive income tax.

The obligation of fiscal collaboration for qualified intermediaries can be included in the general duty of exchanging information imposed by international tax treaties, as a fight instrument against the tax evasion.
Clearly, such U.S. determined law can inspire some considerations about tax policy acted by the European member countries, and about the obligation of exchanging information which is establishing more and more among European states.

All those important events in the U.S. legal system are destined to have significant effects on the international tax agreements signed between the United States and other countries, Italy included.
In this way, those events will require one more update of the U.S.-Italy tax convention.

In conclusion of this Ph.D. thesis, reasonably and to the light of our aforementioned considerations, I can affirm that even though the new "convention between the government of the United States and the government of the Republic of Italy adopted to avoid double taxation and the prevention of fraud or fiscal evasion" has recently become effective (on January 1, 2010, and on February 2, 2010 for certain provisions), it is already old.

Too much time has passed between its signing and its entering into force.

The Convention has taken eleven years to become effective because of a long bureaucracy involved in the process of ratification of tax treaties, and today the evolution of tax system of developed countries in the world is so fast that it is not compatible with such a slow legal process.

LIST OF ABBREVIATIONS

AJIL= American Journal of International Law

Asian YBIL= Asian Yearbook of International Law

Austrian RIEL= Austrian Review of International and European Law

Australian TF= Australian Tax Forum

Australian YBIL= Australian Yearbook of International Law

Boll. Trib.= Bollettino Tributario

Brit. Tax Rev.= British Tax review

Bull. Int’l Fisc. Doc.= Bulletin for international fiscal documentation

BYBIL= British Yearbook of International Law

Can. Tax J.= Canadian Tax Journal

CFDI= Cahier de Droit Fiscal International

Com. Internaz.= Commercio Internazionale

Corr. Trib.= Corriere Tributario

Dig. Disc. priv., Sez. comm.= Digesto Discipline Privatistiche Sezione Commerciale

Dir. Prat. Trib.= Diritto e Pratica Tributaria

Dir. Prat. Trib. Internaz.= Diritto e Pratica Tributaria Internazionale

EJIL= European Journal of International Law

ET= European Taxation Journal

Fed. Fisc.= Federalismo Fiscale

Finnish YBIL= The Finnish Yearbook of International Law

Fletcher F.= Fletcher Forum

ICLQ= International and Comparative Law Quarterly

Indian YBIL= Indian Yearbook of International Law

In. Dir.= Innovazione e Diritto

INTAL/IL= Integración Latinoamericana. Instituto para la Integración de América Latina. B.A.

Int’l Tax & Bus. Law= International Tax and Business Lawyer

Intertax= Intertax

ITPJ= International Transfer Pricing Journal

Mic. J. Int’l L.= Michigan Journal of International Law

NILR= Netherlands International Law Review

Nordic JIL= Nordic Journal of International Law

OZöR= Osterreichische Zeitschrift für offentliches Recht

Polish YBIL= Polish Yearbook of International Law

RC= Recueil des Cours de l’Académie de droit international de La Haye

RGDIP= Revue Générale de Droit International Public

Rass. Trib.= Rassegna Tributaria

Rev. Crit. DIP= Revue Critique de Droit International Privé

Rev. Sc. Leg. Financ.= Rèvue de Science et Législation financière

Riv. Dir. Fin. Sc. Fin.= Rivista di Diritto Finanziario e Scienza delle Finanze

Riv. Dir. Internaz.= Rivista di Diritto Internazionale

Riv. Dip. Sc. St.= Rivista del Dipartimento di Scienze dello Stato

Riv. Dir. Trib.= Rivista di Diritto Tributario

Riv. Giur. Trib.= Rivista di Giurisprudenza Tributaria

RJT= Revue Juridique Themis

Stud. L. & Econ. Dev.= Studies in Law and Economic Development

Tax N Int’l= Tax Notes International

T. Int’l Comp. L. J.= Temple International & Comparative Law Journal

TMIJ= Tax Management International Journal

Trusts At. Fid.= Trusts e Attività Fiduciarie

UCDLR= University College Dublin Law Review

UCLALR= University of California Law Review

Vill. L. Rev.= Villanova Law Review

Vir. J Int’l L.= Virginia Journal of International Law

Virg. Tax Rev.= Virginia Tax Review

Wroclaw= Archivum iuridicum Cracoviense

ZaöRV=Zeitschrift für ausländisches öffentliches Recht und Völkerrecht

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APPENDIX I

INCOME TAX TREATIES BETWEEN THE U.S. AND ITALY

(1955, 1984, and 1999)

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE ITALIAN REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME (Washington, 1955)

Convention signed at Washington March 30, 1955;
Ratification advised by the Senate of the United States of America July 29, 1955;
Ratified by the President of the United States of America August 22, 1955;
Ratified by Italy July 25, 1956;
Ratifications Exchanged at Rome October 26, 1956;
Proclaimed by the President of the United States of America November 2, 1956;
Entered into Force October 26, 1956;
Operative retroactively January 1, 1956.

Article I
The taxes referred to in this Convention are:
(a) In the case of the United States:
the Federal income tax, including surtaxes.
(b) In the case of Italy:
(1) Tax on land (l'imposta sul reddito dei terreni).
(2) Tax on buildings (l'imposta sul reddito die fabbricati).
(3) Tax on movable wealth (l'imposta sui redditi di ricchezza mobile).
(4) Tax on agricultural income (l'imposta sui redditi agrari).
(5) Complementary tax (l'imposta complementare progressiva sul reddito).

Article II
(1) As used in this Convention:
(a) The term "United States" means the United States of America, and when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.
(b) The term "Italy" means the Italian Republic.
(c) The term "permanent establishment" means a branch, office, factory, warehouse or other fixed place of business, but does not include the casual and temporary use of merely storage facilities, nor does it include an agency unless the agent has and exercises a general authority to negotiate and conclude contracts on behalf of an enterprise or has a stock of merchandise from which he regularly fills orders on its behalf. An enterprise of one of the contracting States shall not be deemed to have a permanent establishment in the other State merely because it carries on business dealings in such other State through a bona fide commission agent, broker or custodian acting in the ordinary course of his business as such. The fact that an enterprise of one of the contracting States maintains in the other State a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute such fixed place of business a permanent establishment of such enterprise. The fact that a corporation of one contracting State has a subsidiary corporation which is a corporation of the other State or which is engaged in trade or business in the other State shall not of itself constitute that subsidiary corporation a permanent establishment of its parent corporation.
(d) The term "enterprise of one of the contracting States" means, as the case may be, "United States enterprise" or "Italian enterprise".
(e) The term "enterprise" includes every form of undertaking whether carried on by an individual, partnership, corporation, or any other entity.
(f) The term "United States enterprise" means an enterprise carried on in the United States by a resident of the United States or by a United States corporation or other entity; the term "United States corporation or other entity" means a corporation or other entity created or organized in the United States or under the law of the United States or of any State or Territory of the United States.
(g) The term "Italian enterprise" means an enterprise carried on in Italy by a resident of Italy or by an Italian corporation or other entity; the term "Italian corporation or other entity" means a corporation or other entity created or organized in Italy or under Italian laws, or a partnership so created or organized.
(h) The term "competent authorities" means, in the case of the United States, the Commissioner of Internal Revenue as authorized by the Secretary of the Treasury; and in the case of Italy, the Ministry of Finance, General Directorship for Direct Taxation.
(2) In the application of the provisions of the present Convention by one of the contracting States any term not otherwise defined shall, unless the context otherwise requires, have the meaning which such term has under the tax laws of such State.

Article III
(1) An enterprise of one of the contracting States shall not be subject to tax by the other contracting State in respect of its industrial and commercial profits unless it is engaged in trade or business in such other State through a permanent establishment situated therein. If it is so engaged such other State may impose its tax upon the entire income of such enterprise from sources within such other State.
(2) In determining the industrial or commercial profits from sources within one of the contracting States of an enterprise of the other contracting State, no profits shall be deemed to arise from the mere purchase of goods or merchandise within the former contracting State by such enterprise.
(3) Where an enterprise of one of the contracting States is engaged in trade or business in the other contracting State through a permanent establishment situated therein, there shall be attributed to such permanent establishment the industrial or commercial profits which it might be expected to derive if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment, and the profits so attributed shall, subject to the law of such other contracting State, be deemed to

be income from sources within such other contracting State and shall be assessed according to the law of such other contracting State.
(4) The competent authorities of the two contracting States may lay down rules by agreement for the apportionment of industrial and commercial profits.
(5) In the determination of the net industrial and commercial profits of the permanent establishment there shall be allowed as deductions all expenses, wherever incurred, reasonably allocable to the permanent establishment, including executive and general administrative expenses so allocable.

Article IV
Where an enterprise of one of the contracting States, by reason of its participation in the management or the financial structure of an enterprise of the other contracting State, makes with or imposes on the latter, in their commercial or financial relations, conditions different from those which would be made with an independent enterprise, any profits which would normally 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 V
(1) Income which an enterprise of one of the contracting States derives from the operation of ships or aircraft registered in that State shall be exempt from taxation in the other contracting State.
(2) The present Convention shall be deemed to suspend the arrangement between the United States and Italy providing for relief from double income taxation on shipping profits, effected by exchange of notes dated March 10, 1926 and May 5, 1926.

Article VI
If one of the contracting States imposes a tax based on property and income, an enterprise of the other contracting State
(1) Shall be subject to such tax for the part which is based on property only with respect to property used or employed in the former State in the activity of such enterprise, and
(2) Shall be exempt from such tax for the part based on income, if the enterprise is exempt from tax on income according to Article III or Article V of this Convention.

Article VII
(1) The rate of tax imposed by one of the contracting States upon dividends received from sources within such State by a resident or corporation or other entity of the other contracting State not having a permanent establishment in the former State shall not exceed 15 per cent.
(2) It is agreed, however, that the rate of tax imposed at the source on dividends shall not exceed five per cent if the shareholder is a corporation controlling, directly or indirectly, at least 95 per cent of the entire voting power in the corporation paying the dividend, and if not more than 25 per cent of the gross income of such paying corporation is derived from interest and dividends, other than interest and dividends received from its own subsidiary corporations. Such reduction of the rate to five per cent shall not apply if the relationship of the two corporations has been arranged or is maintained primarily with the intention of securing such reduced rate.
(3) Each of the contracting States reserves the right to increase the rates of tax provided in this Article and, if either State so increases such rates in the case of residents or corporations or other entities of the other State, either State may terminate this Article by giving written notice of termination to the other State, through diplomatic channels, on or before the thirtieth day of June of any calendar year, and in such event this Article shall cease to be effective on and after the first day of January in the year next following that in which notice is given.

Article VIII
Royalties and other amounts received as consideration for the right to use copyrights, patents, designs, secret processes and formulas, trade-marks and other like property (including in such royalties and other amounts rentals and like payments in respect of motion picture films or for the use of industrial, commercial, or scientific equipment) from sources within one of the contracting States by a resident or corporation or other entity of the other contracting State not having a permanent establishment in the former State shall be exempt from taxation in such former State.

Article IX
(1) Income from real property (not including interest derived from mortgages and bonds secured by real property) and royalties in respect of the operation of mines, quarries, or other natural resources, shall be taxable only in the contracting State in which such property, mines, quarries, or other natural resources are situated.
(2) A resident or corporation or other entity of one of the contracting States deriving any such income from sources within the other contracting State may, for any taxable year, elect to be subject to the tax of such other contracting State, on a net basis, as if such resident or corporation or other entity were engaged in trade or business within such other contracting State through a permanent establishment situated therein during such taxable year.

Article X
(1) (a) Wages, salaries and similar compensation, and pensions paid by the United States or by a political subdivision or territory thereof to an individual (other than a citizen of Italy or an individual who has permanent residence status therein) shall be exempt from tax by Italy.
(b) Wages, salaries and similar compensation, and pensions paid by Italy or by a political subdivision or territory thereof to an individual (other than a citizen of the United States or an individual who has permanent residence status therein) shall be exempt from tax by the United States.
(2) Private pensions and life annuities received from sources within one of the contracting States by individuals residing in the other contracting State shall be exempt from taxation in the former State.
(3) The term "pensions", as used in this article, means periodic payments made in consideration for past services rendered or by way of compensation for injuries received.

(4) The term "life annuities", as used in this article, means a stated sum payable periodically at stated times during life, or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article XI
(1) Compensation for labour or personal services, including the practice of the liberal professions, shall be taxable only in the contracting State in which such services are rendered.
(2) The provisions of paragraph (1) are, however, subject to the following exceptions:
(a) A resident of Italy shall be exempt from United States tax upon such compensation if he is temporarily present in the United States for a period or periods not exceeding a total of ninety days during the taxable year and the compensation received for such services does not exceed $2,000 in the aggregate. If, however, such compensation is received for labour or personal services performed as an employee of, or under contract with, a resident or corporation or other entity of Italy, he shall be exempt from United States tax if his stay in the United States does not exceed a total of ninety days during the taxable year.
(b) The provisions of paragraph (2) (a) of this article shall apply, mutatis mutandis, to a resident of the United States with respect to compensation for personal services otherwise subject to income tax in Italy.
(3) The provisions of this article shall have no application to the income to which article X (1) relates.

Article XII
A student or business apprentice who is a resident of one of the contracting States (other than a citizen of the other contracting State) but who is temporarily present in the other contracting State exclusively for the purpose of study or training shall be exempt by such other State from tax on payments made to him by persons resident in the former State for the purpose of his maintenance, education and training.

Article XIII
A resident of one of the contracting States (other than a citizen of the other contracting State), who temporarily visits the other contracting State for the purpose of teaching for a period not exceeding two years at a university, college, school, or other educational institution in the other contracting State, shall be exempt in such other contracting State from tax on his remuneration for such teaching for such period.

Article XIV
(1) Dividends and interest paid by an Italian corporation to a recipient, other than a citizen or resident of the United States or a United States corporation or other entity, shall be exempt from all income taxes imposed by the United States.
(2) Dividends and interest paid by a United States corporation to a recipient, other than a citizen or resident of Italy or an Italian corporation or other entity, shall be exempt from all income taxes imposed by Italy.

Article XV
(1) It is agreed that double taxation shall be avoided in the following manner:
(a) The United States in determining its income taxes specified in Article I of this Convention in the case of its citizens, residents or corporations may, regardless of any other provision of this Convention, include in the basis upon which such taxes are imposed all items of income taxable under the revenue laws of the United States as if this Convention had not come into effect. The United States shall, however, subject to the provisions of sections 901, 902, 903, 904, and 905, Internal Revenue Code of 1954, deduct from its taxes the amount of Italian income taxes.
(b) Italy in determining its income taxes specified in Article I of this Convention in the case of its citizens, residents or corporations or other entities may, regardless of any other provision of this Convention, include in the basis upon which such taxes are imposed all items of income as if this Convention had not come into effect. Italy shall, however, deduct from the taxes so calculated the United States tax on income from sources in the United States (not exempt from United States tax under this Convention), other than dividends, but in an amount not exceeding that proportion of the Italian taxes which such income (other than such dividends) bears to the entire income (other than such dividends) of the taxpayer. With respect to dividends from sources within the United States and taxes therein, Italy shall allow as a credit 8 per cent of the amount of such dividends.
(2) The provisions of this Article shall not be construed to deny the exemptions from United States tax or Italian tax, as the case may be, granted by Articles XII and XIII of this Convention.

Article XVI
Where a taxpayer shows proof that the action of the revenue authorities of the contracting States has resulted, or will result, in double taxation contrary to the provisions of the present Convention, he shall be entitled to lodge a claim with the State of which he is a citizen or, if he is not a citizen of either of the contracting States, with the State of which he is a resident, or, if the taxpayer is a corporation or other entity, with the State in which it is created or organized. Should the claim be upheld, the competent authority of such State will come to an agreement with the competent authority of the other State with a view to equitable avoidance of the double taxation in question.

Article XVII
The competent authorities of the contracting States shall exchange such information (being information available under the respective taxation laws of the contracting States) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or for the administration of statutory provisions against tax avoidance in relation to the taxes which are the subject of the present Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those (including a court) concerned with the assessment and collection of the taxes which are the subject of the present Convention or the determination of appeals in relation thereto. No information shall be exchanged which would disclose any trade secret or trade process.

Article XVIII
Each of the contracting States may collect such taxes, which are the subject of this Convention, imposed by the other contracting State (as though such taxes were taxes imposed by the former State), as will ensure that the exemptions or reduced rates of taxes granted under the present Convention by such other State shall not be enjoyed by persons not entitled to such benefits.

Article XIX
(1) The provisions of this Convention shall not be construed to deny or affect in any manner the right of diplomatic and consular officers to other or additional exemptions now enjoyed by, or which may hereafter be granted to, such officers.
(2) The provisions of the present Convention shall not be construed to restrict in any manner any exemption, deduction, credit or other allowance now or hereafter accorded by the laws of one of the contracting States in the determination of the tax imposed by such State.
(3) Should any difficulty or doubt arise as to the interpretation or application of the present Convention, or its relationship to conventions between one of the contracting States and any other State, the competent authorities of the contracting States may settle the question by mutual agreement.

Article XX
The competent authorities of the two contracting States may prescribe regulations necessary to interpret and carry out the provisions of this Convention and may communicate with each other directly for the purpose of giving effect to the provisions of this Convention.

Article XXI
(1) The present Convention shall be ratified and the instruments of ratification shall be exchanged at Rome as soon as possible.
(2) The present Convention shall become effective on the first day of January of the calendar year in which such exchange takes place. It shall continue to be effective for a period of five years beginning with such first day of January and indefinitely after that period, but may be terminated by either of the contracting States at the end of the five-year period or at any time thereafter, provided that at least six months' prior notice of termination has been given and, in such event, the present Convention shall cease to be effective on the first day of January following the expiration of the six-month period.

DONE at Washington, in duplicate, in the English and Italian languages, the two texts having equal authenticity, this 30th day of March, 1955.
For the President of the United States of America
[SEAL] John Foster DULLES
For the President of the Italian Republic
[SEAL] Gaetano MARTINO

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF ITALY FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND THE PREVENTION OF FRAUD OR FISCAL EVASION (ROME, 1984)

Convention, with Protocol and Exchange of Notes, Signed at Rome April 17, 1984;
Transmitted by the President of the United States of America to the Senate July 3, 1984
(Treaty Doc. No.98-28, 98th Cong., 2d Sess.);
Reported Favorably by the Senate Committee on Foreign Relations December 11,1985 (S. Ex. Rept. No. 99-6, 99th Cong., 1st Sess.);
Advice and Consent to Ratification by the Senate December 16, 1985;
Ratified by the President of the U.S.A. December 23, 1985;
Ratified by Italy December 13, 1985;
Ratifications Exchanged at Washington December 30, 1985;
Proclaimed by the President September 9, 1987;
Entered into Force December 30, 1985; Effective
February 1, 1986 for Certain Provisions:
January 1, 1985 for Others (Art. 28).

ARTICLE 1
Personal Scope
1. Except as otherwise provided in this Convention, this Convention shall apply to persons who are residents of one or both of the Contracting States.
2. Notwithstanding any provision of this Convention except paragraph 3 of this Article, a Contracting State may tax:
a) its residents (as determined under Article 4 (Resident)); and
b) its citizens by reason of citizenship as if there were no convention between the Government of the United States of America and the Government of Italy for the avoidance of double taxation with respect to taxes on income and the prevention of fraud or fiscal evasion.
3. The provisions of paragraph 2 shall not affect:
a) the benefits conferred by a Contracting State under paragraph 3 of Article 18 (Pensions, etc.), and under Articles 23 (Relief from Double Taxation), 24 (Non-Discrimination), and 25 (Mutual Agreement Procedure): and
b) the benefits conferred by a Contracting State under Articles 19 (Government Service), 20 (Professors and Teachers), 21 (Students and Trainees), and 27 (Diplomatic Agents and Consular Officials), upon individuals who are neither citizens of, nor have immigrant status in, that State.

ARTICLE 2
Taxes Covered
1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State.
2. The existing taxes to which this Convention shall apply are:
a) in the case of the United States: the Federal income taxes imposed by the Internal Revenue Code and the excise taxes imposed on insurance premiums paid to foreign insurers and with respect to private foundations, but excluding (notwithstanding paragraph 5 of Article 10 (Dividends)) the accumulated earnings tax and the personal holding company tax, (hereinafter referred to as "United States tax");
b) in the case of Italy:
i) the individual income tax (l'imposta sul reddito delle persone fisiche);
ii) the corporation income tax (l'imposta sul reddito delle persone giuridiche);
and
iii) the local income tax (l'imposta locale sui redditi) except to the extent imposed on cadastral income;
even if they are collected by withholding taxes at the source (hereinafter referred to as "Italian tax").
3. The Convention shall apply also to an identical or substantially similar taxes which are imposed by a Contracting State 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 each other of any significant changes which have been made in their respective taxation laws and shall transmit to each other any significant official published material concerning the application of this Convention, including explanations, regulations, rulings, or judicial decisions.

ARTICLE 3
General Definitions
1. For the purpose of this Convention, unless the context otherwise requires:
a) the term "person" includes an individual, a company, an estate, a trust, and any body of persons;
b) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
c) 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;
d) the term "international traffic" means any transport by a ship or aircraft, except where such transport is solely between places in the other Contracting State;
e) the term "competent authority" means:
i) in the United States: the Secretary of the Treasury or his delegate, and
ii) in Italy, the Ministry of Finance;
f) the term "United States" means the United States of America but does not include Puerto Rico, the Virgin Islands, Guam, or any other United States possession or territory. When used in a geographical sense, the term “United States”' includes any area beyond the territorial waters of the United States which, in accordance with customary international law and the laws of the United States concerning the exploration and exploitation of natural resources, may be designated as an area within which the United States may exercise rights with respect to the seabed and sub-soil and natural resources;

g) the term "Italy" means the Republic of Italy and includes any area beyond the territorial waters of Italy which in accordance with customary international law and the laws of Italy concerning the exploration and exploitation of natural resources, may be designated as an area within which Italy may exercise rights with respect to the seabed and sub-soil and natural resources.
h) the term "nationals" means:
i) all individuals possessing the citizenship of a Contracting State; and
ii) all legal persons, partnerships, and associations deriving their status as such from the law in force in a Contracting State.
2. As regards the application of this Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State concerning the taxes to which this Convention applies.

ARTICLE 4
Resident
1. For 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, place of incorporation, or any other criterion of a similar nature, provided, however, that:
a) this term does not include any person who is liable to tax in that State in respect only of income from sources in that State; and
b) in the case of income derived or paid by a partnership, estate, or trust, this term applies only to the extent that the income derived by such partnership, estate, or trust is subject to tax in that State, either in its hands or in the hands of its partners or beneficiaries.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (center of vital interests);
b) if the State in which he has his center of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
c) if he has an habitual abode in both States or in neither of them, he shall be deemed a resident of the State of which he is a national;
d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavor to settle the question and to determine the mode of application of the Convention to such person.

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; and
g) a building site or construction or assembly project which exists for more than twelve months.
3. The term “permanent establishment” shall be deemed not to include:
a) the use of facilities solely for the purpose of storage, display, or delivery of goods or merchandise belonging to the enterprise;
b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display, or delivery;
c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the enterprise.
4. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State - other than an agent of an independent status to whom paragraph 5 applies - shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.
5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent, or any other agent of an independent status, where such persons are acting in the ordinary course of their business.
6. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6
Income from Immovable Property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term “immovable property” ("real 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 immovable property; ships, boats, and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. 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 and other associated enterprises.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses that are attributable to the activities of the permanent establishment, including a reasonable allocation of executive and general administrative expenses, whether incurred in the State in which the permanent establishment is situated or elsewhere.
4. No profits shall be attributable to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
5. 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.
6. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8
Shipping and Air Transport

1. Profits of an enterprise of a Contracting State from the operation in international traffic of ships or aircraft shall be taxable only in that State.
2. The provisions of paragraph 1 shall also apply to profits derived from the participation in a pool, a joint business, or an international operating agency.

ARTICLE 9
Associated Enterprises

Where
a) an enterprise of a Contracting State participates directly or indirectly in the management, control, or capital of an enterprise of the other Contracting State; or
b) the same persons participate directly or indirectly in the management, control, or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

ARTICLE 10
Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:
a) (i) 5 percent of the gross amount of the dividends if the beneficial owner is a company which has owned more than 50 percent of the voting stock of the company paying the dividends for a 12 month period ending on the date the dividend is declared; and
(ii) 10 percent of the gross amount of the dividends if the beneficial owner is a company which is not entitled to the benefits of clause (i) but which has owned 10 percent or more of the voting stock of the company paying the dividends for a 12-month period ending on the date the dividend is declared, provided that not more than 25 percent of the gross income of the company paying the dividends is derived from interest and dividends (other than interest derived in the conduct of a banking or financing business and interest or dividends received from subsidiary companies); and
b) 15 percent of the gross amount of the dividends in all other cases.
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, founder's 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 laws of the State of which the company making the distribution is a resident.
4. The provisions of paragraph 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State. carries on business in the other Contracting State, of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base, in such case, the dividends are taxable in that other Contracting State according to its own laws.
5. Where a company which is a resident of a Contracting State and not a resident of the other Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is
effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11
Interest
1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 15 percent of the gross amount of the interest.
3. Notwithstanding paragraph 2, interest beneficially derived by
a) a Contracting State or an instrumentality wholly owned by that State; or
b) a resident of a Contracting State with respect to debt obligations guaranteed or insured by that Contracting State or by an instrumentality wholly owned by that State shall be exempt from tax by the other Contracting State.
4. The term “interest” as used in this Article means income from Government securities, bonds, or debentures. whether or not secured by mortgage, and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises.
5. The provisions of paragraphs 1, 2, and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case, the interest is taxable in that other Contracting State according to its own 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 or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base 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 debtclaim 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 is 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.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed:
a) 5 percent of the gross amount of the royalties in respect of 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;
b) 8 percent of the gross amount of the royalties in respect of payments of any kind received as a consideration for the use of, or the right to use, motion pictures and films, tapes or other means of reproduction used for radio or television broadcasting;
c) 10 percent of the gross amount of the royalties in all other cases.
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 motion pictures, films, tapes or other means of reproduction used for radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or other like right or property, 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 paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right of property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the royalties are taxable in that other Contracting State according to its own laws.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political or administrative subdivision, a local authority, or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated. Notwithstanding the preceding provisions of this paragraph, royalties with respect to the use of, or the right to use, rights or property within a Contracting State may be deemed to arise within that State.
6. 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 is 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 derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 (Income from Immovable Property) and situated in the other Contracting State may be taxed in that other State.
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 permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated by such enterprise in international traffic or of movable property pertaining to the operation of such ships or aircraft shall be taxable only in that State.
4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, and 3 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14
Independent Personal Services
1. Income derived by an individual who is a resident of a Contracting State from the performance of personal services in an independent capacity shall be taxable only in that State unless such services are performed in the other Contracting State and
a) the individual has a fixed base regularly available to him in that other State for the purpose of performing his activities, but only so much of the income as is attributable to that fixed base may be taxed in that other State; or
b) the individual is present in that other State for a period or periods aggregating more than 183 days in the fiscal year concerned.
2. The term "personal services in an independent capacity" includes, but is not limited to, scientific, literary, artistic, educational, and teaching activities as well as independent activities of physicians, lawyers, engineers, architects, dentists, and accountants.

ARTICLE 15
Dependent Personal Services
1. Subject to the provisions of Articles 16 (Directors' Fees), 18 (Pensions, etc.), and 19 (Government Service), 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;
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 regularly exercised aboard a ship or aircraft operated by an enterprise of a Contracting State in international traffic shall be taxable only in that Contracting State.

ARTICLE 16
Directors' Fees
Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other contracting State may be taxed in that other State.

ARTICLE 17
Artistes And Athletes
1. Notwithstanding the provisions of Articles 14 (Independent Personal Services) and 15 (Dependent Personal Services) income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio, or television artiste, or a musician, or as an athlete from his personal activities as such exercised in the other Contracting State may be taxed in that other State, if:
a) the amount of the gross receipts derived by such entertainer or athlete, including expenses reimbursed to him or borne on his behalf, from such activities exceeds twelve thousand United States dollars ($12,000) or its equivalent in Italian lire for the fiscal year concerned; or

b) such entertainer or athlete is present in that other State for a period or periods aggregating more than 90 days in the fiscal year concerned.
2. Where income in respect of activities exercised by an entertainer or an athlete in his capacity as such accrues not to him but to another person, that income may, notwithstanding the provisions of Articles 7 (Business Profits), 14 (Independent Personal Services), and 15 (Dependent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised. For purposes of the preceding sentence, income of an entertainer or athlete shall be deemed not to accrue to another person if it is proved by the entertainer or athlete that neither he nor persons related to him participate directly or indirectly in the profits of such other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions, or other distributions.

ARTICLE 18
Pensions, Etc.
1. Subject to the provisions of paragraph 2 of Article 19 (Government Service), pensions and other similar remuneration beneficially derived by a resident of a Contracting State in consideration of past employment shall be taxable only in that State.
2. Annuities beneficially derived by a resident of a Contracting State shall be taxable only in that State. The term "annuities" as used in this paragraph means a stated sum paid periodically at stated times during life or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (in money or money's worth).
3. Alimony and child support payments paid to a resident of a Contracting State by a resident of the other Contracting State shall be taxable only in the first-mentioned State. However, such payments shall not be taxable in either State if the person making such payments is not entitled to a deduction for such payments in the State of which he is a resident. The term "alimony" as used in this paragraph means periodic payments made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, which payments are taxable to the recipient under the laws of the State of which he is a resident. The term "child support" as used in this paragraph means periodic payments for the support of a minor child made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support.

ARTICLE 19
Government Service
1. a) Remuneration, other than a pension, paid by a Contracting State or a political or administrative subdivision or 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 State and the individual 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;
provided that the provisions of clause (ii) shall not apply to the spouse or dependent children of an individual who is receiving remuneration to which the provisions of subparagraph (a) apply and who does not come within the terms of clause (i) or (ii).
2. a) Any pension paid by, or out of funds created by, a Contracting State or a political or administrative subdivision or local authority thereof to an individual in respect of services rendered to that State or subdivision or local authority shall be taxable only in that State.
b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident and a national of that State.
3. The provisions of Article 14 (Independent Personal Services), 15 (Dependent Personal Services), 16 (Directors' Fees), 17 (Artistes and Athletes), or 18 (Pensions, etc.), as the case may be, 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
Professors And Teachers
1. A professor or teacher who makes a temporary visit to a Contracting State for the purpose of teaching or conducting research at a university, college, school, or other educational institution, or at a medical facility primarily funded from governmental sources, and who is, or immediately before such visit was, a resident of the other Contracting State shall, for a period not exceeding two years, be exempt from tax in the first-mentioned Contracting State in respect of remuneration from such teaching or research.
2. This Article shall not apply to income from research if such research is undertaken not in the general interest but primarily for the private benefit of a specific person or persons.

ARTICLE 21
Students And Trainees
Payments which a student or business apprentice (trainee) who is, or immediately before visiting a Contracting State was, a resident of the other Contracting State and who is present in the firstmentioned State exclusively for the purpose of his education or training receives for the purpose of his maintenance, education, or training shall not be taxed in that State provided that such payments arise outside that State.

ARTICLE 22
Other Income
1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6 (Income from Immovable Property), if the person deriving 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 items of income are taxable in the other Contracting State according to its own law.

ARTICLE 23

Relief From Double Taxation

1. It is agreed that double taxation shall be avoided in accordance with the following paragraphs of this Article.

2. In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof). the United States shall allow to a resident or citizen of the United States as a credit against the, United States tax on income the appropriate amount of income tax paid to Italy; and in the case of a United States company owning at least ten percent of the voting stock of a company which is a resident of Italy from which it receives dividends in any taxable year, the United States shall allow as a credit against the United States tax on income the appropriate amount of income tax paid to Italy by that company with respect to the profits out of which such dividends are paid. Such appropriate amount shall be based upon the amount of tax paid to Italy, but shall not exceed the limitations of the law of the United States (for the purpose of limiting the credit to the United States tax on income from sources without the United States). For purposes of applying the United States credit in relation to tax paid to Italy, the taxes referred to in paragraphs 2 (b) and 3 of Article 2 (Taxes Covered) shall be considered to be income taxes.

3. If a resident of Italy derives items of income which are taxable in the United States under the Convention (without regard to paragraph 2 (b) of Article 1 (Personal Scope)), Italy may, in determining its income taxes specified in Article 2 of this Convention, include in the basis upon which such taxes are imposed the said items of income (unless specified provisions of this Convention otherwise provide). In such case, Italy shall deduct from the taxes so calculated, the tax on income paid to the United States, but in an amount not exceeding the tax that would be due to the United States if the resident of Italy were not a citizen of the United States, and not exceeding that proportion of the aforesaid Italian tax which such items of income bear to the entire income. However, no deduction will be granted if the item of income is subjected in Italy to a final withholding tax by request of the recipient of the said income in accordance with Italian law. For purposes of applying the Italian credit in relation to tax paid to the United States the taxes referred to in paragraphs 2 (a) and 3 of Article 2 (Taxes Covered) shall be considered to be income taxes.

4. For purposes of the United States obligation to avoid double taxation with respect to Italian tax under the preceding paragraphs of this Article:

a) subject to the provisions of subparagraph (b), except for income or profits taxed by the United States solely by reason of citizenship in accordance with paragraph 2 (b) of Article 1 (Personal Scope), income or profits derived by a resident of a Contracting State (who is not a resident of the other Contracting State) which may be taxed in the other Contracting State in accordance with this Convention shall be deemed to arise in that other Contracting State; and

b) in the case of an individual who is a resident of Italy, income or profits which may be taxed by the United States by reason of citizenship in accordance with paragraph 2 (b) of Article 1 (Personal Scope) shall be deemed to arise in Italy to the extent necessary to avoid double taxation, provided that in no event will the tax paid to the United States be less than the tax that would be paid if the individual were not a citizen of the United States. The rules of this subparagraph with respect to the source of income shall not apply in determining credits against U.S. tax for foreign taxes other than the taxes referred to in paragraphs 2b) and 3 of Article 2 (Taxes Covered).

ARTICLE 24

Non-discrimination

1. Nationals of a Contracting. State shall not be subjected in the other State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1 (Personal Scope), also apply to persons who are not residents of one or both of the Contracting States. However, for purposes of United States taxation, United States citizens who are subject to tax on a worldwide basis are not in the same circumstances as Italian nationals who are not residents of the United States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably 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 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 (Associated Enterprises), paragraph 7 of Article 11 (Interest), or paragraph 6 of Article 12 (Royalties) apply, interest, royalties, and all 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.

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 firstmentioned State are or may be subjected.

5. For purposes of this Article, this Convention shall apply to taxes of every kind and description imposed by a Contracting State or a political or administrative subdivision or local authority thereof.

ARTICLE 25

Mutual Agreement Procedure

1. Where a person 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 or, if his

case comes under Article 23 (Relief from Double Taxation) or paragraph 1 of Article 24 (Non-Discrimination), to the competent authority of the Contracting State of which he is a national.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

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 insofar as the taxation thereunder is not contrary to the Convention, and for the prevention of fraud or fiscal evasion. The exchange of information is not restricted by Article 1 (Personal Scope). Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:
a) to carry out administrative measures at variance with the laws and 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 Officials
Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular-officials under the general rules of international law or under the provisions of special agreements.

ARTICLE 28
Entry into Force
1. This convention shall be subject to ratification in accordance with the applicable procedures of each Contracting State and instruments of ratification shall be exchanged at Washington as soon as possible.
2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:
a) in respect of tax withheld at the source, for amounts paid or credited on or after the first day of the second month following the date on which this Convention enters into force,
b) in respect of other taxes, for taxable periods beginning on or after January 1 of the year in which this Convention enters into force.
3. Subject to the provisions of paragraph 4, the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed at Washington March 30, 1955, and the exchange of letters concerning the application of the Convention of March 30, 1955, for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income. exchanged at Rome December 13. 1974. are terminated. Their provisions shall cease to have effect for taxes for which the provisions of this Convention have effect in accordance with paragraph 2.
4. Where any greater relief from tax would have been afforded by any provision of the 1955 Convention than under this Convention, any such provision shall continue to have effect for the first taxable period with respect to which the provisions of this Convention have effect under paragraph 2.
5. The arrangement between the United States and Italy providing for relief from double income taxation on shipping profits effected by exchange of notes dated March 10, 1926, and May 5, 1926, is terminated.

ARTICLE 29
Termination
This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention at any time after 5 years from the date on which this Convention enters into force provided that at least 6 months' prior notice of termination has been given through diplomatic channels. In such event, the Convention shall cease to have effect:
a) in respect of tax withheld at the source, for amounts paid or credited on or after the first day of January next following the expiration of the 6 months' period;
b) in respect of other taxes, for taxable periods beginning on or after the first day of January next following the expiration of the 6 months' period.

Done at Rome in duplicate, in the English and Italian languages, the two texts having equal authenticity, this 12th day of April, 1984.
FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA
(s) Maxwell M. Rabb
FOR THE GOVERNMENT OF THE REPUBLIC OF ITALY

(s) Giulio Andreotti

PROTOCOL

The Government of the United States of America and the Government of the Republic of Italy, desiring to conclude a protocol clarifying and supplementing the Convention for the avoidance of double taxation with respect to taxes on income and the prevention of fraud or fiscal evasion to be signed simultaneously with the signing of this Protocol, have agreed upon the following provisions.

ARTICLE 1

1. For purposes of paragraph 2 (b) of Article 1 (Personal Scope) of the Convention, the term "citizen" as applied to the United States shall include a former citizen whose loss of citizenship had as one of its principal purposes the avoidance of tax, but only for a period of 10 years following such loss.
2. The provisions of paragraph 2 of Article 1 (Personal Scope) of the Convention shall not affect:
(a) the benefits conferred by a Contacting State under paragraph 14 of Article 1 of this Protocol to residents of the other Contracting State who are nationals of that other State, even if they are also Nationals of the first-mentioned State;
(b) the benefits conferred by a Contacting State under Article 4 of this Protocol.
3. For purposes of paragraph 2 (a) of Article 2 (Taxes Covered) of the Convention, the Convention shall apply to the excise tax imposed by the United States on insurance premiums paid to foreign insurers only to the extent that the foreign insurer does not reinsure such risks with a person not entitled to exemption from such tax under this or any other Convention.
4. For purposes of paragraph 2 of Article 5 (Permanent Establishment) of the Convention, a drilling rig or ship used for the exploration or development of natural resources constitutes a permanent establishment in a Contracting State only if it remains in that State for more than 180 days in a twelve month period.
5. For purposes of paragraph 1 of Article 8 (Shipping and Air Transport) of the Convention, profits from the operation in international traffic of ships or aircraft include:
(a) profits from the use, maintenance, or rental of containers (including trailers, barges, and related equipment for the transport of containers) used for the transport in international traffic of goods or merchandise; and
(b) profits derived from the rental on a full basis of ships or aircraft and profits derived from the rental on a bareboat basis of ships or aircraft, provided in the latter case that such rental profits are incidental to other profits from the operation of ships or aircraft in international traffic.
6. For purposes of Article 8 (Shipping and Air Transport) of the Convention, and notwithstanding any other provision of the Convention, profits which a national of the United States not resident in Italy, or a United States corporation, derives from operating ships documented or aircraft registered under the laws of the United States shall be exempt from tax in Italy.
7. If, in accordance with Article 9 (Associated Enterprises) of the Convention, a redetermination has been made by one Contracting State with respect to a person, the other Contracting State shall, to the extent it agrees that such redetermination reflects arrangements or conditions which would be made between independent persons, make the corresponding adjustments with respect to persons who are related to such person and are subject to the taxing jurisdiction of that other State. Any such adjustment shall be made only in accordance with the mutual agreement procedure in Article 25 (Mutual Agreement Procedure) of the Convention and with paragraph 15 of Article 1 of this Protocol.
8. The provisions of Article 9 (Associated Enterprises) of the Convention shall not limit any provisions of the law of either Contracting State which permit the distribution, apportionment, or allocation of income, deductions, credits, or allowances between persons owned or controlled directly or indirectly by the same interests when necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such persons.
9. For purposes of paragraph 2 (a) of Article 10 (Dividends), the term "subsidiary company" means a corporation in which the company paying the dividends owns more than 50 percent of the voting stock.
10. Notwithstanding paragraph 2 of Article 12 (Royalties) of the Convention, in the case of royalties derived with respect to tangible personal (movable) property, the tax imposed by the Contracting State in which such royalties arise may not exceed 7 percent of the gross amount of such royalties.
11. For purposes of paragraph 1 of Article 13 (Capital Gains) of the Convention:
(a) the term "immovable property", in the case of the United States, includes a United States real property interest; and
(b) the term " immovable property" in the case of Italy includes:
(i) immovable property referred to in Article 6;
(ii) shares or comparable interests in a company or other body of persons, the assets of which consist wholly or principally of real property situated in Italy; and
(iii) an interest in an estate of a deceased individual, the assets of which consist wholly or principally of real property situated in Italy.
(c) property described in subparagraph (a) of this paragraph shall be deemed to be situated in the United States and property described in subparagraph (b) of this paragraph shall be deemed to be situated in Italy.
12. For purposes of paragraph 3 of Article 13 (Capital Gains) of the Convention, gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated by such enterprise in international traffic include:
(a) gains from the alienation of containers (including trailers, barges, and related equipment for the transport of containers) used for the transport in international traffic of goods or merchandise; and
(b) gains from the alienation of ships or aircraft rented on a full basis or gains from the alienation of ships or aircraft rented on a bareboat basis if, in the latter case, rental profits were incidental to other profits from the operation of ships or aircraft in international traffic.
13. Directors' fees and other similar payments derived by a resident of a Contracting State which are described in Article 16 (Directors' Fees) of the Convention may be taxed in the other Contracting State only to the extent that the fees and other payments are attributable to services performed in such other State.
14. With respect to Article 18 (Pensions, etc.) of the Convention, it is agreed that social security payments and similar public pensions not covered by Article 19 (Government Service) of the Convention are covered by paragraph 1 of said Article 18 (Pensions, etc.).

15. With respect to Article 25 (Mutual Agreement Procedure) of the Convention, it is understood that an adjustment of taxes pursuant to that Article may be made only prior to the final determination of such taxes. It is further understood that, in the case of Italy, the preceding sentence means that invoking the mutual agreement procedure does not relieve a taxpayer of the obligation to initiate the procedures of domestic law for resolving tax disputes.
16. For purposes of Article 26 (Exchange of Information) of the Convention, the Convention shall apply to taxes of every kind imposed by a Contracting State, but only insofar as the information is relevant to the assessment of taxes covered by Article 2 (Taxes Covered) of the Convention. It is understood that appropriate United States Congressional Committees and the General Accounting Office shall be afforded access to the information exchanged under the Convention where such access is necessary to carry out their oversight responsibilities, subject only to the limitations and procedures of the Internal Revenue Code.

ARTICLE 2
1. A person (other than an individual) which is a resident of a Contracting State shall not be entitled under this Convention to benefits provided in Articles 7 (Business Profits), 10 (Dividends), 11 (Interest), 12 (Royalties), 13 (Capital Gains) or 22 (Other Income) unless:
(a) more than 50 percent of the beneficial ownership of such person (or in the case of a company, more than 50 percent of the number of shares of each class of the company's shares) is owned, directly or indirectly, by any combination of one or more of:
(i) individuals who are residents of the United States;
(ii) citizens of the United States;
(iii) individuals who are residents of Italy;
(iv) companies as described in subparagraph (b); or
(v) the Contracting States; or
(b) it is a company in whose principal class of shares there is substantial and regular trading on a recognized stock exchange.
2. Paragraph 1 shall not apply unless the competent authority of the other Contracting State determines that either the establishment, acquisition or maintenance of such person or the conduct of its operations had as a principal purpose obtaining benefits under the Convention.
3. For the purpose of subparagraph (1) (b), the term "a recognized stock exchange" means:
(a) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the Securities and Exchange Commission as a national securities exchange for the purposes of the Securities Exchange Act of 1934.
(b) any stock exchange constituted and organized according to Italian laws; and
(c) any other stock exchange agreed upon by the competent authorities of the Contracting States.

ARTICLE 3
The Convention shall not restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded -
(a) by the laws of either Contracting State, or
(b) by any other agreement between the Contracting States.

ARTICLE 4
It is agreed that a United States citizen resident in Italy who is a partner of a partnership that is a national of the United States shall be entitled to a refundable credit against that partner's individual income tax (l'imposta sul reddito delle persone fisiche) imposed by Italy for the taxable period equal to the portion of the corporation income tax (l'imposta sul reddito delle persone giuridiche) imposed by Italy for the same period on the partnership that is attributable to that partner's share of the partnership income.

ARTICLE 5
Taxes withheld at the source in a Contracting State at the rates provided by domestic law will be refunded by request of the taxpayer if the right to collect the said taxes is limited by the provisions of the Convention. Claims for refund, which shall be made within the time limit fixed by the law of the Contracting State which is obliged to make 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 benefits provided for by the Convention. This provision shall not be construed to prevent the competent authority of each Contracting State from establishing other modes of application of the benefits provided for by the Convention.

ARTICLE 6
Each of the Contracting States may collect on behalf of the other Contracting State such amounts as may be necessary to ensure that relief granted by the Convention from taxation imposed by such other State does not ensure to the benefit of persons not entitled thereto. The preceding sentence shall not, however, impose upon either of the Contracting States the obligation to carry out administrative measures which are of a different nature from those used in the collection of its own tax, or which would be contrary to its sovereignty, security, or public policy.

ARTICLE 7
1. This Protocol shall be subject to ratification in accordance with the applicable procedures of each Contracting State, and instruments of ratification shall be exchanged at Washington.
2. The Protocol shall enter into force upon the exchange of instruments of ratification and shall thereafter have effect in accordance with Article 28 of the Convention.

ARTICLE 8
This Protocol shall remain in force as long as the Convention between the United States of America and Italy for the avoidance of double taxation with respect to taxes on income and the prevention of fraud or fiscal evasion of this date shall remain in force.

Done at Rome in duplicate, in the English and Italian languages, the two texts having equal authenticity, this 17th day of April, 1984.
FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA
(s) Maxwell Rabb
FOR THE GOVERNMENT OF THE REPUBLIC OF ITALY
(s) Giulio Andreotti

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE ITALIAN REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND THE PREVENTION OF FRAUD OR FISCAL EVASION (Washington, 1999)

Convention, with Protocol, Signed at Washington August 25, 1999;
Transmitted by the President of the United States of America to the Senate September 21, 1999
Reported Favorably by the Senate Committee on Foreign Relations October 13, 1999;
Advice and Consent to Ratification by the Senate November 5, 1999;
Ratified by Italy March 18, 2009;
Ratifications Exchanged at Rome December 16, 2009;
Entered into Force December 16, 2009; Effective
February 2, 2010 for Certain Provisions:
January 1, 2010 for Others (Art. 28).

ARTICLE 1
Personal Scope
1. Except as otherwise provided in this Convention, this Convention shall apply to persons who are residents of one or both of the Contracting States.
2. Notwithstanding any provision of this Convention except paragraph 3 of this Article, a Contracting State may tax:
(a) its residents (as determined under Article 4 (Resident); and
(b) its citizens by reason of citizenship as if there were no convention between the Government of the United States of America and the Government of the Italian Republic for the avoidance of double taxation with respect to taxes on income and the prevention of fraud or fiscal evasion.
3. The provisions of paragraph 2 shall not affect:
(a) the benefits conferred by a Contracting State under paragraph 2 of Article 9 (Associated Enterprises), paragraphs 5 and 6 of Article 18 (Pensions, Etc.), and under Articles 23 (Relief from Double Taxation), 24 (Non-Discrimination), and 25 (Mutual Agreement Procedure); and
(b) the benefits conferred by a Contracting State under Articles 19 (Government Service), 20 (Professors and Teachers), 21 (Students and Trainees), and 27 (Diplomatic Agents and Consular Officials), upon individuals who are neither citizens of, nor have immigrant status in, that State.

ARTICLE 2
Taxes Covered
1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State.
2. The existing taxes to which this Convention shall apply are:
(a) in the case of the United States: the Federal income taxes imposed by the Internal Revenue Code (but excluding social security taxes), and the Federal excise taxes imposed on insurance premiums paid to foreign insurers and with respect to private foundations (hereinafter referred to as "United States tax");
(b) in the case of Italy:
(i) the individual income tax (l'imposta sul reddito delle persone fisiche);
(ii) the corporation income tax (l'imposta sul reddito delle persone giuridiche); and
(iii) the regional tax on productive activities (l'imposta regionale sulle attività produttive), but only that portion of such tax that is considered to be an income tax pursuant to paragraph 2(c) of Article 23 (Relief from Double Taxation);
even if they are collected by withholding taxes at the source (hereinafter referred to as "Italian tax").
3. The Convention shall apply also to any identical or substantially similar taxes which are imposed by a Contracting State 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 each other of any significant changes which have been made in their respective taxation laws and shall transmit to each other any significant official published material concerning the application of this Convention, including explanations, regulations, rulings, or judicial decisions.

ARTICLE 3
General Definitions
1. For the purposes of this Convention, unless the context otherwise requires:
(a) the term "person" includes an individual, a company, an estate, a trust, a partnership, and any other body of persons;
(b) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
(c) 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;
(d) the term "international traffic" means any transport by a ship or aircraft, except where such transport is solely between places in the other Contracting State;
(e) the term "competent authority" means:
(i) in the United States: the Secretary of the Treasury or his delegate; and
(ii) in Italy: the Ministry of Finance;
(f) the term "United States" means the United States of America, and includes the states thereof and the District of Columbia; such term also includes the territorial sea thereof and any area beyond the territorial sea which is designated as an area within which the United States, in compliance with its legislation and in conformity with international law, exercises sovereign rights in respect of the exploration and exploitation of the natural resources of the seabed, the subsoil and the superjacent waters; the term, however, does not include Puerto Rico, the Virgin Islands, Guam or any other United States possession or territory;
(g) the term "Italy" means the Italian Republic and includes any area beyond the territorial sea which is designated as an area within which Italy, in compliance with its legislation and in conformity with international law, exercises sovereign

rights in respect of the exploration and exploitation of the natural resources of the seabed, the subsoil and the superjacent waters;
(h) the term "nationals" means:
(i) all individuals possessing the citizenship of a Contracting State; and
(ii) all legal persons, partnerships, and associations deriving their status as such from the law in force in a Contracting State.
(i) the term "qualified governmental entity" means:
(i) any person or body of persons that constitutes a governing body of a Contracting State, or of a political or administrative subdivision or local authority of a Contracting State;
(ii) a person that is wholly owned, directly or indirectly, by a Contracting State or a political or administrative subdivision or local authority of a Contracting State, provided (A) it is organized under the laws of the Contracting State, (B) its earnings are credited to its own account with no portion of its income inuring to the benefit of any private person, and (C) its assets vest in the Contracting State, political or administrative subdivision or local authority upon dissolution; and
(iii) a pension trust or fund of a person described in subparagraph (i) or (ii) that is constituted and operated exclusively to administer or provide pension benefits described in Article 19 (Government Service); provided that an entity described in subparagraph (ii) or (iii) does not carry on commercial activities.
2. As regards the application of this Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State concerning the taxes to which this Convention applies.

ARTICLE 4
Resident
1. For 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, place of incorporation, or any other criterion of a similar nature, provided, however, that:
(a) this term does not include any person who is liable to tax in that State in respect only of income from sources in that State; and
(b) in the case of income derived or paid by a partnership, estate, or trust, this term applies only to the extent that the income derived by such partnership, estate, or trust is subject to tax in that State, either in its hands or in the hands of its partners or beneficiaries.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
(a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of that State with which his personal and economic relations are closer (center of vital interests);
(b) if the State in which he has his center of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
(c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
(d) if he is a national of both States or neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavor to settle the question and to determine the mode of application of the Convention to such person.

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; and
(g) a building site or construction or assembly project which exists for more than twelve months;
3. The term "permanent establishment" shall be deemed not to include:
(a) the use of facilities solely for the purpose of storage, display, or delivery of goods or merchandise belonging to the enterprise;
(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display, or delivery;
(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
(e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the enterprise.
4. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State -- other than an agent of an independent status to whom paragraph 5 applies -- shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent, or any other agent of an independent status, where such persons are acting in the ordinary course of their business as independent agents.
6. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6
Income from Immovable Property
1. Income derived by a resident of a Contracting State from immovable property, including income from agriculture or forestry, situated in the other Contracting State may be taxed in that other State.
2. The term "immovable property" ("real 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 immovable property; ships, boats, and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. 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 and other associated enterprises.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses that are attributable to the activities of the permanent establishment, including a reasonable allocation of executive and general administrative expenses, whether incurred in the State in which the permanent establishment is situated or elsewhere.
4. No profits shall be attributable to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
5. 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.
6. In applying paragraphs 1 and 2 of Article 7 (Business Profits), paragraph 4 of Article 10 (Dividends), paragraph 5 of Article 11 (Interest), paragraph 5 of Article 12 (Royalties), paragraph 2 of Article 13 (Capital Gains), Article 14 (Independent Personal Services) and paragraph 2 of Article 22 (Other Income), any income or gain attributable to a permanent establishment or fixed base during its existence is taxable in the Contracting State where such permanent establishment or fixed base is situated even if the payments are deferred until after such permanent establishment or fixed base has ceased to exist.
7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8
Shipping and Air Transport
1. Profits of an enterprise of a Contracting State from the operation in international traffic of ships or aircraft shall be taxable only in that State.
2. The provisions of paragraph 1 shall also apply to profits derived from the participation in a pool, a joint business, or an international operating agency.

ARTICLE 9
Associated Enterprises
1. Where:
(a) an enterprise of a Contracting State participates directly or indirectly in the management, control, or capital of an enterprise of the other Contracting State; or
(b) the same persons participate directly or indirectly in the management, control, or capital of an
enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.
2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an

appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and, in any case, any such adjustment shall be made only in accordance with the mutual agreement procedure in Article 25 (Mutual Agreement Procedure) of the Convention.

ARTICLE 10
Dividends

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

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

(a) 5 percent of the gross amount of the dividends if the beneficial owner is a company which has owned at least 25 percent of the voting stock of the company paying the dividends for a 12 month period ending on the date the dividend is declared; and

(b) 15 percent of the gross amount of the dividends in all other cases.

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, founder's shares, or other rights, not being debt-claims, participating in profits, as well as income which is subjected to the same taxation treatment as income from shares by the 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 are taxable in that other Contracting State according to its own laws.

5. Where a company which is a resident of a Contracting State and not a resident of the other Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, except as provided in paragraph 6, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

6. A corporation that is a resident of one of the States and that has a permanent establishment in the other State or that is subject to tax in the other State on a net basis on its income that may be taxed in the other State under Article 6 (Income from Immovable Property) or under paragraph 1 of Article 13 (Capital Gains) may be subject in that other State to a tax in addition to the tax allowable under the other provisions of this Convention. Such tax, however, may be imposed on only the portion of the business profits of the corporation attributable to the permanent establishment and the portion of the income referred to in the preceding sentence that is subject to tax under Article 6 (Income from Immovable Property) or under paragraph 1 of Article 13 (Capital Gains) that, in the case of the United States, represents the dividend equivalent amount of such profits or income and, in the case of Italy, is an amount that is analogous to the dividend equivalent amount.

7. The tax referred to in paragraph 6 may not be imposed at a rate in excess of the rate specified in paragraph 2(a).

8. Notwithstanding paragraph 2, dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is a resident of the other Contracting State that is a qualified governmental entity that holds, directly or indirectly, less than 25 percent of the voting stock of the company paying the dividends.

9. Subparagraph (a) of paragraph 2 shall not apply in the case of dividends paid by a United States Regulated Investment Company (RIC) or a United States Real Estate Investment Trust (REIT). In the case of dividends from a RIC, subparagraph (b) of paragraph 2 shall apply. In the case of dividends paid by a REIT, subparagraph (b) of paragraph 2 shall apply only if:

(a) the beneficial owner of the dividends is an individual holding an interest of not more than 10 percent in the REIT;

(b) the dividends are paid with respect to a class of stock that is publicly traded and the beneficial owner of the dividends is a person holding an interest of not more than 5 percent of any class of the REIT’s stock; or

(c) the beneficial owner of the dividends is a person holding an interest of not more than 10 percent in the REIT and the REIT is diversified.

10. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.

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 beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount of the interest.

3. Notwithstanding paragraph 2, interest shall not be taxed in the Contracting State in which it arises if:

(a) the interest is beneficially owned by a resident of the other Contracting State that is a qualified governmental entity that holds, directly or indirectly, less than 25 percent of the capital of the person paying the interest;

(b) the interest is paid with respect to debt obligations guaranteed or insured by a qualified governmental entity of that Contracting State or the other Contracting State and is beneficially owned by a resident of the other Contracting State;

(c) the interest is paid or accrued with respect to a sale on credit of goods, merchandise, or services provided by one enterprise to another enterprise; or

(d) the interest is paid or accrued in connection with the sale on credit of industrial, commercial, or scientific equipment.
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 money lent by the taxation law of the State in which the income arises. Income dealt with in Article 10 (Dividends) shall not be regarded as interest for the purposes of this Convention.
5. The provisions of paragraphs 1, 2, and 3 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 service from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case, the interest is taxable in that other Contracting State according to its own 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 or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base 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 is taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.
8. In the case of the United States, the excess, if any, of the amount of interest allocable to the profits of a company resident in the other Contracting State that are either attributable to a permanent establishment in the United States or subject to tax in the United States under Article 6 (Income from Immovable Property) or paragraph 1 of Article 13 (Capital Gains) over the interest paid by that permanent establishment or trade or business in the United States shall be deemed to arise in the United States and be beneficially owned by a resident of the other Contracting State. The tax imposed under this Article on such interest shall not exceed the rate specified in paragraph 2.
9. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 12
Royalties
1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient of the royalties is the beneficial owner thereof, the tax so charged shall not exceed:
(a) 5 percent of the gross amount in the case of royalties for the use of, or the right to use, computer software or industrial, commercial, or scientific equipment; and
(b) 8 percent of the gross amount in all other cases.
3. Notwithstanding the provisions of paragraph 2, royalties arising in a State and paid to a resident of the other State for the use of, or right to use, a copyright of literary, artistic or scientific work (excluding royalties for computer software, motion pictures, films, tapes or other means of reproduction used for radio or television broadcasting) shall be taxable only in that other State if such resident is the beneficial owner thereof.
4. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic, or scientific work including computer software, motion pictures, films, tapes or other means of reproduction used for radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or other like right or property, or for the use of, or right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial, or scientific experience.
5. The provisions of paragraphs 1, 2, and 3 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the royalties are taxable in that other Contracting State according to its own laws.
6. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political or administrative subdivision, a local authority, or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated. Notwithstanding the preceding provisions of this paragraph, royalties with respect to the use of, or the right to use, rights or property within a Contracting State may be deemed to arise within that State.
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 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 is taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.
8. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 13
Capital Gains
1. Gains derived by a resident of a Contracting State from the alienation of immovable property situated in the other Contracting State may be taxed in that other State.
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 permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated by such enterprise in international traffic or of movable property pertaining to the operation of such ships or aircraft shall be taxable only in that State.
4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, and 3 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14
Independent Personal Services
1. Income derived by an individual who is a resident of a Contracting State from the performance of personal services in an independent capacity shall be taxable only in that State unless such services are performed in the other Contracting State and the individual has a fixed base regularly available to him in that other State for the purpose of performing his activities, but only so much of the income as is attributable to that fixed base may be taxed in that other State.
2. The term "personal services in an independent capacity" includes, but is not limited to, scientific, literary, artistic, educational, and teaching activities as well as independent activities of physicians, lawyers, engineers, architects, dentists, and accountants.

ARTICLE 15
Dependent Personal Services
1. Subject to the provisions of Articles 16 (Directors' Fees), 18 (Pensions, Etc.), 19 (Government Service), 20 (Professors and Teachers), and 21 (Students and Trainees), 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;
(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment regularly exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

ARTICLE 16
Directors' Fees
Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17
Artistes and Athletes
1. Income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio, or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, which income would be exempt from tax in that other
Contracting State under the provisions of Articles 14 (Independent Personal Services) and 15 (Dependent Personal Services), may be taxed in that other State, if:
(a) the amount of the gross receipts derived by such entertainer or athlete, including expenses reimbursed to him or borne on his behalf, from such activities exceeds twenty thousand United States dollars ($20,000) or its equivalent in Italian currency for the fiscal year concerned; or
(b) such entertainer or athlete is present in that other State for a period or periods aggregating more than 90 days in the fiscal year concerned.
2. Where income in respect of activities exercised by an entertainer or an athlete in his capacity as such accrues not to him but to another person, that income may, notwithstanding the provisions of Articles 7 (Business Profits), 14 (Independent Personal Services), and 15 (Dependent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised. For purposes of the preceding sentence, income of an entertainer or athlete shall be deemed not to accrue to another person if it is proved by the entertainer or athlete that neither he nor persons related to him participate directly or indirectly in the profits of such other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions, or other distributions.

ARTICLE 18
Pensions, Etc.
1. Subject to the provisions of paragraph 2 of Article 19 (Government Service), pensions and other similar remuneration beneficially derived by a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

2. Payments made by a Contracting State under provisions of the social security or similar legislation of that State to a resident of the other Contracting State shall be taxable only in the other State.
3. Notwithstanding the provisions of paragraph 1, if a resident of a Contracting State becomes a resident of the other Contracting State, lump-sum payments or severance payments (indemnities) received after such change of residence that are paid with respect to employment exercised in the first-mentioned State while a resident thereof, shall be taxable only in that first-mentioned State. For purposes of this paragraph, the term “severance payments (indemnities)” includes any payment made in consequence of the termination of any office or employment of a person.
4. Annuities beneficially derived by a resident of a Contracting State shall be taxable only in that State. The term "annuities" as used in this paragraph means a stated sum paid periodically at stated times during life or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration in money or money's worth (other than services rendered).
5. Alimony and child support payments paid to a resident of a Contracting State by a resident of the other Contracting State shall be taxable only in the first-mentioned State. However, such payments shall not be taxable in either State if the person making such payments is not entitled to a deduction for such payments in the State of which he is a resident. The term "alimony" as used in this paragraph means periodic payments made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, which payments are taxable to the recipient under the laws of the State of which he is a resident. The term "child support" as used in this paragraph means periodic payments for the support of a minor child made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support.
6. For purposes of this Convention, where an individual who is a participant in a pension plan that is established and recognized under the legislation of one of the Contracting States performs personal services in the other Contracting State:
(a) Contributions paid by or on behalf of the individual to the plan during the period that he performs such services in the other State shall be deductible (or excludible) in computing his taxable income in that State.
Any benefits accrued under the plan or payments made to the plan by or on behalf of his employer during that period shall not be treated as part of the employee's taxable income and shall be allowed as a deduction in computing the profits of his employer in that other State.
(b) The provisions of this paragraph shall apply only if:
(i) contributions by or on behalf of the individual to the plan (or to another similar plan for which this plan was substituted) were made before he arrived in the other State; and
(ii) the competent authority of the other State has agreed that the pension plan generally corresponds to a pension plan recognized for tax purposes by that State.
The benefits granted under this paragraph shall not exceed the benefits that would be allowed by the other State to its residents for contributions to, or benefits otherwise accrued under a pension plan recognized for tax purposes by 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 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 State and the individual is a resident of that State who:
(i) is a national of that State and is not a national of the other State; or
(ii) did not become a resident of that State solely for the purpose of rendering the services;
provided that the provisions of clause (ii) shall not apply to the spouse or dependent children of an individual who is receiving remuneration to which the provisions of subparagraph (a) apply and who does not come within the terms of clause (i) or (ii).
2. Subject to the provisions of paragraph 2 of Article 18 (Pensions, Etc.):
(a) Any pension paid by, or out of funds created by, a Contracting State or a political or administrative subdivision or local authority thereof to an individual in respect of services rendered to that State or subdivision or local authority shall be taxable only in that State.
(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident and a national of that State.
3. The provisions of Article 14 (Independent Personal Services), 15 (Dependent Personal Services), 16 (Directors' Fees), 17 (Artistes and Athletes), or 18 (Pensions, Etc.), as the case may be, 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
Professors and Teachers
1. A professor or teacher who makes a temporary visit to a Contracting State for a period that is not expected to exceed two years for the purpose of teaching or conducting research at a university, college, school, or other recognized educational institution, or at a medical facility primarily funded from governmental sources, and who is, or immediately before such visit was, a resident of the other Contracting State shall, for a period not exceeding two years, be exempt from tax in the first-mentioned Contracting State in respect of remuneration from such teaching or research.
2. This Article shall not apply to income from research if such research is undertaken not in the general interest but primarily for the private benefit of a specific person or persons.

ARTICLE 21
Students and Trainees
Payments which a student or business apprentice (trainee) who is, or immediately before visiting a Contracting State was, a resident of the other Contracting State and who is present in the first-mentioned State exclusively for the purpose of his

education at a recognized educational institution or training receives for the purpose of his maintenance, education, or training shall not be taxed in that State provided that such payments arise outside that State.

ARTICLE 22
Other Income
1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6 (Income from Immovable Property), if the person deriving 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 if paid is effectively connected with such permanent establishment or fixed base. In such case the items of income are taxable in the other Contracting State according to its own law.
3. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the income is paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 23
Relief from Double Taxation
1. It is agreed that double taxation shall be avoided in accordance with the following paragraphs of this Article.
2. (a) In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income the appropriate amount of income tax paid to Italy; and in the case of a United States company owning at least ten percent of the voting stock of a company which is a resident of Italy from which it receives dividends in any taxable year, the United States shall allow as a credit against the United States tax on income the appropriate amount of income tax paid to Italy by that company with respect to the profits out of which such dividends are paid. Such appropriate amount shall be based upon the amount of tax paid to Italy, but shall not exceed the limitations of the law of the United States (for the purpose of limiting the credit to the United States tax on income from sources without the United States).
(b) For purposes of applying the United States credit in relation to tax paid to Italy, the taxes referred to in paragraphs 2(b)(i), 2(b)(ii) and 3 of Article 2 (Taxes Covered) shall be considered to be income taxes. In addition, for purposes of applying the United States credit in relation to tax paid to Italy, the portion of the tax referred to in paragraph 2(b)(iii) of Article 2 (Taxes Covered) as is described in subparagraph (c) of this paragraph shall be considered to be an income tax.
(c) The portion of the tax referred to in paragraph 2(b)(iii) of Article 2 (Taxes Covered) that shall be considered to be an income tax shall be calculated by multiplying the applicable ratio by the total amount of the tax referred to in paragraph 2(b)(iii) of Article 2 (Taxes Covered) that is paid or accrued to Italy.
(i) The term "applicable ratio" means the adjusted base divided by the total tax base upon which the tax referred to in paragraph 2(b)(iii) of Article 2 (Taxes Covered) is actually imposed.
(ii) The term "adjusted base" means the greater of:
(A) zero (0), or
(B) the total tax base upon which the tax referred to in paragraph 2(b)(iii) of Article 2 (Taxes Covered) is actually imposed, less the total amount of labor expense and interest expense not otherwise taken into account in determining the total tax base upon which the tax referred to in paragraph 2(b)(iii) of Article 2 (Taxes Covered) is actually imposed.
3. If a resident of Italy derives items of income which are taxable in the United States under the Convention (without regard to paragraph 2(b) of Article 1 (Personal Scope)), Italy may, in determining its income taxes specified in Article 2 of this Convention, include in the basis upon which such taxes are imposed the said items of income (unless specified provisions of this Convention otherwise provide). In such case, Italy shall deduct from the taxes so calculated the tax on income paid to the United States, but in an amount not exceeding that proportion of the aforesaid Italian tax which such items of income bear to the entire income. However, no deduction will be granted if the item of income is subjected in Italy to a final withholding tax by request of the recipient of the said income in accordance with Italian law. For purposes of applying the Italian credit in relation to tax paid to the United States the taxes referred to in paragraphs 2(a) and 3 of Article 2 (Taxes Covered) shall be considered to be income taxes.
4. Where a United States citizen is a resident of Italy:
(a) with respect to items of income that under the provisions of this Convention are exempt from United States tax or that are subject to a reduced rate of United States tax when derived by a resident of Italy who is not a United States citizen, Italy shall allow as a credit against Italian tax an amount not exceeding the tax that would be due to the United States if the resident of Italy were not a citizen of the United States;
(b) for purposes of computing United States tax on those items of income referred to in subparagraph (a), the United States shall allow as a credit against United States tax the income tax paid to Italy after the credit referred to in subparagraph (a); the credit so allowed shall not reduce the portion of the United States tax that is creditable against the Italian tax in accordance with subparagraph(a); and
(c) for the exclusive purpose of relieving double taxation in the United States under subparagraph (b), items of income referred to in subparagraph (a) shall be deemed to arise in Italy to the extent necessary to avoid double taxation of such income under subparagraph (b).
5. In the case of an individual who is both a resident and national of one Contracting State and is also a national of the other Contracting State, the provisions of paragraph 2 of Article 1 (Personal Scope) shall apply to remuneration described in paragraph 1(b)(i) of Article 19 (Government Service), but such remuneration shall be treated by the Contracting State where the services in respect of the remuneration are rendered as income from sources within the other State.

ARTICLE 24
Non-Discrimination
1. Nationals of a Contracting State shall not be subjected in the other State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1 (Personal Scope), also apply to persons who are not residents of one or both of the Contracting States. However, for purposes of United States taxation, United States citizens who are subject to tax on a worldwide basis are not in the same circumstances as Italian nationals who are not residents of the United States.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably 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 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 paragraph 1 of Article 9 (Associated Enterprises), paragraph 7 of Article 11 (Interest), or paragraph 7 of Article 12 (Royalties) apply, interest, royalties, and all 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.
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 purposes of this Article, notwithstanding the provisions of Article 2 (Taxes Covered), this Convention shall apply to taxes of every kind and description imposed by a Contracting State or a political or administrative subdivision or local authority thereof.

ARTICLE 25
Mutual Agreement Procedure
1. Where a person 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 or, if his case comes under paragraph 1 of Article 24 (Non-Discrimination), to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.
2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in 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.
5. If an agreement cannot be reached by the competent authorities pursuant to the previous paragraphs of this Article, the case may, if both competent authorities and the taxpayer agree, be submitted for arbitration, provided that the taxpayer agrees in writing to be bound by the decision of the arbitration board. The competent authorities may release to the arbitration board such information as is necessary for carrying out the arbitration procedure. The award of the arbitration board shall be binding on the taxpayer and on both States with regard to that case. The procedures shall be finalized by the Contracting States by means of notes to be exchanged through diplomatic channels after consultation between the competent authorities. The provisions of this paragraph shall not have effect until the date specified in the exchange of diplomatic notes.

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 insofar as the taxation thereunder is not contrary to the Convention, and for the prevention of fraud or fiscal evasion. The exchange of information is not restricted by Article 1 (Personal Scope). Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:
(a) to carry out administrative measures at variance with the laws and 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 Officials
Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officials under the general rules of international law or under the provisions of special agreements.

ARTICLE 28
Entry into Force
1. This Convention shall be subject to ratification in accordance with the applicable procedures of each Contracting State and instruments of ratification shall be exchanged as soon as possible.
2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:
(a) in respect of tax withheld at the source, for amounts paid or credited on or after the first day of the second month following the date on which this Convention enters into force,
(b) in respect of other taxes, for taxable periods beginning on or after the first day of January next following the date on which this Convention enters into force.
3. Notwithstanding paragraph 2, where a person who was entitled to the benefits of the Convention for the Avoidance of Double Taxation with Respect to Taxes on Income and the Prevention of Fraud or Fiscal Evasion, signed at Rome April 17, 1984, and the Protocol clarifying and supplementing that Convention, signed at Rome April 17, 1984 (collectively, the "prior Convention") would have been entitled to any greater relief from tax under the prior Convention than under this Convention, the prior Convention shall, at the election of such person, continue to have effect in its entirety for a twelvemonth period from the date on which the provisions of this Convention would otherwise have effect under paragraph 2.
4. The provisions of the prior Convention shall cease to have effect when corresponding provisions of this Convention take effect in accordance with paragraphs 2 and 3, and the prior Convention shall terminate on the last date on which it has effect in accordance with the foregoing provisions of this paragraph.

ARTICLE 29
Termination
This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention at any time after 5 years from the date on which this Convention enters into force provided that at least 6 months' prior notice of termination has been given through diplomatic channels. In such event, the Convention shall cease to have effect:
(a) in respect of tax withheld at the source, for amounts paid or credited on or after the first day of January next following the expiration of the 6 months' period;
(b) in respect of other taxes, for taxable periods beginning on or after the first day of January next following the expiration of the 6 months' period.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Convention.
DONE at Washington, in duplicate, in the English and Italian languages, the two texts having equal authenticity, this twenty-fifth day of August, 1999.
FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:
FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC:

PROTOCOL

The Government of the United States of America and the Government of the Italian Republic, desiring to conclude a Protocol clarifying and supplementing the Convention for the Avoidance of Double Taxation with Respect to Taxes on Income and the Prevention of Fraud or Fiscal Evasion (hereinafter referred to as "the Convention") to be signed simultaneously with the signing of this Protocol, have agreed upon the following provisions, which shall be an integral part of the Convention.

ARTICLE 1
1. For purposes of paragraph 2(b) of Article 1 (Personal Scope) of the Convention, the term "citizen" as applied to the United States shall include a former citizen or long-term resident whose loss of such status had as one of its principal purposes the avoidance of tax, but only for a period of 10 years following such loss.
2. The provisions of paragraph 2 of Article 1 (Personal Scope) of the Convention shall not affect:
(a) the benefits conferred by a Contracting State under paragraph 2 of Article 18 (Pensions, Etc.) of the Convention to residents of the other Contracting State who are nationals of that other State, even if they are also nationals of the first-mentioned State;
(b) the benefits conferred by a Contracting State under Article 4 of this Protocol.
3. For purposes of paragraph 2(a) of Article 2 (Taxes Covered) of the Convention, the Convention shall apply to the excise tax imposed by the United States on insurance premiums paid to foreign insurers only to the extent that the foreign insurer does not reinsure such risks with a person not entitled to exemption from such tax under this or any other Convention.
4. For purposes of paragraph 1(i) of Article 3 (General Definitions) of the Convention, the term "qualified governmental entity" includes:
(a) in the case of the United States:
(i) the Federal Reserve Banks;
(ii) the Export-Import Bank; and
(iii) the Overseas Private Investment Corporation;
(b) in the case of Italy:

(i) La Banca d'Italia (the Central Bank);
(ii) L'Istituto per il Commercio con l'Estero (the Foreign Trade Institute); and
(iii) L'Istituto per l'Assicurazione del Credito all'Esportazione (the Official Insurance Institute for Export Credits);
and such financial institutions, the capital of which is wholly owned by a Contracting State or any state or political or administrative subdivision or local authority as may be agreed from time to time between the competent authorities of both of the Contracting States.
5. For purposes of paragraph 1 of Article 4 (Resident) of the Convention:
(a) A legal person organized under the laws of a Contracting State and that is generally exempt from tax in that State and is established and maintained in that State either:
(i) exclusively for a religious, charitable, educational, scientific, or other similar purpose; or
(ii) to provide pensions or other similar benefits to employees pursuant to a plan is to be treated as a resident of that Contracting State;
(b) A qualified governmental entity is to be treated as a resident of the Contracting State where it is established;
(c) Italy shall treat a United States citizen or an alien lawfully admitted for permanent residence (a "green card" holder) as a resident of the United States only if such person has a substantial presence, permanent home, or habitual abode in the United States; and
(d) The provisions of subparagraph 1(b) of Article 4 (Resident) of the Convention shall apply to determine the residence of an entity that is treated as fiscally transparent under the laws of either Contracting State.
6. For purposes of paragraph 2 of Article 5 (Permanent Establishment) of the Convention, a drilling rig or ship used for the exploration or development of natural resources constitutes a permanent establishment in a Contracting State only if it remains in that State for more than twelve months.
7. For purposes of paragraph 1 of Article 8 (Shipping and Air Transport) of the Convention, profits from the operation in international traffic of ships or aircraft include:
(a) profits from the use, maintenance, or rental of containers (including trailers, barges, and related equipment for the transport of containers) used for the transport in international traffic of goods or merchandise; and
(b) profits derived from the rental on a full basis of ships or aircraft and profits derived from the rental on a bareboat basis of ships or aircraft, provided in the latter case that such rental profits are incidental to other profits from the operation of ships or aircraft in international traffic.
8. For purposes of Article 8 (Shipping and Air Transport) of the Convention, and notwithstanding any other provision of the Convention, profits which a national of the United States not resident in Italy or a United States corporation derives from operating ships documented or aircraft registered under the laws of the United States shall be exempt from tax in Italy.
9. The provisions of Article 9 (Associated Enterprises) of the Convention shall not limit any provisions of the law of either Contracting State which permit the distribution, apportionment, or allocation of income, deductions, credits, or allowances between persons owned or controlled directly or indirectly by the same interests when necessary in order to prevent evasion of taxes or clearly to reflect the income of any such persons.
10. For purposes of paragraph 4 of Article 10 (Dividends), paragraph 5 of Article 11 (Interest), paragraph 5 of Article 12 (Royalties), and paragraph 2 of Article 22 (Other Income) of the Convention, it is agreed that the last sentence included therein cannot be interpreted so that the principles included in Articles 7 (Business Profits) and 14 (Independent Personal Services) of the Convention are not taken into consideration.
11. Notwithstanding the provisions of paragraphs 1, 2, and 3 of Article 11 (Interest) of the Convention, interest that is an excess inclusion with respect to a real estate mortgage investment conduit may be taxed by each State in accordance with its own domestic law.
12. For purposes of paragraph 1 of Article 13 (Capital Gains) of the Convention:
(a) the term "immovable property" in the case of the United States, includes a United States real property interest; and
(b) the term "immovable property" in the case of Italy includes:
(i) immovable property referred to in Article 6 (Income from Immovable Property);
(ii) shares or comparable interests in a company or other body of persons, the assets of which consist wholly or principally of real property situated in Italy; and
(iii) an interest in an estate of a deceased individual, the assets of which consist wholly or principally of real property situated in Italy.
(c) property described in subparagraph (a) of this paragraph shall be deemed to be situated in the United States and property described in subparagraph (b) of this paragraph shall be deemed to be situated in Italy.
13. For purposes of paragraph 3 of Article 13 (Capital Gains) of the Convention, gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated by such enterprise in international traffic include:
(a) gains from the alienation of containers (including trailers, barges, and related equipment for the transport of containers) used for the transport in international traffic of goods or merchandise; and
(b) gains from the alienation of ships or aircraft rented on a full basis or gains from the alienation of ships or aircraft rented on a bareboat basis if, in the latter case, rental profits were incidental to other profits from the operation of ships or aircraft in international traffic.
14. Directors' fees and other similar payments derived by a resident of a Contracting State which are described in Article 16 (Directors' Fees) of the Convention may be taxed in the other Contracting State only to the extent that the fees and other payments are attributable to services performed in such other State.
15. With respect to paragraph 6 of Article 18 (Pensions, Etc.), the term "pension plan" in the case of Italy shall mean "fondi pensione."
16. With respect to Article 19 (Government Service) of the Convention, it is understood that the competent authorities of the Contracting States may by mutual agreement apply the provisions of paragraphs 1 and 2 of Article 19 (Government Service) to employees of organizations that perform functions of a governmental nature.
17. With respect to Articles 20 (Professors and Teachers) and 21 (Students and Trainees) of the Convention, the term "recognized educational institution" in the case of the United States shall mean an accredited educational institution. An educational institution will be considered to be accredited if it is accredited by an authority that generally is responsible for accreditation of institutions in the particular field of study.

18. Nothing in Article 24 (Non-Discrimination) of the Convention shall be construed as preventing either Contracting State from imposing a tax as described in paragraph 6 of Article 10 (Dividends) or paragraph 8 of Article 11 (Interest) of the Convention.
19. With respect to paragraph 3 of Article 25 (Mutual Agreement Procedure) of the Convention, the competent authorities of the Contracting States may, in particular, agree that the conditions for the application of paragraph 10 of Article 10 (Dividends), paragraph 9 of Article 11 (Interest), paragraph 8 of Article 12 (Royalties), or paragraph 3 of Article 22 (Other Income) of the Convention are met.
20. For purposes of Article 26 (Exchange of Information) of the Convention, the Convention shall apply to taxes of every kind imposed by a Contracting State. It is understood that information may be disclosed to persons or authorities involved in the oversight of the activities for which information may be exchanged under Article 26 (Exchange of Information), and such persons shall use the information only for such oversight purposes and shall be subject to the limitations of Article 26 (Exchange of Information).

ARTICLE 2
1. A resident of a Contracting State shall be entitled to benefits otherwise accorded to residents of a Contracting State by the Convention only to the extent provided in this Article.
2. A resident of a Contracting State shall be entitled to all the benefits of the Convention if the resident is:
(a) an individual;
(b) a qualified governmental entity;
(c) a company, if:
(i) all the shares in the class or classes of shares representing more than 50 percent of the voting power and value of the company are regularly traded on a recognized stock exchange, or
(ii) at least 50 percent of each class of shares in the company is owned directly or indirectly by five or fewer companies entitled to benefits under clause (i), provided that in the case of indirect ownership, each intermediate owner is a person entitled to benefits of the Convention under this paragraph;
(d) described in subparagraph 5(a)(i) of Article 1 of this Protocol;
(e) described in subparagraph 5(a)(ii) of Article 1 of this Protocol, provided that more than 50 percent of the person's beneficiaries, members or participants are individuals resident in either Contracting State; or
(f) a person other than an individual, if:
(i) On at least half the days of the taxable year persons described in subparagraphs (a), (b), (c), (d) or (e) own, directly or indirectly (through a chain of ownership in which each person is entitled to benefits of the Convention under this paragraph), at least 50 percent of each class of shares or other beneficial interests in the person, and (ii) less than 50 percent of the person's gross income for the taxable year is paid or accrued, directly or indirectly, to persons who are not residents of either Contracting State (unless the payment is attributable to a permanent establishment situated in either State), in the form of payments that are deductible for income tax purposes in the person’s State of residence.
3. (a) A resident of a Contracting State not otherwise entitled to benefits shall be entitled to the benefits of this Convention with respect to an item of income derived from the other State, if:
(i) the resident is engaged in the active conduct of a trade or business in the first-mentioned State,
(ii) the income is connected with or incidental to the trade or business, and
(iii) the trade or business is substantial in relation to the activity in the other State generating the income.
(b) For purposes of this paragraph, the business of making or managing investments will not be considered an active trade or business unless the activity is banking, insurance or securities activity conducted by a bank, insurance company or registered securities dealer.
(c) Whether a trade or business is substantial for purposes of this paragraph will be determined based on all the facts and circumstances. In any case, however, a trade or business will be deemed substantial if, for the preceding taxable year, or for the average of the three preceding taxable years, the asset value, the gross income, and the payroll expense that are related to the trade or business in the first-mentioned State equal at least 7.5 percent of the resident's (and any related parties') proportionate share of the asset value, gross income and payroll expense, respectively, that are related to the activity that generated the income in the other State, and the average of the three ratios exceeds 10 percent.
(d) Income is derived in connection with a trade or business if the activity in the other State generating the income is a line of business that forms a part of or is complementary to the trade or business. Income is incidental to a trade or business if it facilitates the conduct of the trade or business in the other State.
4. A resident of a Contracting State not otherwise entitled to benefits may be granted benefits of the Convention if the competent authority of the State from which benefits are claimed so determines.
5. For purposes of this Article the term "recognized stock exchange" means:
(a) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under the U.S. Securities Exchange Act of 1934;
(b) any stock exchange constituted and organized according to Italian laws; and
(c) any other stock exchanges agreed upon by the competent authorities of both Contracting States.

ARTICLE 3
1. The Convention shall not restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded:
(a) by the laws of either Contracting State, or
(b) by any other agreement between the Contracting States.
2. Notwithstanding the provisions of paragraph 1(b):
(a) the provisions of Article 25 (Mutual Agreement Procedure) of the Convention exclusively shall apply to any dispute concerning whether a measure is within the scope of the Convention, and the procedures under the Convention exclusively shall apply to that dispute; and
(b) unless the competent authorities determine that a taxation measure is not within the scope of this Convention, the nondiscrimination obligations of this Convention exclusively shall apply with respect to that measure, except for such

national treatment or mostfavored-nation obligations as may apply to trade in goods under the General Agreement on Tariffs and Trade. No national treatment or most-favored-nation obligation under any other agreement shall apply with respect to that measure.
(c) For the purpose of this paragraph, a "measure" is a law, regulation, rule, procedure, decision, administrative action, or any similar provision or action.

ARTICLE 4
It is agreed that a United States citizen resident in Italy who is a partner of a partnership that is a national of the United States shall be entitled to a refundable credit against that partner's individual income tax (l'imposta sul reddito delle persone fisiche) imposed by Italy for the taxable period equal to the portion of the corporation income tax (l'imposta sul reddito delle persone giuridiche) imposed by Italy for the same period on the partnership that is attributable to that partner's share of the partnership income.

ARTICLE 5
Taxes withheld at the source in a Contracting State at the rates provided by domestic law will be refunded by request of the taxpayer if the right to collect the said taxes is limited by the provisions of the Convention. Claims for refund, which shall be made within the time limit fixed by the law of the Contracting State which is obliged to make 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 benefits provided for by the Convention. This provision shall not be construed to prevent the competent authority of each Contracting State from establishing other modes of application of the benefits provided for by the Convention.

ARTICLE 6
Each of the Contracting States may collect on behalf of the other Contracting State such amounts as may be necessary to ensure that relief granted by the Convention from taxation imposed by such other State does not enure to the benefit of persons not entitled thereto. The preceding sentence shall not, however, impose upon either of the Contracting States the obligation to carry out administrative measures which are of a different nature from those used in the collection of its own tax, or which would be contrary to its sovereignty, security, or public policy.

ARTICLE 7
1. The appropriate authority of either Contracting State may request consultations with the appropriate authority of the other Contracting State to determine whether amendment to the Convention is appropriate to respond to changes in the law or policy of either Contracting State. If these consultations determine that the effect of the Convention or its application have been unilaterally changed by reason of domestic legislation enacted by a Contracting State such that the balance of benefits provided by the Convention has been significantly altered, the authorities shall consult with each other with a view to amending the Convention to restore an appropriate balance of benefits.
2. Within three years after the entry into force of the Convention, the competent authorities shall consult with respect to the implementation of Article 25 (Mutual Agreement Procedure) and, taking into account experience with respect thereto, determine whether any modifications to Article 25 (Mutual Agreement Procedure) would be appropriate and, also taking into account experience with respect to arbitration of international tax disputes, shall determine whether it is appropriate to exchange the diplomatic notes referred to in paragraph 5 of Article 25 (Mutual Agreement Procedure), and if so the provisions thereof.

ARTICLE 8
If any State or locality of the United States imposes tax on profits of enterprises of Italy from the operation in international traffic of ships or aircraft, Italy may impose its regional tax on productive activities (l’imposta regionale sulle attività produttive) on such profits of enterprises of the United States, notwithstanding the provisions of subparagraph 2(b)(iii) of Article 2 (Taxes Covered) and Article 8 (Shipping and Air Transport) of the Convention.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Protocol.
DONE at Washington, in duplicate, in the English and Italian languages, the two texts having equal authenticity, this twenty-fifth day of August, 1999.
FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:
FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC:

APPENDIX II

OECD MODEL TAX CONVENTION ON INCOME AND ON CAPITAL

UNITED NATIONS MODEL DOUBLE TAXATION CONVENTION BETWEEN DEVELOPED AND DEVELOPING COUNTRIES

UNITED STATES MODEL INCOME TAX CONVENTIONS
(1996, and 2006)

OECD Model Tax Convention on Income and on Capital
CONDENSED VERSION
22 JULY 2010

SUMMARY OF THE CONVENTION

Chapter I
SCOPE OF THE CONVENTION
ARTICLE 1
PERSONS COVERED
This Convention shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2
TAXES COVERED
1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which the Convention shall apply are in particular:
a) (in State A): ....
b) (in State B): ....

4. The Convention shall apply also to any identical or substantially similar taxes that 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 any significant changes that have been made in their taxation laws.

Chapter II
DEFINITIONS
ARTICLE 3
GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:
a) the term “person” includes an individual, a company and any other body of persons;
b) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
c) the term “enterprise” applies to the carrying on of any business;
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 “international traffic” means any transport by a ship or aircraft operated by an enterprise that 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;
f) the term “competent authority” means:
(i) (in State A): ....
(ii) (in State B): ....
g) the term “national”, in relation to a Contracting State, means:
(i) any individual possessing the nationality or citizenship of that Contracting State; and
(ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;
h) the term “business” includes the performance of professional services and of other activities of an independent character.
2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4
RESIDENT

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, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that 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 only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only 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, and
f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.
4. Notwithstanding the preceding provisions of this Article, 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 carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraphs 1 and 2, where a person — other than an agent of an independent status to whom paragraph 6 applies — is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that 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.
7. 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 derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, 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; ships, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

ARTICLE 7
BUSINESS PROFITS

1. 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 that are attributable to the permanent establishment in accordance with the provisions of paragraph 2 may be taxed in that other State.
2. For the purposes of this Article and Article [23 A] [23B], the profits that are attributable in each Contracting State to the permanent establishment referred to in paragraph 1 are the profits it might be expected to make, in particular in its dealings with other parts of the enterprise, if it were a separate and independent enterprise engaged in the same or similar activities under the same or similar conditions, taking into account the functions performed, assets used and risks assumed by the enterprise through the permanent establishment and through the other parts of the enterprise.
3. Where, in accordance with paragraph 2, a Contracting State adjusts the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting States and taxes accordingly profits of the enterprise that have been charged to tax in the other State, the other State shall, to the extent necessary to eliminate double taxation on these profits, make an appropriate adjustment to the amount of the tax charged on those profits. In determining such adjustment, the competent authorities of the Contracting States shall if necessary consult each other.
4. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8
SHIPPING, INLAND WATERWAYS TRANSPORT 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. Profits from the operation of boats engaged in inland waterways transport shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
3. If the place of effective management of a shipping enterprise or of an inland waterways transport enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.
4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9
ASSOCIATED ENTERPRISES

1. Where
a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.
2. Where a Contracting State includes in the profits of an enterprise of that State —and taxes accordingly — profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10
DIVIDENDS
1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:
a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;
b) 15 per cent of the gross amount of the dividends in all other cases.
The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.
3. The term “dividends” as used in this Article means income from shares, “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 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 and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.
5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company’s undistributed profits to a tax on the company’s undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11
INTEREST
1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.
3. The term “interest” as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
4. 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 and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.
5. Interest shall be deemed to arise in a Contracting State when the payer is 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.
6. 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 beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

2. 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, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.
3. 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 and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.
4. 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 derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains 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, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic, boats engaged in inland waterways transport or movable property pertaining to the operation of such ships, aircraft or boats, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. Gains derived by a resident of a Contracting State from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.
5. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3 and 4, shall be taxable only in the Contracting State of which the alienator is a resident.

[ARTICLE 14 - INDEPENDENT PERSONAL SERVICES]
[Deleted]

ARTICLE 15
INCOME FROM EMPLOYMENT
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 any twelve month period commencing or ending 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 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, or aboard a boat engaged in inland waterways transport, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 16
DIRECTORS’ FEES
Directors’ fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17
ARTISTES AND SPORTSMEN
1. Notwithstanding the provisions of Articles 7 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

ARTICLE 18
PENSIONS
Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

ARTICLE 19
GOVERNMENT SERVICE

1. a) Salaries, wages and other similar remuneration paid by a Contracting State or a political 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 salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual 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. a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political 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 pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16, 17, and 18 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

ARTICLE 20
STUDENTS

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

ARTICLE 21
OTHER INCOME

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

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

Chapter IV
TAXATION OF CAPITAL
ARTICLE 22
CAPITAL

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

2. Capital represented by 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 may be taxed in that other State.

3. Capital represented by ships and aircraft operated in international traffic and by boats engaged in inland waterways transport, and by movable property pertaining to the operation of such ships, aircraft and boats, 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 A
EXEMPTION METHOD

1. Where a resident of a Contracting State derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in the other Contracting State, the first-mentioned State shall, subject to the provisions of paragraphs 2 and 3, exempt such income or capital from tax.

2. Where a resident of a Contracting State derives items of income which, in accordance with the provisions of Articles 10 and 11, may be taxed in the other Contracting State, the first-mentioned State shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in that other State. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from that other State.

3. Where in accordance with any provision of the Convention income derived or capital owned by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

4. The provisions of paragraph 1 shall not apply to income derived or capital owned by a resident of a Contracting State where the other Contracting State applies the provisions of this Convention to exempt such income or capital from tax or applies the provisions of paragraph 2 of Article 10 or 11 to such income.

ARTICLE 23 B
CREDIT METHOD

1. Where a resident of a Contracting State derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in the other Contracting State, the first-mentioned State shall allow:

a) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in that other State;

b) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in that other State.

Such deduction in either case shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in that other State.
2. Where in accordance with any provision of the Convention income derived or capital owned by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

Chapter VI
SPECIAL PROVISIONS
ARTICLE 24
NON-DISCRIMINATION
1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. Stateless persons who are residents of a Contracting State shall not be subjected in either Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of the State concerned in the same circumstances, in particular with respect to residence, are or may be subjected.
3. 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.
4. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11, or paragraph 4 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.
5. 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 firstmentioned State are or may be subjected.
6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

ARTICLE 25
MUTUAL AGREEMENT PROCEDURE
1. Where a person considers that the actions of one or both of the 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 or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
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. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.
4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.
5. Where,
a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention, and
b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the presentation of the case to the competent authority of the other Contracting State, any unresolved issues arising from the case shall be submitted to arbitration if the person so requests. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph (in some States, national law, policy or administrative considerations may not allow or justify the type of dispute resolution envisaged under this paragraph. In addition, some States may only wish to include this paragraph in treaties with certain States. For these reasons, the paragraph should only be included in the Convention where each State concludes that it would be appropriate to do so based on the factors described in paragraph 65 of the Commentary on the paragraph. As mentioned in paragraph 74 of that Commentary,

however, other States may be able to agree to remove from the paragraph the condition that issues may not be submitted to arbitration if a decision on these issues has already been rendered by one of their courts or administrative tribunals).

ARTICLE 26
EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.
2. Any information received under paragraph 1 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) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. 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.
3. In no case shall the provisions of paragraphs 1 and 2 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).
4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.
5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

ARTICLE 27
ASSISTANCE IN THE COLLECTION OF TAXES

(In some countries, national law, policy or administrative considerations may not allow or justify the type of assistance envisaged under this Article or may require that this type of assistance be restricted, e.g. to countries that have similar tax systems or tax administrations or as to the taxes covered. For that reason, the Article should only be included in the Convention where each State concludes that, based on the factors described in paragraph 1 of the Commentary on the Article, they can agree to provide assistance in the collection of taxes levied by the other State)
1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.
2. The term “revenue claim” as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.
3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.
4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the firstmentioned State or is owed by a person who has a right to prevent its collection.
5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.
6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.
7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be
a) in the case of a request under paragraph 3, a revenue claim of the firstmentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or

b) in the case of a request under paragraph 4, a revenue claim of the firstmentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article 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 carry out measures which would be contrary to public policy (ordre public);

c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;

d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

ARTICLE 28

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

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

ARTICLE 29

TERRITORIAL EXTENSION

(The words between brackets are of relevance when, by special provision, a part of the territory of a Contracting State is excluded from the application of the Convention)

1. This Convention may be extended, either in its entirety or with any necessary modifications [to any part of the territory of (State A) or of (State B) which is specifically excluded from the application of the Convention or], to any State or territory for whose international relations (State A) or (State B) is responsible, which imposes taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed between the Contracting States in notes to be exchanged through diplomatic channels or in any other manner in accordance with their constitutional procedures.

2. Unless otherwise agreed by both Contracting States, the termination of the Convention by one of them under Article 30 shall also terminate, in the manner provided for in that Article, the application of the Convention [to any part of the territory of (State A) or of (State B) or] to any State or territory to which it has been extended under this Article.

Chapter VII

FINAL PROVISIONS

ARTICLE 30

ENTRY INTO FORCE

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

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

a) (in State A): ....

b) (in State B): ....

ARTICLE 31

TERMINATION

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

a) (in State A): ....

b) (in State B): ....

TERMINAL CLAUSE

(The terminal clause concerning the signing shall be drafted in accordance with the constitutional procedure of both Contracting States)

UNITED NATIONS MODEL DOUBLE TAXATION CONVENTION BETWEEN DEVELOPED AND DEVELOPING COUNTRIES

SUMMARY OF THE CONVENTION

Chapter I
SCOPE OF THE CONVENTION
Article 1
PERSONS COVERED
This Convention shall apply to persons who are residents of one or both of the Contracting States.

Article 2
TAXES COVERED
1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which the Convention shall apply are in particular:
(a) (in State A): ....
(b) (in State B): ....
4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of significant changes made to their tax law.

Chapter II
DEFINITIONS
Article 3
GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:
(a) The term “person” includes an individual, a company and any other body of persons;
(b) The term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
(c) 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;
(d) The term “international traffic” means any transport by a ship or aircraft operated by an enterprise that 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;
(e) The term “competent authority” means:
(i) (In State A): ....
(ii) (In State B): ....
(f) The term “national” means:
(i) Any individual possessing the nationality of a Contracting State
(ii) Any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.
2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4
RESIDENT

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 incorporation, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that 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 only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
(b) If the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
(c) If he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
(d) If he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only 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, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. The term “permanent establishment” also encompasses:
(a) A building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than six months;
(b) The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within a Contracting State for a period or periods aggregating more than six months within any twelve-month period.
4. Notwithstanding the preceding provisions of this article, the term “permanent establishment” shall be deemed not to include:
(a) The use of facilities solely for the purpose of storage or display 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 or display;
(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 carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.
(f) The maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraphs 1 and 2, where a person—other than an agent of an independent status to whom paragraph 7 applies—is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:
(a) Has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
(b) Has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.
6. Notwithstanding the preceding provisions of this article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.
7. 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. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, he will not be considered an agent of an independent status within the meaning of this paragraph.
8. 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 derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, 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; 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 (a) that permanent establishment; (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or (c) other business activities carried on in that other State of the same or similar kind as those effected through 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 incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for

management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.
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. 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.
6. 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.
(NOTE: The question of whether profits should be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods and merchandise for the enterprise was not resolved. It should therefore be settled in bilateral negotiations.)

Article 8
SHIPPING, INLAND WATERWAYS TRANSPORT
AND AIR TRANSPORT
Article 8 (alternative A)
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. Profits from the operation of boats engaged in inland waterways transport shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
3. If the place of effective management of a shipping enterprise or of an inland waterways transport enterprise is aboard a ship or a boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.
4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.
Article 8 (alternative B)
1. Profits from the operation of 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. Profits from the operation of ships in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated unless the shipping activities arising from such operation in the other Contracting State are more than casual. If such activities are more than casual, such profits may be taxed in that other State. The profits to be taxed in that other State shall be determined on the basis of an appropriate allocation of the overall net profits derived by the enterprise from its shipping operations.
The tax computed in accordance with such allocation shall then be reduced by ___ per cent. (The percentage is to be established through bilateral negotiations.)
3. Profits from the operation of boats engaged in inland waterways transport shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. If the place of effective management of a shipping enterprise or of an inland waterways transport enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated, or if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.
5. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9
ASSOCIATED ENTERPRISES
1. Where:
(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.
2. Where a Contracting State includes in the profits of an enterprise of that State—and taxes accordingly—profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of the Convention and the competent authorities of the Contracting States shall, if necessary, consult each other.
3. The provisions of paragraph 2 shall not apply where judicial, administrative or other legal proceedings have resulted in a final ruling that by actions giving rise to an adjustment of profits under paragraph 1, one of the enterprises concerned is liable to penalty with respect to fraud, gross negligence or wilful default.

Article 10
DIVIDENDS
1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:
(a) ___ per cent (the percentage is to be established through bilateral negotiations) of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends;
(b) ___ per cent (the percentage is to be established through bilateral negotiations) of the gross amount of the dividends in all other cases.
The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.
3. The term “dividends” as used in this article means income from shares, “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 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 provisions of article 7 or article 14, as the case may be, shall apply.
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 the company’s undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11
INTEREST
1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed ___ per cent (the percentage is to be established through bilateral negotiations) of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.
3. The term “interest” as used in this article means income from debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this article.
4. 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 (a) such permanent establishment or fixed base, or with (b) business activities referred to in (c) of paragraph 1 of article 7. In such cases the provisions of article 7 or article 14, as the case may be, shall apply.
5. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
6. 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.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed ___ per cent (the percentage is to be established through bilateral negotiations) of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.
3. The term “royalties” as used in this article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trademark, 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 paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with (a) such permanent establishment or fixed base, or with (b) business activities referred to in (c) of paragraph 1 of article 7. In such cases the provisions of article 7 or article 14, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
6. Where by reason of a special relationship between the payer and the 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 derived by a resident of a Contracting State from the alienation of immovable property referred to in article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains 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.
3. Gains from the alienation of ships or aircraft operated in international traffic, boats engaged in inland waterways transport or movable property pertaining to the operation of such ships, aircraft or boats, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. Gains from the alienation of shares of the capital stock of a company, or of an interest in a partnership, trust or estate, the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State. In particular:
(1) Nothing contained in this paragraph shall apply to a company, partnership, trust or estate, other than a company, partnership, trust or estate engaged in the business of management of immovable properties, the property of which consists directly or indirectly principally of immovable property used by such company, partnership, trust or estate in its business activities.
(2) For the purposes of this paragraph, “principally” in relation to ownership of immovable property means the value of such immovable property exceeding 50 per cent of the aggregate value of all assets owned by the company, partnership, trust or estate.
5. Gains from the alienation of shares other than those mentioned in paragraph 4 representing a participation of ___ per cent (the percentage is to be established through bilateral negotiations) in a company which is a resident of a Contracting State may be taxed in that State.
6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14
INDEPENDENT PERSONAL SERVICES
1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:
(a) If he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or
(b) If his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.
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 any twelve-month period commencing or ending 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, or aboard a boat engaged in inland waterways transport, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16
DIRECTORS' FEES AND REMUNERATION OF TOP-LEVEL
MANAGERIAL OFFICIALS
1. Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the Board of Directors of a company which is a resident of the other Contracting State may be taxed in that other State.
2. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in his capacity as an official in a top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17
ARTISTES AND SPORTSPERSONS
1. Notwithstanding the provisions of articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson 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 sportsperson are exercised.

Article 18
PENSIONS AND SOCIAL SECURITY PAYMENTS
Article 18 (alternative A)
1. Subject to the provisions of paragraph 2 of article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.
2. Notwithstanding the provisions of paragraph 1, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political subdivision or a local authority thereof shall be taxable only in that State.
Article 18 (alternative B)
1. Subject to the provisions of paragraph 2 of article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment may be taxed in that State.
2. However, such pensions and other similar remuneration may also be taxed in the other Contracting State if the payment is made by a resident of that other State or a permanent establishment situated therein.
3. Notwithstanding the provisions of paragraphs 1 and 2, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political subdivision or a local authority thereof shall be taxable only in that State.

Article 19
GOVERNMENT SERVICE
1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political 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 salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual 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. (a) Any pension paid by, or out of funds created by, a Contracting State or a political 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 pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other State.
3. The provisions of articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 20
STUDENTS
Payments which a student or business trainee or apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

Article 21
OTHER INCOME
1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing articles of this Convention shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent

personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of article 7 or article 14, as the case may be, shall apply.
3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing articles of this Convention and arising in the other Contracting State may also be taxed in that other State.

Chapter IV
TAXATION OF CAPITAL
Article 22
CAPITAL
1. Capital represented by immovable property referred to in article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.
2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services may be taxed in that other State.
3. Capital represented by ships and aircraft operated in international traffic and by boats engaged in inland waterways transport, and by movable property pertaining to the operation of such ships, aircraft and boats, 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.]
(The Group decided to leave to bilateral negotiations the question of the taxation of the capital represented by immovable property and movable property and of all other elements of capital of a resident of a Contracting State. Should the negotiating parties decide to include in the Convention an article on the taxation of capital, they will have to determine whether to use the wording of paragraph 4 as shown or wording that leaves taxation to the State in which the capital is located.)

Chapter V
METHODS FOR THE ELIMINATION OF DOUBLE TAXATION
Article 23 A
EXEMPTION METHOD
1. Where a resident of a Contracting State derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in the other Contracting State, the firstmentioned State shall, subject to the provisions of paragraphs 2 and 3, exempt such income or capital from tax.
2. Where a resident of a Contracting State derives items of income which, in accordance with the provisions of articles 10, 11 and 12, may be taxed in the other Contracting State, the first-mentioned State shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in that other State. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from that other State.
3. Where in accordance with any provision of this Convention income derived or capital owned by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.
Article 23 B
CREDIT METHOD
1. Where a resident of a Contracting State derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in the other Contracting State, the firstmentioned State shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in that other State; and as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in that other State. Such deduction in either case shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in that other State.
2. Where, in accordance with any provision of this Convention, income derived or capital owned by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

Chapter VI
SPECIAL PROVISIONS
Article 24
NON-DISCRIMINATION
1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. Stateless persons who are residents of a Contracting State shall not be subjected in either Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of the State concerned in the same circumstances, in particular with respect to residence, are or may be subjected.
3. 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.

4. Except where the provisions of paragraph 1 of article 9, paragraph 6 of article 11, or paragraph 6 of article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the firstmentioned 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.
5. 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.
6. The provisions of this article shall, notwithstanding the provisions of article 2, apply to taxes of every kind and description.

Article 25
MUTUAL AGREEMENT PROCEDURE
1. Where a person considers that the actions of one or both of the 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 or, if his case comes under paragraph 1 of article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with this Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
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. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.
4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs. The competent authorities, through consultations, shall develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this article. In addition, a competent authority may devise appropriate unilateral procedures, conditions, methods and techniques to facilitate the above-mentioned bilateral actions and the implementation of the mutual agreement procedure.

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, in particular for the prevention of fraud or evasion of 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. However, if the information is originally regarded as secret in the transmitting State it shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with 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 the Convention. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchanges of information shall be made, including, where appropriate, exchanges of information regarding tax avoidance.
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
MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS
Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

Chapter VII
FINAL PROVISIONS
Article 28
ENTRY INTO FORCE
1. This Convention shall be ratified and the instruments of ratification shall be exchanged at ______________________ as soon as possible.
2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:
(a) (In State A): ....
(b) (In State B): ....

Article 29

TERMINATION

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the year ____. In such event, the Convention shall cease to have effect:

(a) (In State A): ....

(b) (In State B): ....

UNITED STATES MODEL INCOME TAX CONVENTION OF SEPTEMBER 20, 1996
CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND ------- FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The United States of America and -----, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

Article 1
GENERAL SCOPE

1. This Convention shall apply only to persons who are residents of one or both of the Contracting States, except as otherwise provided in the Convention.
2. The Convention shall not restrict in any manner any benefit now or hereafter accorded:
a) by the laws of either Contracting State; or
b) by any other agreement between the Contracting States.
3. Notwithstanding the provisions of subparagraph 2(b):
(a) the provisions of Article 25(Mutual Agreement Procedure) of this Convention exclusively shall apply to any dispute concerning whether a measure is within the scope of this Convention, and the procedures under this Convention exclusively shall apply to that dispute; and
(b) unless the competent authorities determine that a taxation measure is not within the scope of this Convention, the nondiscrimination obligations of this Convention exclusively shall apply with respect to that measure, except for such national treatment or most-favored-nation obligations as may apply to trade in goods under the General Agreement on Tariffs and Trade. No national treatment or most-favored-nation obligation under any other agreement shall apply with respect to that measure.
(c) For the purpose of this paragraph, a "measure" is a law, regulation, rule, procedure, decision, administrative action, or any similar provision or action.
4. Notwithstanding any provision of the Convention except paragraph 5 of this Article, a Contracting State may tax its residents (as determined under Article 4 (Residence)), and by reason of citizenship may tax its citizens, as if the Convention had not come into effect. For this purpose, the term "citizen" shall include a former citizen or long-term resident whose loss of such status had as one of its principal purposes the avoidance of tax (as defined under the laws of the Contracting State of which the person was a citizen or long-term resident), but only for a period of 10 years following such loss.
5. The provisions of paragraph 4 shall not affect:
a) the benefits conferred by a Contracting State under paragraph 2 of Article 9 (Associated Enterprises), paragraphs 2 and 5 of Article 18 (Pensions, Social Security, Annuities, Alimony, and Child Support), and Articles 23 (Relief From Double Taxation), 24 (Non-Discrimination), and 25 (Mutual Agreement Procedure); and
b) the benefits conferred by a Contracting State under paragraph 6 of Article 18 (Pensions, Social Security, Annuities, Alimony, and Child Support), Articles 19 (Government Service), 20 (Students and Trainees), and 27 (Diplomatic Agents and Consular Officers), upon individuals who are neither citizens of, nor have been admitted for permanent residence in, that State.

Article 2
TAXES COVERED

1. The existing taxes to which this Convention shall apply are:
a) in the United States: the Federal income taxes imposed by the Internal Revenue Code (but excluding social security taxes), and the Federal excise taxes imposed with respect to private foundations.
b)in_________:____
____.
2. The Convention shall apply also to any identical or substantially similar taxes that 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 any significant changes that have been made in their respective taxation laws or other laws affecting their obligations under the Convention, and of any official published material concerning the application of the Convention, including explanations, regulations, rulings, or judicial decisions.

Article 3
GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:
a) the term "person" includes an individual, an estate, a trust, a partnership, a company, and any other body of persons;
b) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes according to the laws of the state in which it is organized;
c) 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; the terms also include an enterprise carried on by a resident of a Contracting State through an entity that is treated as fiscally transparent in that Contracting State;
d) the term "international traffic" means any transport by a ship or aircraft, except when such transport is solely between places in a Contracting State;
e) the term "competent authority" means:
(i) in the United States: the Secretary of the Treasury or his delegate; and
(ii) in ___________: ___________________;
f) the term "United States" means the United States of America, and includes the states thereof and the District of Columbia; such term also includes the territorial sea thereof and the sea bed and subsoil of the submarine areas adjacent to that territorial sea, over which the United States exercises sovereign rights in accordance with international law; the term, however, does not include Puerto Rico, the Virgin Islands, Guam or any other United States possession or territory;

g) the term _________ means _________________;
h) the term "national" of a Contracting State, means:
(i) any individual possessing the nationality or citizenship of that State; and
(ii) any legal person, partnership or association deriving its status as such from the laws in force in that State;
i) the term "qualified governmental entity" means:
(i) any person or body of persons that constitutes a governing body of a Contracting State, or of a political subdivision or local authority of a Contracting State;
(ii) a person that is wholly owned, directly or indirectly, by a Contracting State or a political subdivision or local authority of a Contracting State, provided (A) it is organized under the laws of the Contracting State, (B) its earnings are credited to its own account with no portion of its income inuring to the benefit of any private person, and (C) its assets vest in the Contracting State, political subdivision or local authority upon dissolution; and
(iii) a pension trust or fund of a person described in subparagraph (i) or (ii) that is constituted and operated exclusively to administer or provide pension benefits described in Article 19;
provided that an entity described in subparagraph (ii) or (iii) does not carry on commercial activities.
2. As regards the application of the Convention at any time by a Contracting State any term not defined therein shall, unless the context otherwise requires, or the competent authorities agree to a common meaning pursuant to the provisions of Article 25 (Mutual Agreement Procedure), have the meaning which it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4
RESIDENCE
1. Except as provided in this paragraph, 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, citizenship, place of management, place of incorporation, or any other criterion of a similar nature.
a) The term “resident of a Contracting State” does not include any person who is liable to tax in that State in respect only of income from sources in that State or of profits attributable to a permanent establishment in that State.
b) A legal person organized under the laws of a Contracting State and that is generally exempt from tax in that State and is established and maintained in that State either:
i) exclusively for a religious, charitable, educational, scientific, or other similar purpose; or
ii) to provide pensions or other similar benefits to employees pursuant to a plan is to be treated for purposes of this paragraph as a resident of that Contracting State.
c) A qualified governmental entity is to be treated as a resident of the Contracting State where it is established.
d) An item of income, profit or gain derived through an entity that is fiscally transparent under the laws of either Contracting State shall be considered to be derived by a resident of a State to the extent that the item is treated for purposes of the taxation law of such Contracting State as the income, profit or gain of a resident.
2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows:
a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (center of vital interests);
b) if the State in which he has his center of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall endeavor to settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a company is a resident of both Contracting States, then if it is created under the laws of one of the Contracting States or a political subdivision thereof, it shall be deemed to be a resident of that State.
4. Where by reason of the provisions of paragraph 1 a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavor to settle the question by mutual agreement and determine the mode of application of the Convention to such person.

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; and
f) a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources.
3. A building site or construction or installation project, or an installation or drilling rig or ship used for the exploration of natural resources, constitutes a permanent establishment only if it lasts or the activity continues for more than twelve months.
4. Notwithstanding the preceding provisions of this Article, 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 carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
f) the maintenance of a fixed place of business solely for any combination of the activities mentioned in subparagraphs a) through e).
5. Notwithstanding the provisions of paragraphs 1 and 2, where a person -- other than an agent of an independent status to whom paragraph 6 applies -- is acting on behalf of an enterprise and has and habitually exercises in a Contracting State an authority to conclude contracts that are binding on the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities that the person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 that, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that 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 as independent agents.
7. The fact that a company that is a resident of a Contracting State controls or is controlled by a company that is a resident of the other Contracting State, or that carries on business in that other State (whether through a permanent establishment or otherwise), shall not constitute either company a permanent establishment of the other.

Article 6
INCOME FROM REAL PROPERTY (IMMOVABLE PROPERTY)
1. Income derived by a resident of a Contracting State from real property (immovable property), including income from agriculture or forestry, situated in the other Contracting State may be taxed in that other State.
2. The term "real property (immovable property)" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated.
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. The provisions of paragraphs 1 and 3 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.
5. A resident of a Contracting State who is liable to tax in the other Contracting State on income from real property situated in the other Contracting State may elect for any taxable year to compute the tax on such income on a net basis as if such income were business profits attributable to a permanent establishment in such other State. Any such election shall be binding for the taxable year of the election and all subsequent taxable years unless the competent authority of the Contracting State in which the property is situated agrees to terminate the election.

Article 7
BUSINESS PROFITS
1. The business 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 business profits of the enterprise may be taxed in the other State but only so much of them as are 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 business profits that it might be expected to make if it were a distinct and independent enterprise engaged in the same or similar activities under the same or similar conditions. For this purpose, the business profits to be attributed to the permanent establishment shall include only the profits derived from the assets or activities of the permanent establishment.
3. In determining the business profits of a permanent establishment, there shall be allowed as deductions expenses that are incurred for the purposes of the permanent establishment, including a reasonable allocation of executive and general administrative expenses, research and development expenses, interest, and other expenses incurred for the purposes of the enterprise as a whole (or the part thereof which includes the permanent establishment), whether incurred in the State in which the permanent establishment is situated or elsewhere.
4. No business 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. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method of accounting year by year unless there is good and sufficient reason to the contrary.
6. Where business profits include items of income that are dealt with separately in other Articles of the Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.
7. For the purposes of the Convention, the term "business profits" means income from any trade or business, including income derived by an enterprise from the performance of personal services, and from the rental of tangible personal property.
8. In applying paragraphs 1 and 2 of Article 7 (Business Profits), paragraph 6 of Article 10 (Dividends), paragraph 3 of Article 11 (Interest), paragraph 3 of Article 12 (Royalties), paragraph 3 of Article 13 (Gains), Article 14 (Independent Personal Services) and paragraph 2 of Article 21 (Other Income), any income or gain attributable to a permanent establishment or fixed base during its existence is taxable in the Contracting State where such permanent establishment or fixed base is situated even if the payments are deferred until such permanent establishment or fixed base has ceased to exist.

Article 8
SHIPPING AND AIR TRANSPORT

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. For the purposes of this Article, profits from the operation of ships or aircraft include profits derived from the rental of ships or aircraft on a full (time or voyage) basis. They also include profits from the rental of ships or aircraft on a bareboat basis if such ships or aircraft are operated in international traffic by the lessee, or if the rental income is incidental to profits from the operation of ships or aircraft in international traffic. Profits derived by an enterprise from the inland transport of property or passengers within either Contracting State, shall be treated as profits from the operation of ships or aircraft in international traffic if such transport is undertaken as part of international traffic.

3. Profits of an enterprise of a Contracting State from the use, maintenance, or rental of containers (including trailers, barges, and related equipment for the transport of containers) used in international traffic shall be taxable only in that State.

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

Article 9
ASSOCIATED ENTERPRISES

1. 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 that differ from those that would be made between independent enterprises, then, any profits that, but for those conditions, would 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.

2. Where a Contracting State includes in the profits of an enterprise of that State, and taxes accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State, and the other Contracting State agrees that the profits so included are profits that would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those that would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be paid to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10
DIVIDENDS

1. Dividends paid by 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 payor is a resident and according to the laws of that State, but if the dividends are beneficially owned by a resident of the other Contracting State, except as otherwise provided, the tax so charged shall not exceed:

a) 5 percent of the gross amount of the dividends if the beneficial owner is a company that owns directly at least 10 percent of the voting stock of the company paying the dividends;

b) 15 percent of the gross amount of the dividends in all other cases.

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

3. Subparagraph a) of paragraph 2 shall not apply in the case of dividends paid by a United States person that is a Regulated Investment Company or a Real Estate Investment Trust (REIT). In the case of a United States person that is a REIT, subparagraph b) of paragraph 2 also shall not apply, unless the dividend is beneficially owned by an individual holding a less than 10-percent interest in the REIT.

4. Notwithstanding paragraph 2, dividends may not be taxed in the Contracting State of which the payor is a resident if the beneficial owner of the dividends is a resident of the other Contracting State that is a qualified governmental entity that does not control the payor of the dividend.

5. For purposes of the Convention, the term "dividends" means income from shares or other rights, not being debt-claims, participating in profits, as well as income that is subjected to the same taxation treatment as income from shares under the laws of the State of which the payor is a resident.

6. 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 payor 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 dividends are attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

7. A Contracting State may not impose any tax on dividends paid by a resident of the other State, except insofar as the dividends are paid to a resident of the first-mentioned State or the dividends are attributable to a permanent establishment or a fixed base situated in that State, nor may it impose tax on a corporation's undistributed profits, except as provided in paragraph 8, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that State.

8. A corporation that is a resident of one of the States and that has a permanent establishment in the other State or that is subject to tax in the other State on a net basis on its income that may be taxed in the other State under Article 6 (Income from Real Property (Immoveable Property)) or under paragraph 1 of Article 13 (Gains) may be subject in that other State to a tax in addition to the tax allowable under the other provisions of this Convention. Such tax, however, may be imposed on only the portion of the business profits of the corporation attributable to the permanent establishment and the portion of the income referred to in the preceding sentence that is subject to tax under Article 6 (Income from Real Property (Immoveable Property)) or under paragraph 1 of Article 13 (Gains) that, in the case of the United States, represents the dividend

equivalent amount of such profits or income and, in the case of __________, is an amount that is analogous to the dividend equivalent amount.
9. The tax referred to in paragraph 8 may not be imposed at a rate in excess of the rate specified in paragraph 2 a).

Article 11
INTEREST
1. Interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State may be taxed only in that other State.
2. The term "interest" as used in this Convention means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums or prizes attaching to such securities, bonds or debentures, and all other income that is subjected to the same taxation treatment as income from money lent by the taxation law of the Contracting State in which the income arises. Income dealt with in Article 10 (Dividends) and penalty charges for late payment shall not be regarded as interest for the purposes of this Convention.
3. The provisions of paragraph 1 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 interest is attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.
4. 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 State, due regard being had to the other provisions of this Convention.
5. Notwithstanding the provisions of paragraph 1:
a) interest paid by a resident of a Contracting State and that is determined with reference to receipts, sales, income, profits or other cash flow of the debtor or a related person, to any change in the value of any property of the debtor or a related person or to any dividend, partnership distribution or similar payment made by the debtor to a related person, and paid to a resident of the other State also may be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the beneficial owner is a resident of the other Contracting State, the gross amount of the interest may be taxed at a rate not exceeding the rate prescribed in subparagraph b) of paragraph 2 of Article 10 (Dividends); and
b) Interest that is an excess inclusion with respect to a residual interest in a real estate mortgage investment conduit may be taxed by each State in accordance with its domestic law.

Article 12
ROYALTIES
1. Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State may be taxed only in that other State.
2. The term "royalties" as used in this Convention means:
(a) any consideration for the use of, or the right to use, any copyright of literary, artistic, scientific or other work (including computer software, cinematographic films, audio or video tapes or disks, and other means of image or sound reproduction), any patent, trademark, design or model, plan, secret formula or process, or other like right or property, or for information concerning industrial,
commercial, or scientific experience; and
(b) gain derived from the alienation of any property described in subparagraph (a), provided that such gain is contingent on the productivity, use, or disposition of the property.
3. 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 through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the royalties are attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.
4. 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 the Convention.

Article 13
GAINS
1. Gains derived by a resident of a Contracting State that are attributable to the alienation of real property situated in the other Contracting State may be taxed in that other State.
2. For the purposes of this Convention the term "real property situated in the other Contracting State" shall include:
a) real property referred to in Article 6 (Income from Real Property (Immovable Property));
b) a United States real property interest; and
c) an equivalent interest in real property situated in _____.
3. Gains from the alienation of personal property that are attributable to a permanent establishment that an enterprise of a Contracting State has in the other Contracting State, or that are attributable to a fixed base that is available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, and gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other State.

4. Gains derived by an enterprise of a Contracting State from the alienation of ships, aircraft, or containers operated or used in international traffic or personal property pertaining to the operation or use of such ships, aircraft, or containers shall be taxable only in that State.
5. Gains from the alienation of any property other than property referred to in paragraphs 1 through 4 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14
INDEPENDENT PERSONAL SERVICES
1. Income derived by an individual who is a resident of a Contracting State in respect of the performance of personal services of an independent character shall be taxable only in that State, unless the individual 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 attributable to the fixed base that is derived in respect of services performed in that other State also may be taxed by that other State.
2. For purposes of paragraph 1, the income that is taxable in the other Contracting State shall be determined under the principles of paragraph 3 of Article 7.

Article 15
DEPENDENT PERSONAL SERVICES
1. Subject to the provisions of Articles 16 (Directors' Fees), 18 (Pensions, Social Security, Annuities, Alimony, and Child Support) and 19 (Government Service), salaries, wages, and other 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 any twelve month period commencing or ending in the taxable year concerned;
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 described in paragraph 1 that is derived by a resident of a Contracting State in respect of an employment as a member of the regular complement of a ship or aircraft operated in international traffic shall be taxable only in that State.

Article 16
DIRECTORS' FEES
Directors' fees and other compensation derived by a resident of a Contracting State for services rendered in the other Contracting State in his capacity as a member of the board of directors of a company that is a resident of the other Contracting State may be taxed in that other Contracting State.

Article 17
ARTISTES AND SPORTSMEN
1. Income derived by a resident of a Contracting State as an entertainer, such as a theater, motion picture, radio, or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, which income would be exempt from tax in that other
Contracting State under the provisions of Articles 14 (Independent Personal Services) and 15 (Dependent Personal Services) may be taxed in that other State, except where the amount of the gross receipts derived by such entertainer or sportsman, including expenses reimbursed to him or borne on his behalf, from such activities does not exceed twenty thousand United States dollars ($20,000) or its equivalent in ______ for the taxable year concerned.
2. Where income in respect of activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income, notwithstanding the provisions of Articles 7 (Business Profits) and 14 (Independent Personal Services), may be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised, unless it is established that neither the entertainer or sportsman nor persons related thereto participate directly or indirectly in the profits of that other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions, or other distributions.

Article 18
PENSIONS, SOCIAL SECURITY, ANNUITIES, ALIMONY, AND CHILD SUPPORT
1. Subject to the provisions of Article 19 (Government Service), pension distributions and other similar remuneration beneficially owned by a resident of a Contracting State, whether paid periodically or as a single sum, shall be taxable only in that State, but only to the extent not included in taxable income in the other Contracting State prior to the distribution.
2. Notwithstanding the provisions of paragraph 1, payments made by a Contracting State under provisions of the social security or similar legislation of that State to a resident of the other Contracting State or to a citizen of the United States shall be taxable only in the first-mentioned State.
3. Annuities derived and beneficially owned by an individual resident of a Contracting State shall be taxable only in that State. The term "annuities" as used in this paragraph means a stated sum paid periodically at stated times during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered).
4. Alimony paid by a resident of a Contracting State, and deductible therein, to a resident of the other Contracting State shall be taxable only in that other State. The term "alimony" as used in this paragraph means periodic payments made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, which payments are taxable to the recipient under the laws of the State of which he is a resident.

5. Periodic payments, not dealt with in paragraph 4, for the support of a child made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, paid by a resident of a Contracting State to a resident of the other Contracting State, shall be exempt from tax in both Contracting States.
6. For purposes of this Convention, where an individual who is a participant in a pension plan that is established and recognized under the legislation of one of the Contracting States performs personal services in the other Contracting State:
a) Contributions paid by or on behalf of the individual to the plan during the period that he performs such services in the other State shall be deductible (or excludible) in computing his taxable income in that State. Any benefits accrued under the plan or payments made to the plan by or on behalf of his employer during that period shall not be treated as part of the employee's taxable income and shall be allowed as a deduction in computing the profits of his employer in that other State.
b) Income earned but not distributed by the plan shall not be taxable in the other State until such time and to the extent that a distribution is made from the plan.
c) Distributions from the plan to the individual shall not be subject to taxation in the other Contracting State if the individual contributes such amounts to a similar plan established in the other State within a time period and in accordance with any other requirements imposed under the laws of the other State.
d) The provisions of this paragraph shall not apply unless:
(i) contributions by or on behalf of the individual to the plan (or to another similar plan for which this plan was substituted) were made before he arrived in the other State; and
(ii) the competent authority of the other State has agreed that the pension plan generally corresponds to a pension plan recognized for tax purposes by that State.
The benefits granted under this paragraph shall not exceed the benefits that would be allowed by the other State to its residents for contributions to, or benefits otherwise accrued under a pension plan recognized for tax purposes by that State.

Article 19
GOVERNMENT SERVICE
1. Notwithstanding the provisions of Articles 14 (Independent Personal Services), 15 (Dependent Personal Services), 16 (Director's Fees) and 17 (Artistes and Sportsmen):
a) Salaries, wages and other remuneration, other than a pension, paid from the public funds of a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority in the discharge of functions of a governmental nature shall, subject to the provisions of subparagraph (b), be taxable only in that State;
b) such remuneration, however, shall be taxable only in the other Contracting State if the services are rendered in that State and the individual 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. Notwithstanding the provisions of paragraph 1 of Article 18 (Pensions, Social Security, Annuities, Alimony, and Child Support):
a) any pension paid from the public funds of a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority in the discharge of functions of a governmental nature shall, subject to the provisions of subparagraph (b), be taxable only in that State;
b) such pension, however, shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

Article 20
STUDENTS AND TRAINEES
Payments received by a student, apprentice, or business trainee who is, or was immediately before visiting a Contracting State, a resident of the other Contracting State, and who is present in the first-mentioned State for the purpose of his fulltime education at an accredited educational institution, or for his full-time training, shall not be taxed in that State, provided that such payments arise outside that State, and are for the purpose of his maintenance, education or training. The exemption from tax provided by this Article shall apply to an apprentice or business trainee only for a period of time not exceeding one year from the date he first arrives in the first-mentioned Contracting State for the purpose of his training.

Article 21
OTHER INCOME
1. Items of income beneficially owned by a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from real property as defined in paragraph 2 of Article 6 (Income from Real Property (Immovable Property)), if the beneficial owner 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 income is attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

Article 22
LIMITATION ON BENEFITS
1. A resident of a Contracting State shall be entitled to benefits otherwise accorded to residents of a Contracting State by this Convention only to the extent provided in this Article.
2. A resident of a Contracting State shall be entitled to all the benefits of this Convention if the resident is:
a) an individual;
b) a qualified governmental entity;
c) a company, if
i) all the shares in the class or classes of shares representing more than 50 percent of the voting power and value of the company are regularly traded on a recognized stock exchange, or

ii) at least 50 percent of each class of shares in the company is owned directly or indirectly by companies entitled to benefits under clause i), provided that in the case of indirect ownership, each intermediate owner is a person entitled to benefits of the Convention under this paragraph;
d) described in subparagraph 1(b)(i) of Article 4 (Residence);
e) described in subparagraph 1(b)(ii) of Article 4 (Residence), provided that more than 50 percent of the person's beneficiaries, members or participants are individuals resident in either Contracting State; or
f) a person other than an individual, if:
i) On at least half the days of the taxable year persons described in subparagraphs a), b), c), d) or e) own, directly or indirectly (through a chain of ownership in which each person is entitled to benefits
of the Convention under this paragraph), at least 50 percent of each class of shares or other beneficial interests in the person, and
ii) less than 50 percent of the person's gross income for the taxable year is paid or accrued, directly or indirectly, to persons who are not residents of either Contracting State (unless the payment is attributable to a permanent establishment situated in either State), in the form of payments that are deductible for income tax purposes in the person’s State of residence.
3. a) A resident of a Contracting State not otherwise entitled to benefits shall be entitled to the benefits of this Convention with respect to an item of income derived from the other State, if:
i) the resident is engaged in the active conduct of a trade or business in the first-mentioned State,
ii) the income is connected with or incidental to the trade or business, and
iii) the trade or business is substantial in relation to the activity in the other State generating the income.
b) For purposes of this paragraph, the business of making or managing investments will not be considered an active trade or business unless the activity is banking, insurance or securities activity conducted by a bank, insurance company or registered securities dealer.
c) Whether a trade or business is substantial for purposes of this paragraph will be determined based on all the facts and circumstances. In any case, however, a trade or business will be deemed substantial if, for the preceding taxable year, or for the average of the three preceding taxable years, the asset value, the gross income, and the payroll expense that are related to the trade or business in the first-mentioned State equal at least 7.5 percent of the resident's (and any related parties') proportionate share of the asset value, gross income and payroll expense, respectively, that are related to the activity that generated the income in the other State, and the average of the three ratios exceeds 10 percent.
d) Income is derived in connection with a trade or business if the activity in the other State generating the income is a line of business that forms a part of or is complementary to the trade or business. Income is incidental to a trade or business if it facilitates the conduct of the trade or business in the other State.
4. A resident of a Contracting State not otherwise entitled to benefits may be granted benefits of the Convention if the competent authority of the State from which benefits are claimed so determines.
5. For purposes of this Article the term "recognized stock exchange" means:
a) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under the U.S. Securities Exchange Act of 1934; and
b) [stock exchanges of the other Contracting State].

Article 23
RELIEF FROM DOUBLE TAXATION
1. In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income
a) the income tax paid or accrued to _______ by or on behalf of such citizen or resident; and
b) in the case of a United States company owning at least 10 percent of the voting stock of a company that is a resident of _______ and from which the United States company receives dividends, the income tax paid or accrued to ________ by or on behalf of the payor with respect to the profits out of which the dividends are paid.
For the purposes of this paragraph, the taxes referred to in paragraphs 1(b) and 2 of Article 2 (Taxes Covered) shall be considered income taxes.
2. In accordance with the provisions and subject to the limitations of the law of ________ (as it may be amended from time to time without changing the general principle hereof), ________ shall allow to a resident or citizen of_________ as a credit against the _________ tax on income:
a) the income tax paid or accrued to the United States by or on behalf of such resident of citizen; and
b) in the case of a company owning at least 10 percent of the voting stock of a company that is a resident of the United States and from which the company receives dividends, the income tax paid or accrued to the United States by or on behalf of the payor with respect to the profits out of which the dividends are paid.
For the purposes of this paragraph, the taxes referred to in paragraphs 1(a) and 2 of Article 2 (Taxes Covered) shall be considered income taxes.
3. Where a United States citizen is a resident of ________:
a) with respect to items of income that under the provisions of this Convention are exempt from United States tax or that are subject to a reduced rate of United States tax when derived by a resident of __________ who is not a United States citizen, _________ shall allow as a credit against ________ tax, only the tax paid, if any, that the United States may impose under the provisions of this Convention, other than taxes that may be imposed solely by reason of citizenship under the saving clause of paragraph 4 of Article 1 (General Scope);
b) for purposes of computing United States tax on those items of income referred to in subparagraph (a), the United States shall allow as a credit against United States tax the income tax paid to ________ after the credit referred to in subparagraph (a); the credit so allowed shall not reduce the portion of the United States tax that is creditable against the ________ tax in accordance with subparagraph (a); and
c) for the exclusive purpose of relieving double taxation in the United States under subparagraph (b), items of income referred to in subparagraph (a) shall be deemed to arise in ________ to the extent necessary to avoid double taxation of such income under subparagraph (b).

Article 24

NON-DISCRIMINATION

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

2. The taxation on a permanent establishment or fixed base that a resident or enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises or residents of that other State carrying on the same activities. The provisions of this paragraph 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 that it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 4 of Article 11 (Interest), or paragraph 4 of Article 12 (Royalties) apply, interest, royalties, and other disbursements paid by a resident of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of the first-mentioned resident, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of a resident of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of the first-mentioned resident, 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 that is more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. Nothing in this Article shall be construed as preventing either Contracting State from imposing a tax as described in paragraph 8 of Article 10 (Dividends).

6. The provisions of this Article shall, notwithstanding the provisions of Article 2 (Taxes Covered), apply to taxes of every kind and description imposed by a Contracting State or a political subdivision or local authority thereof.

Article 25

MUTUAL AGREEMENT PROCEDURE

1. Where a person 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, and the time limits prescribed in such laws for presenting claims for refund, present his case to the competent authority of either Contracting State.

2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations in the domestic law of the Contracting States. Assessment and collection procedures shall be suspended during the pendency of any mutual agreement proceeding.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. In particular the competent authorities of the Contracting States may agree:

a) to the same attribution of income, deductions, credits, or allowances of an enterprise of a Contracting State to its permanent establishment situated in the other Contracting State;

b) to the same allocation of income, deductions, credits, or allowances between persons;

c) to the same characterization of particular items of income, including the same characterization of income that is assimilated to income from shares by the taxation law of one of the Contracting States and that is treated as a different class of income in the other State;

d) to the same characterization of persons;

e) to the same application of source rules with respect to particular items of income;

f) to a common meaning of a term;

g) to advance pricing arrangements; and

h) to the application of the provisions of domestic law regarding penalties, fines, and interest in a manner consistent with the purposes of the Convention.

They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities also may agree to increases in any specific dollar amounts referred to in the Convention to reflect economic or monetary developments.

5. 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.

Article 26

EXCHANGE OF INFORMATION AND ADMINISTRATIVE ASSISTANCE

1. The competent authorities of the Contracting States shall exchange such information as is relevant for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention, including information relating to the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. The exchange of information is not restricted by Article 1 (General Scope). 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, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention or the oversight of the above. 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 that 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 that 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).
3. Notwithstanding paragraph 2, the competent authority of the requested State shall have the authority to obtain and provide information held by financial institutions, nominees or persons acting in an agency or fiduciary capacity, or respecting interests in a person, including bearer shares, regardless of any laws or practices of the requested State that might otherwise preclude the obtaining of such information. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain that information in the same manner and to the same extent as if the tax of the firstmentioned State were the tax of that other State and were being
imposed by that other State, notwithstanding that the other State may not, at that time, need such information for purposes of its own tax. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts, and writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of that other State with respect to its own taxes.
4. Each of the Contracting States shall endeavor to collect on behalf of the other Contracting State such amounts as may be necessary to ensure that relief granted by the Convention from taxation imposed by that other State does not inure to the benefit of persons not entitled thereto. This paragraph shall not impose upon either of the Contracting States the obligation to carry out administrative measures that would be contrary to its sovereignty, security, or public policy.
5. For the purposes of this Article, the Convention shall apply, notwithstanding the provisions of Article 2 (Taxes Covered), to taxes of every kind imposed by a Contracting State.
6. The competent authority of the requested State shall allow representatives of the applicant State to enter the requested State to interview individuals and examine books and records with the consent of the persons subject to examination.

Article 27
DIPLOMATIC AGENTS AND CONSULAR OFFICERS
Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

Article 28
ENTRY INTO FORCE
1. This Convention shall be subject to ratification in accordance with the applicable procedures of each Contracting State. Each Contracting State shall notify the other as soon as its procedures have been complied with.
2. The Convention shall enter into force on the date of the receipt of the later of such notifications, and its provisions shall have effect:
a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of the second month next following the date on which the Convention enters into force;
b) in respect of other taxes, for taxable periods beginning on or after the first day of January next following the date on which the Convention enters into force.

Article 29
TERMINATION
1. This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention by giving notice of termination to the other Contracting State through diplomatic channels. In such event, the Convention shall cease to have effect:
a) in respect of taxes withheld at source, for amounts paid or credited after the expiration of the 6 month period beginning on the date on which notice of termination was given; and
b) in respect of other taxes, for taxable periods beginning on or after the expiration of the 6 month period beginning on the date on which notice of termination was given.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention.
DONE at __________ in duplicate, in the English and _____________ languages, both texts being equally authentic, this _____ day of ________, 19___.

FOR THE UNITED STATES OF AMERICA:	FOR:

UNITED STATES MODEL INCOME TAX CONVENTION OF NOVEMBER 15, 2006
CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF -------FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the United States of America and the Government of -----, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

Article 1
GENERAL SCOPE

1. This Convention shall apply only to persons who are residents of one or both of the Contracting States, except as otherwise provided in the Convention.
2. This Convention shall not restrict in any manner any benefit now or hereafter accorded:
a) by the laws of either Contracting State; or
b) by any other agreement to which the Contracting States are parties.
3. a) Notwithstanding the provisions of subparagraph b) of paragraph 2 of this Article:
i) for purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that any question arising as to the interpretation or application of this Convention and, in particular, whether a taxation measure is within the scope of this Convention, shall be determined exclusively in accordance with the provisions of Article 25 (Mutual Agreement Procedure) of this Convention; and
ii) the provisions of Article XVII of the General Agreement on Trade in Services shall not apply to a taxation measure unless the competent authorities agree that the measure is not within the scope of Article 24 (Non-Discrimination) of this Convention.
b) For the purposes of this paragraph, a “measure” is a law, regulation, rule, procedure, decision, administrative action, or any similar provision or action.
4. Except to the extent provided in paragraph 5, this Convention shall not affect the taxation by a Contracting State of its residents (as determined under Article 4 (Resident)) and its citizens. Notwithstanding the other provisions of this Convention, a former citizen or former long-term resident of a Contracting State may, for the period of ten years following the loss of such status, be taxed in accordance with the laws of that Contracting State.
5. The provisions of paragraph 4 shall not affect:
a) the benefits conferred by a Contracting State under paragraph 2 of Article 9 (Associated Enterprises), paragraphs 1 b), 2, and 5 of Article 17 (Pensions, Social Security, Annuities, Alimony, and Child Support), paragraphs 1 and 4 of Article 18 (Pension Funds), and Articles 23 (Relief From Double Taxation), 24 (Non-Discrimination), and 25 (Mutual Agreement Procedure); and
b) the benefits conferred by a Contracting State under paragraph 2 of Article 18 (Pension Funds), Articles 19 (Government Service), 20 (Students and Trainees), and 27 (Members of Diplomatic Missions and Consular Posts), upon individuals who are neither citizens of, nor have been admitted for permanent residence in, that State.
6. An item of income, profit or gain derived through an entity that is fiscally transparent under the laws of either Contracting State shall be considered to be derived by a resident of a State to the extent that the item is treated for purposes of the taxation law of such Contracting State as the income, profit or gain of a resident.

Article 2
TAXES COVERED

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of property.
3. The existing taxes to which this Convention shall apply are:
a) in the case of ------:
b) in the case of the United States: the Federal income taxes imposed by the Internal Revenue Code (but excluding social security and unemployment taxes), and the Federal excise taxes imposed with respect to private foundations.
4. This Convention shall apply also to any identical or substantially similar taxes that 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 any changes that have been made in their respective taxation or other laws that significantly affect their obligations under this Convention.

Article 3
GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:
a) the term "person" includes an individual, an estate, a trust, a partnership, a company, and any other body of persons;
b) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes according to the laws of the state in which it is organized;
c) 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; the terms also include an enterprise carried on by a resident of a Contracting State through an entity that is treated as fiscally transparent in that Contracting State;
d) the term “enterprise” applies to the carrying on of any business;
e) the term “business” includes the performance of professional services and of other activities of an independent character;
f) the term "international traffic" means any transport by a ship or aircraft, except when such transport is solely between places in a Contracting State;
g) the term "competent authority" means:
i) in -----, --------------------------; and
ii) in the United States: the Secretary of the Treasury or his delegate;

h) the term “--------” means ;
i) the term "United States" means the United States of America, and includes the states thereof and the District of Columbia; such term also includes the territorial sea thereof and the sea bed and subsoil of the submarine areas adjacent to that territorial sea, over which the United States exercises sovereign rights in accordance with international law; the term, however, does not include Puerto Rico, the Virgin Islands, Guam or any other United States possession or territory;
j) the term "national" of a Contracting State means:
i) any individual possessing the nationality or citizenship of that State; and
ii) any legal person, partnership or association deriving its status as such from the laws in force in that State;
k) the term “pension fund” means any person established in a Contracting State that is:
i) generally exempt from income taxation in that State; and
ii) operated principally either:
A) to administer or provide pension or retirement benefits; or
B) to earn income for the benefit of one or more persons described in clause A).
2. As regards the application of the Convention at any time by a Contracting State any term not defined therein shall, unless the context otherwise requires, or the competent authorities agree to a common meaning pursuant to the provisions of Article 25 (Mutual Agreement Procedure), have the meaning which it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4
RESIDENT
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, citizenship, place of management, place of incorporation, or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or of profits attributable to a permanent establishment in that State.
2. The term “resident of a Contracting State” includes:
a) a pension fund established in that State; and
b) an organization that is established and maintained in that State exclusively for religious, charitable, scientific, artistic, cultural, or educational purposes, notwithstanding that all or part of its income or gains may be exempt from tax under the domestic law of that State.
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 as follows:
a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (center of vital interests);
b) if the State in which he has his center of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall endeavor to settle the question by mutual agreement.
4. Where by reason of the provisions of paragraph 1 a company is a resident of both Contracting States, then if it is created or organized under the laws of one of the Contracting States or a political subdivision thereof, but not under the laws of the other Contracting State or a political subdivision thereof, such company shall be deemed to be a resident of the first-mentioned Contracting State. In all other cases involving dual resident companies, the competent authorities of the Contracting States shall endeavor to determine the mode of application of the Convention to such company. If the competent authorities do not reach such an agreement, that company will not be treated as a resident of either Contracting State for purposes of its claiming any benefits provided by the Convention.
5. Where by reason of the provisions of paragraphs 1 and 2 of this Article a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavor to determine the mode of application of this Convention to that person.

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; and
f) a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources.
3. A building site or construction or installation project, or an installation or drilling rig or ship used for the exploration of natural resources, constitutes a permanent establishment only if it lasts, or the exploration activity continues for more than twelve months.
4. Notwithstanding the preceding provisions of this Article, 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 carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
f) the maintenance of a fixed place of business solely for any combination of the activities mentioned in subparagraphs a) through e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraphs 1 and 2, where a person -- other than an agent of an independent status to whom paragraph 6 applies -- is acting on behalf of an enterprise and has and habitually exercises in a Contracting State an authority to conclude contracts that are binding on the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities that the person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 that, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that 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 as independent agents.
7. The fact that a company that is a resident of a Contracting State controls or is controlled by a company that is a resident of the other Contracting State, or that carries on business in that other State (whether through a permanent establishment or otherwise), shall not be taken into account in determining whether either company has a permanent establishment in that other State.

Article 6
INCOME FROM REAL PROPERTY
1. Income derived by a resident of a Contracting State from real property, including income from agriculture or forestry, situated in the other Contracting State may be taxed in that other State.
2. The term "real 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 real property (including livestock and equipment used in agriculture and forestry), rights to which the provisions of general law respecting landed property apply, usufruct of real 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. Ships and 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. The provisions of paragraphs 1 and 3 shall also apply to the income from real property of an enterprise.
5. A resident of a Contracting State who is liable to tax in the other Contracting State on income from real property situated in the other Contracting State may elect for any taxable year to compute the tax on such income on a net basis as if such income were business profits attributable to a permanent establishment in such other State. Any such election shall be binding for the taxable year of the election and all subsequent taxable years unless the competent authority of the Contracting State in which the property is situated agrees to terminate the election.

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 are 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 that it might be expected to make if it were a distinct and independent enterprise engaged in the same or similar activities under the same or similar conditions. For this purpose, the profits to be attributed to the permanent establishment shall include only the profits derived from the assets used, risks assumed and activities performed by the permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses that are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.∗
(∗ Protocol or Notes should include the following language:
It is understood that the business profits to be attributed to a permanent establishment shall include only the profits derived from the assets used, risks assumed and activities performed by the permanent establishment. The principles of the OECD Transfer Pricing Guidelines will apply for purposes of determining the profits attributable to a permanent establishment, taking into account the different economic and legal circumstances of a single entity. Accordingly, any of the methods described therein as acceptable methods for determining an arm’s length result may be used to determine the income of a permanent establishment so long as those methods are applied in accordance with the Guidelines. In particular, in determining the amount of attributable profits, the permanent establishment shall be treated as having the same amount of capital that it would need to support its activities if it were a distinct and separate enterprise engaged in the same or similar activities. With respect to financial institutions other than insurance companies, a Contracting State may determine the amount of capital to be attributed to a permanent establishment by allocating the institution’s total equity between its various offices on the basis of the proportion of the financial institution’s risk-weighted assets attributable to each of them. In the case of an insurance company, there shall be attributed to a permanent establishment not only premiums earned

through the permanent establishment, but that portion of the insurance company's overall investment income from reserves and surplus that supports the risks assumed by the permanent establishment).
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. 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.
6. Where profits include items of income that are dealt with separately in other Articles of the Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.
7. In applying this Article, paragraph 6 of Article 10 (Dividends), paragraph 4 of Article 11 (Interest), paragraph 3 of Article 12 (Royalties), paragraph 3 of Article 13 (Gains) and paragraph 2 of Article 21 (Other Income), any income or gain attributable to a permanent establishment during its existence is taxable in the Contracting State where such permanent establishment is situated even if the payments are deferred until such permanent establishment has ceased to exist.

Article 8
SHIPPING AND AIR TRANSPORT
1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.
2. For purposes of this Article, profits from the operation of ships or aircraft include, but are not limited to:
a) profits from the rental of ships or aircraft on a full (time or voyage) basis;
b) profits from the rental on a bareboat basis of ships or aircraft if the rental income is incidental to profits from the operation of ships or aircraft in international traffic; and
c) profits from the rental on a bareboat basis of ships or aircraft if such ships or aircraft are operated in international traffic by the lessee.
Profits derived by an enterprise from the inland transport of property or passengers within either Contracting State shall be treated as profits from the operation of ships or aircraft in international traffic if such transport is undertaken as part of international traffic.
3. Profits of an enterprise of a Contracting State from the use, maintenance, or rental of containers (including trailers, barges, and related equipment for the transport of containers) shall be taxable only in that Contracting State, except to the extent that those containers are used for transport solely between places within the other Contracting State.
4. The provisions of paragraphs 1 and 3 shall also apply to profits from participation in a pool, a joint business, or an international operating agency.

Article 9
ASSOCIATED ENTERPRISES
1. 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 that differ from those that would be made between independent enterprises, then any profits that, but for those conditions, would 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.
2. Where a Contracting State includes in the profits of an enterprise of that State, and taxes accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State, and the other Contracting State agrees that the profits so included are profits that would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those that would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10
DIVIDENDS
1. Dividends paid by a company that is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the dividends are beneficially owned by a resident of the other Contracting State, except as otherwise provided, the tax so charged shall not exceed:
a) 5 percent of the gross amount of the dividends if the beneficial owner is a company that owns directly at least 10 percent of the voting stock of the company paying the dividends;
b) 15 percent of the gross amount of the dividends in all other cases.
This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.
3. Notwithstanding paragraph 2, dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if:
a) the beneficial owner of the dividends is a pension fund that is a resident of the other Contracting State; and
b) such dividends are not derived from the carrying on of a trade or business by the pension fund or through an associated enterprise.
4. a) Subparagraph a) of paragraph 2 shall not apply in the case of dividends paid by a U.S. Regulated Investment Company (RIC) or a U.S. Real Estate Investment Trust (REIT). In the case of dividends paid by a RIC, subparagraph b) of paragraph 2 and paragraph 3 shall apply. In the case of dividends paid by a REIT, subparagraph b) of paragraph 2 and paragraph 3 shall apply only if:
i) the beneficial owner of the dividends is an individual or pension fund, in either case holding an interest of not more than 10 percent in the REIT;

ii) the dividends are paid with respect to a class of stock that is publicly traded and the beneficial owner of the dividends is a person holding an interest of not more than 5 percent of any class of the REIT’s stock; or
iii) the beneficial owner of the dividends is a person holding an interest of not more than 10 percent in the REIT and the REIT is diversified.
b) For purposes of this paragraph, a REIT shall be "diversified" if the value of no single interest in real property exceeds 10 percent of its total interests in real property. For the purposes of this rule, foreclosure property shall not be considered an interest in real property. Where a REIT holds an interest in a partnership, it shall be treated as owning directly a proportion of the partnership's interests in real property corresponding to its interest in the partnership.
5. For purposes of this Article, the term "dividends" means income from shares or other rights, not being debt-claims, participating in profits, as well as income that is subjected to the same taxation treatment as income from shares under the laws of the State of which the payer is a resident.
6. The provisions of paragraphs 2 through 4 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 payer is a resident, through a permanent establishment situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 (Business Profits) shall apply.
7. A Contracting State may not impose any tax on dividends paid by a resident of the other State, except insofar as the dividends are paid to a resident of the first-mentioned State or the dividends are attributable to a permanent establishment, nor may it impose tax on a corporation's undistributed profits, except as provided in paragraph 8, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that State.
8. a) A company that is a resident of one of the States and that has a permanent establishment in the other State or that is subject to tax in the other State on a net basis on its income that may be taxed in the other State under Article 6 (Income from Real Property) or under paragraph 1 of Article 13 (Gains) may be subject in that other State to a tax in addition to the tax allowable under the other provisions of this Convention.
b) Such tax, however, may be imposed:
i) on only the portion of the business profits of the company attributable to the permanent establishment and the portion of the income referred to in subparagraph a) that is subject to tax under Article 6 or under paragraph 1 of Article 13 that, in the case of the United States, represents the dividend equivalent amount of such profits or income and, in the case of -------, is an amount that is analogous to the dividend equivalent amount; and
ii) at a rate not in excess of the rate specified in paragraph 2 a).

Article 11
INTEREST
1. Interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State may be taxed only in that other State.
2. Notwithstanding the provisions of paragraph 1:
a) interest arising in ---------- that is determined with reference to receipts, sales, income, profits or other cash flow of the debtor or a related person, to any change in the value of any property of the debtor or a related person or to any dividend, partnership distribution or similar payment made by the debtor or a related person may be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the beneficial owner is a resident of the other Contracting State, the interest may be taxed at a rate not exceeding 15 percent of the gross amount of the interest;
b) interest arising in the United States that is contingent interest of a type that does not qualify as portfolio interest under United States law may be taxed by the United States but, if the beneficial owner of the interest is a resident of ----------, the interest may be taxed at a rate not exceeding 15 percent of the gross amount of the interest; and
c) interest that is an excess inclusion with respect to a residual interest in a real estate mortgage investment conduit may be taxed by each State in accordance with its domestic law.
3. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums or prizes attaching to such securities, bonds or debentures, and all other income that is subjected to the same taxation treatment as income from money lent by the taxation law of the Contracting State in which the income arises. Income dealt with in Article 10 (Dividends) and penalty charges for late payment shall not be regarded as interest for the purposes of this Convention.
4. 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, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 (Business Profits) shall apply.
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 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 State, due regard being had to the other provisions of this Convention.

Article 12
ROYALTIES
1. Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State may be taxed only in that other State.
2. The term "royalties" as used in this Article means:
a) payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic, scientific or other work (including cinematographic films), any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience; and
b) gain derived from the alienation of any property described in subparagraph a), to the extent that such gain is contingent on the productivity, use, or disposition of the property.

3. 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 through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 (Business Profits) shall apply.
4. 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 the Convention.

Article 13
GAINS
1. Gains derived by a resident of a Contracting State that are attributable to the alienation of real property situated in the other Contracting State may be taxed in that other State.
2. For the purposes of this Article the term "real property situated in the other Contracting State" shall include:
a) real property referred to in Article 6 (Income from Real Property);
b) where that other State is the United States, a United States real property interest; and
c) where that other State is ------,
i) shares, including rights to acquire shares, other than shares in which there is regular trading on a stock exchange, deriving their value or the greater part of their value directly or indirectly from real property referred to in subparagraph a) of this paragraph situated in --------; and
ii) an interest in a partnership or trust to the extent that the assets of the partnership or trust consist of real property situated in --------, or of shares referred to in clause i) of this sub-paragraph.
3. Gains from the alienation of movable property forming part of the business property of a permanent establishment that an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.
4. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated or used in international traffic or personal property pertaining to the operation or use of such ships or aircraft shall be taxable only in that State.
5. Gains derived by an enterprise of a Contracting State from the alienation of containers (including trailers, barges and related equipment for the transport of containers) used for the transport of goods or merchandise shall be taxable only in that State, unless those containers are used for transport solely between places within the other Contracting State.
6. Gains from the alienation of any property other than property referred to in paragraphs 1 through 5 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14
INCOME FROM EMPLOYMENT
1. Subject to the provisions of Articles 15 (Directors' Fees), 17 (Pensions, Social Security, Annuities, Alimony, and Child Support) and 19 (Government Service), 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 any twelve month period commencing or ending in the taxable year concerned;
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 which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration described in paragraph 1 that is derived by a resident of a Contracting State in respect of an employment as a member of the regular complement of a ship or aircraft operated in international traffic shall be taxable only in that State.

Article 15
DIRECTORS' FEES
Directors' fees and other compensation derived by a resident of a Contracting State for services rendered in the other Contracting State in his capacity as a member of the board of directors of a company that is a resident of the other Contracting State may be taxed in that other Contracting State.

Article 16
ENTERTAINERS AND SPORTSMEN
1. Income derived by a resident of a Contracting State as an entertainer, such as a theater, motion picture, radio, or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, which income would be exempt from tax in that other Contracting State under the provisions of Articles 7 (Business Profits) and 14 (Income from Employment) may be taxed in that other State, except where the amount of the gross receipts derived by such entertainer or sportsman, including expenses reimbursed to him or borne on his behalf, from such activities does not exceed twenty thousand United States dollars ($20,000) or its equivalent in ---------- for the taxable year of the payment.
2. Where income in respect of activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income, notwithstanding the provisions of Article 7 (Business Profits) or 14 (Income from Employment), may be taxed in the Contracting State in which the activities of the entertainer

or sportsman are exercised unless the contract pursuant to which the personal activities are performed allows that other person to designate the individual who is to perform the personal activities.

Article 17
PENSIONS, SOCIAL SECURITY, ANNUITIES, ALIMONY, AND CHILD SUPPORT
1. a) Pensions and other similar remuneration beneficially owned by a resident of a Contracting State shall be taxable only in that State.
b) Notwithstanding subparagraph a), the amount of any such pension or remuneration arising in a Contracting State that, when received, would be exempt from taxation in that State if the beneficial owner were a resident thereof shall be exempt from taxation in the Contracting State of which the beneficial owner is a resident.
2. Notwithstanding the provisions of paragraph 1, payments made by a Contracting State under provisions of the social security or similar legislation of that State to a resident of the other Contracting State or to a citizen of the United States shall be taxable only in the first-mentioned State.
3. Annuities derived and beneficially owned by an individual resident of a Contracting State shall be taxable only in that State. The term "annuities" as used in this paragraph means a stated sum paid periodically at stated times during a specified number of years, or for life, under an obligation to make the payments in return for adequate and full consideration (other than services rendered).
4. Alimony paid by a resident of a Contracting State to a resident of the other Contracting State shall be taxable only in that other State. The term "alimony" as used in this paragraph means periodic payments made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, which payments are taxable to the recipient under the laws of the State of which he is a resident.
5. Periodic payments, not dealt with in paragraph 4, for the support of a child made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, paid by a resident of a Contracting State to a resident of the other Contracting State, shall be exempt from tax in both Contracting States.

Article 18
PENSION FUNDS
1. Where an individual who is a resident of one of the States is a member or beneficiary of, or participant in, a pension fund that is a resident of the other State, income earned by the pension fund may be taxed as income of that individual only when, and, subject to the provisions of paragraph 1 of Article 17 (Pensions, Social Security, Annuities, Alimony and Child Support), to the extent that, it is paid to, or for the benefit of, that individual from the pension fund (and not transferred to another pension fund in that other State).
2. Where an individual who is a member or beneficiary of, or participant in, a pension fund that is a resident of one of the States exercises an employment or self-employment in the other State:
a) contributions paid by or on behalf of that individual to the pension fund during the period that he exercises an employment or self-employment in the other State shall be deductible (or excludible) in computing his taxable income in that other State; and
b) any benefits accrued under the pension fund, or contributions made to the pension fund by or on behalf of the individual’s employer, during that period shall not be treated as part of the employee’s taxable income and any such contributions shall be allowed as a deduction in computing the taxable income of his employer in that other State.
The relief available under this paragraph shall not exceed the relief that would be allowed by the other State to residents of that State for contributions to, or benefits accrued under, a pension plan established in that State.
3. The provisions of paragraph 2 of this Article shall not apply unless:
a) contributions by or on behalf of the individual, or by or on behalf of the individual’s employer, to the pension fund (or to another similar pension fund for which the first-mentioned pension fund was substituted) were made before the individual began to exercise an employment or self-employment in the other State; and
b) the competent authority of the other State has agreed that the pension fund generally corresponds to a pension fund established in that other State.
4. a) Where a citizen of the United States who is a resident of ------ exercises an employment in ------- the income from which is taxable in -------, the contribution is borne by an employer who is a resident of ------- or by a permanent establishment situated in -----, and the individual is a member or beneficiary of, or participant in, a pension plan established in -----,
i) contributions paid by or on behalf of that individual to the pension fund during the period that he exercises the employment in --------, and that are attributable to the employment, shall be deductible (or excludible) in computing his taxable income in the United States; and
ii) any benefits accrued under the pension fund, or contributions made to the pension fund by or on behalf of the individual’s employer, during that period, and that are attributable to the employment, shall not be treated as part of the employee’s taxable income in computing his taxable income in the United States.
b) The relief available under this paragraph shall not exceed the lesser of:
i) the relief that would be allowed by the United States to its residents for contributions to, or benefits accrued under, a generally corresponding pension plan established in the United States; and
ii) the amount of contributions or benefits that qualify for tax relief in --------.
c) For purposes of determining an individual’s eligibility to participate in and receive tax benefits with respect to a pension plan established in the United States, contributions made to, or benefits accrued under, a pension plan established in ------ shall be treated as contributions or benefits under a generally corresponding pension plan established in the United States to the extent relief is available to the individual under this paragraph.
d) This paragraph shall not apply unless the competent authority of the United States has agreed that the pension plan generally corresponds to a pension plan established in the United States.

Article 19
GOVERNMENT SERVICE
1. Notwithstanding the provisions of Articles 14 (Income from Employment), 15 (Directors’ Fees), 16 (Entertainers and Sportsmen) and 20 (Students and Trainees):
a) Salaries, wages and other remuneration, other than a pension, paid to an individual in respect of services rendered to a Contracting State or a political subdivision or local authority thereof shall, subject to the provisions of subparagraph b), be taxable only in that State;
b) such remuneration, however, shall be taxable only in the other Contracting State if the services are rendered in that State and the individual 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. Notwithstanding the provisions of paragraph 1 of Article 17 (Pensions, Social Security, Annuities, Alimony, and Child Support):
a) any pension and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority (other than a payment to which paragraph 2 of Article 17 applies) shall, subject to the provisions of subparagraph b), be taxable only in that State;
b) such pension, however, shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
3. The provisions of Articles 14 (Income from Employment), 15 (Directors' Fees), 16 (Entertainers and Sportsmen) and 17 (Pensions, Social Security, Annuities, Alimony, and Child Support) shall apply to salaries, wages and other remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 20
STUDENTS AND TRAINEES
1. Payments, other than compensation for personal services, received by a student or business trainee who is, or was immediately before visiting a Contracting State, a resident of the other Contracting State, and who is present in the first-mentioned State for the purpose of his full-time education or for his full-time training, shall not be taxed in that State, provided that such payments arise outside that State, and are for the purpose of his maintenance, education or training. The exemption from tax provided by this paragraph shall apply to a business trainee only for a period of time not exceeding one year from the date the business trainee first arrives in the first-mentioned Contracting State for the purpose of training.
2. A student or business trainee within the meaning of paragraph 1 shall be exempt from tax by the Contracting State in which the individual is temporarily present with respect to income from personal services in an aggregate amount equal to $9,000 or its equivalent in [ ] annually. The competent authorities shall, every five years, adjust the amount provided in this subparagraph to the extent necessary to take into account changes in the U.S. personal exemption and the standard deduction.
3. For purposes of this Article, a business trainee is an individual:
a) who is temporarily in a Contracting State for the purpose of securing training required to qualify the individual to practice a profession or professional specialty; or
b) who is temporarily in a Contracting State as an employee of, or under contract with, a resident of the other Contracting State, for the primary purpose of acquiring technical, professional, or business experience from a person other than that resident of the other Contracting State (or a person related to such resident of the other Contracting State).

Article 21
OTHER INCOME
1. Items of income beneficially owned by a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from real property as defined in paragraph 2 of Article 6 (Income from Real Property), if the beneficial owner of the income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein and the income is attributable to such permanent establishment. In such case the provisions of Article 7 (Business Profits) shall apply.

Article 22
LIMITATION ON BENEFITS
1. Except as otherwise provided in this Article, a resident of a Contracting State shall not be entitled to the benefits of this Convention otherwise accorded to residents of a Contracting State unless such resident is a "qualified person" as defined in paragraph 2.
2. A resident of a Contracting State shall be a qualified person for a taxable year if the resident is:
a) an individual;
b) a Contracting State, or a political subdivision or local authority thereof;
c) a company, if:
i) the principal class of its shares (and any disproportionate class of shares) is regularly traded on one or more recognized stock exchanges, and either:
A) its principal class of shares is primarily traded on one or more recognized stock exchanges located in the Contracting State of which the company is a resident; or
B) the company's primary place of management and control is in the Contracting State of which it is a resident; or
ii) at least 50 percent of the aggregate vote and value of the shares (and at least 50 percent of any disproportionate class of shares) in the company is owned directly or indirectly by five or fewer companies entitled to benefits under clause i) of this subparagraph, provided that, in the case of indirect ownership, each intermediate owner is a resident of either Contracting State;

d) a person described in paragraph 2 of Article 4 of this Convention, provided that, in the case of a person described in subparagraph a) of that paragraph, more than 50 percent of the person's beneficiaries, members or participants are individuals resident in either Contracting State; or

e) a person other than an individual, if:

i) on at least half the days of the taxable year, persons who are residents of that Contracting State and that are entitled to the benefits of this Convention under subparagraph a), subparagraph b), clause i) of subparagraph c), or subparagraph d) of this paragraph own, directly or indirectly, shares or other beneficial interests representing at least 50 percent of the aggregate voting power and value (and at least 50 percent of any disproportionate class of shares) of the person, provided that, in the case of indirect ownership, each intermediate owner is a resident of that Contracting State, and

ii) less than 50 percent of the person's gross income for the taxable year, as determined in the person's State of residence, is paid or accrued, directly or indirectly, to persons who are not residents of either Contracting State entitled to the benefits of this Convention under subparagraph a), subparagraph b), clause i) of subparagraph c), or subparagraph d) of this paragraph in the form of payments that are deductible for purposes of the taxes covered by this Convention in the person's State of residence (but not including arm's length payments in the ordinary course of business for services or tangible property).

3. a) A resident of a Contracting State will be entitled to benefits of the Convention with respect to an item of income derived from the other State, regardless of whether the resident is a qualified person, if the resident is engaged in the active conduct of a trade or business in the first-mentioned State (other than the business of making or managing investments for the resident's own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance company or registered securities dealer), and the income derived from the other Contracting State is derived in connection with, or is incidental to, that trade or business.

b) If a resident of a Contracting State derives an item of income from a trade or business activity conducted by that resident in the other Contracting State, or derives an item of income arising in the other Contracting State from a related person, the conditions described in subparagraph a) shall be considered to be satisfied with respect to such item only if the trade or business activity carried on by the resident in the first-mentioned Contracting State is substantial in relation to the trade or business activity carried on by the resident or such person in the other Contracting State. Whether a trade or business activity is substantial for the purposes of this paragraph will be determined based on all the facts and circumstances.

c) For purposes of applying this paragraph, activities conducted by persons connected to a person shall be deemed to be conducted by such person. A person shall be connected to another if one possesses at least 50 percent of the beneficial interest in the other (or, in the case of a company, at least 50 percent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or another person possesses at least 50 percent of the beneficial interest (or, in the case of a company, at least 50 percent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in each person. In any case, a person shall be considered to be connected to another if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same person or persons.

4. If a resident of a Contracting State is neither a qualified person pursuant to the provisions of paragraph 2 nor entitled to benefits with respect to an item of income under paragraph 3 of this Article the competent authority of the other Contracting State may, nevertheless, grant the benefits of this Convention, or benefits with respect to a specific item of income, if it determines that the establishment, acquisition or maintenance of such person and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under this Convention.

5. For purposes of this Article:

a) the term "recognized stock exchange" means:

i) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under the U.S. Securities Exchange Act of 1934;

ii) stock exchanges of -------; and

iii) any other stock exchange agreed upon by the competent authorities;

b) the term "principal class of shares" means the ordinary or common shares of the company, provided that such class of shares represents the majority of the voting power and value of the company. If no single class of ordinary or common shares represents the majority of the aggregate voting power and value of the company, the "principal class of shares" are those classes that in the aggregate represent a majority of the aggregate voting power and value of the company;

c) the term "disproportionate class of shares" means any class of shares of a company resident in one of the Contracting States that entitles the shareholder to disproportionately higher participation, through dividends, redemption payments or otherwise, in the earnings generated in the other State by particular assets or activities of the company; and

d) a company's "primary place of management and control" will be in the Contracting State of which it is a resident only if executive officers and senior management employees exercise day-to-day responsibility for more of the strategic, financial and operational policy decision making for the company (including its direct and indirect subsidiaries) in that State than in any other state and the staff of such persons conduct more of the day-to-day activities necessary for preparing and making those decisions in that State than in any other state.

Article 23

RELIEF FROM DOUBLE TAXATION

1. In the case of -------, double taxation will be relieved as follows:

2. In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income applicable to residents and citizens:

a) the income tax paid or accrued to ------ by or on behalf of such resident or citizen; and

b) in the case of a United States company owning at least 10 percent of the voting stock of a company that is a resident of -------- and from which the United States company receives dividends, the income tax paid or accrued to ------- by or on behalf of the payer with respect to the profits out of which the dividends are paid.

For the purposes of this paragraph, the taxes referred to in paragraphs 3 a) and 4 of Article 2 (Taxes Covered) shall be considered income taxes.

3. For the purposes of applying paragraph 2 of this Article, an item of gross income, as determined under the laws of the United States, derived by a resident of the United States that, under this Convention, may be taxed in ----- shall be deemed to be income from sources in -----.

4. Where a United States citizen is a resident of -------:

a) with respect to items of income that under the provisions of this Convention are exempt from United States tax or that are subject to a reduced rate of United States tax when derived by a resident of ------ who is not a United States citizen, ------- shall allow as a credit against -------- tax, only the tax paid, if any, that the United States may impose under the provisions of this Convention, other than taxes that may be imposed solely by reason of citizenship under the saving clause of paragraph 4 of Article 1 (General Scope);

b) for purposes of applying paragraph 2 to compute United States tax on those items of income referred to in subparagraph a), the United States shall allow as a credit against United States tax the income tax paid to -------- after the credit referred to in subparagraph a); the credit so allowed shall not reduce the portion of the United States tax that is creditable against the ----------- tax in accordance with subparagraph a); and

c) for the exclusive purpose of relieving double taxation in the United States under subparagraph b), items of income referred to in subparagraph a) shall be deemed to arise in ------- to the extent necessary to avoid double taxation of such income under subparagraph b).

Article 24

NON-DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith that is more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall also apply to persons who are not residents of one or both of the Contracting States. However, for the purposes of United States taxation, United States nationals who are subject to tax on a worldwide basis are not in the same circumstances as nationals of --------- who are not residents of the United States.

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

3. The provisions of paragraphs 1 and 2 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 that it grants to its own residents.

4. Except where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 5 of Article 11 (Interest), or paragraph 4 of Article 12 (Royalties) apply, interest, royalties, and other disbursements paid by a resident of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of the first-mentioned resident, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of a resident of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of the first-mentioned resident, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

5. 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 that is more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

6. Nothing in this Article shall be construed as preventing either Contracting State from imposing a tax as described in paragraph 8 of Article 10 (Dividends).

7. The provisions of this Article shall, notwithstanding the provisions of Article 2 (Taxes Covered), apply to taxes of every kind and description imposed by a Contracting State or a political subdivision or local authority thereof.

Article 25

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for such person in taxation not in accordance with the provisions of this Convention, it may, irrespective of the remedies provided by the domestic law of those States, and the time limits prescribed in such laws for presenting claims for refund, present its case to the competent authority of either Contracting State.

2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations in the domestic law of the Contracting States. Assessment and collection procedures shall be suspended during the period that any mutual agreement proceeding is pending.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They also may consult together for the elimination of double taxation in cases not provided for in the Convention. In particular the competent authorities of the Contracting States may agree:

a) to the same attribution of income, deductions, credits, or allowances of an enterprise of a Contracting State to its permanent establishment situated in the other Contracting State;

b) to the same allocation of income, deductions, credits, or allowances between persons;

c) to the settlement of conflicting application of the Convention, including conflicts regarding:

i) the characterization of particular items of income;

ii) the characterization of persons;

iii) the application of source rules with respect to particular items of income;

iv) the meaning of any term used in the Convention;

v) the timing of particular items of income;

d) to advance pricing arrangements; and
e) to the application of the provisions of domestic law regarding penalties, fines, and interest in a manner consistent with the purposes of the Convention.
4. The competent authorities also may agree to increases in any specific dollar amounts referred to in the Convention to reflect economic or monetary developments.
5. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 26
EXCHANGE OF INFORMATION AND ADMINISTRATIVE ASSISTANCE
1. The competent authorities of the Contracting States shall exchange such information as may be relevant for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes of every kind imposed by a Contracting State to the extent that the taxation thereunder is not contrary to the Convention, including information relating to the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, such taxes. The exchange of information is not restricted by paragraph 1 of Article 1 (General Scope) or Article 2 (Taxes Covered).
2. Any information received under this Article 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, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes referred to above, or the oversight of such functions. 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.
3. In no case shall the provisions of the preceding paragraphs 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 that 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 that 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).
4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitation be construed to permit a Contracting State to decline to supply information because it has no domestic interest in such information.
5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information requested by the other Contracting State because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.
6. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts, and writings).
7. Each of the Contracting States shall endeavor to collect on behalf of the other Contracting State such amounts as may be necessary to ensure that relief granted by the Convention from taxation imposed by that other State does not inure to the benefit of persons not entitled thereto. This paragraph shall not impose upon either of the Contracting States the obligation to carry out administrative measures that would be contrary to its sovereignty, security, or public policy.
8. The requested State shall allow representatives of the requesting State to enter the requested State to interview individuals and examine books and records with the consent of the persons subject to examination.
8. The competent authorities of the Contracting States may develop an agreement upon the mode of application of this Article, including agreement to ensure comparable levels of assistance to each of the Contracting States, but in no case will the lack of such agreement relieve a Contracting State of its obligations under this Article.

Article 27
MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS
Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

Article 28
ENTRY INTO FORCE
1. This Convention shall be subject to ratification in accordance with the applicable procedures of each Contracting State, and instruments of ratification will be exchanged as soon thereafter as possible.
2. This Convention shall enter into force on the date of the exchange of instruments of ratification, and its provisions shall have effect:
a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of the second month next following the date on which the Convention enters into force;
b) in respect of other taxes, for taxable periods beginning on or after the first day of January next following the date on which the Convention enters into force.
3. Notwithstanding paragraph 2, the provisions of Article 26 (Exchange of Information and Administrative Assistance) shall have effect from the date of entry into force of this Convention, without regard to the taxable period to which the matter relates.

Article 29

TERMINATION

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention by giving notice of termination to the other Contracting State through diplomatic channels. In such event, the Convention shall cease to have effect:

a) in respect of taxes withheld at source, for amounts paid or credited after the expiration of the 6 month period beginning on the date on which notice of termination was given; and

b) in respect of other taxes, for taxable periods beginning on or after the expiration of the 6 month period beginning on the date on which notice of termination was given.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention.

DONE at _________ in duplicate, in the English and ---------- languages, both texts being equally authentic, this ______ day of _______, 20___.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:	FOR THE GOVERNMENT OF _______________________

APPENDIX III

VIENNA CONVENTION ON THE LAW OF TREATIES

(Done at Vienna on 23 May 1969)

Vienna Convention on the Law of Treaties 1969
Done at Vienna on 23 May 1969.
Entered into force on 27 January 1980.

PART I.
INTRODUCTION
Article 1
Scope of the present Convention
The present Convention applies to treaties between States.

Article 2
Use of terms
1. For the purposes of the present Convention:
(a) “treaty” means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;
(b) “ratification”, “acceptance”, “approval” and “accession” mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;
(c) “full powers” means a document emanating from the competent authority of a State designating a person or persons to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect to a treaty;
(d) “reservation” means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State;
(e) “negotiating State” means a State which took part in the drawing up and adoption of the text of the treaty;
(f) “contracting State” means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force;
(g) “party” means a State which has consented to be bound by the treaty and for which the treaty is in force;
(h) “third State” means a State not a party to the treaty;
(i) “international organization” means an intergovernmental organization.
2. The provisions of paragraph 1 regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State.

Article 3
International agreements not within the scope of the present Convention
The fact that the present Convention does not apply to international agreements concluded between States and other subjects of international law or between such other subjects of international law, or to international agreements not in written form, shall not affect:
(a) the legal force of such agreements;
(b) the application to them of any of the rules set forth in the present Convention to which they would be subject under international law independently of the Convention;
(c) the application of the Convention to the relations of States as between themselves under international agreements to which other subjects of international law are also parties.

Article 4
Non-retroactivity of the present Convention
Without prejudice to the application of any rules set forth in the present Convention to which treaties would be subject under international law independently of the Convention, the Convention applies only to treaties which are concluded by States after the entry into force of the present Convention with regard to such States.

Article 5
Treaties constituting international organizations and treaties adopted within an international organization
The present Convention applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization without prejudice to any relevant rules of the organization.

PART II.
CONCLUSION AND ENTRY INTO FORCE OF TREATIES
SECTION 1. CONCLUSION OF TREATIES
Article 6
Capacity of States to conclude treaties
Every State possesses capacity to conclude treaties.

Article 7
Full powers
1. A person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty if:
(a) he produces appropriate full powers; or
(b) it appears from the practice of the States concerned or from other circumstances that their intention was to consider that person as representing the State for such purposes and to dispense with full powers.
2. In virtue of their functions and without having to produce full powers, the following are considered as representing their State:

(a) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty;
(b) heads of diplomatic missions, for the purpose of adopting the text of a treaty between the accrediting State and the State to which they are accredited;
(c) representatives accredited by States to an international conference or to an international organization or one of its organs, for the purpose of adopting the text of a treaty in that conference, organization or organ.

Article 8
Subsequent confirmation of an act performed without authorization
An act relating to the conclusion of a treaty performed by a person who cannot be considered under article 7 as authorized to represent a State for that purpose is without legal effect unless afterwards confirmed by that State.

Article 9
Adoption of the text
1. The adoption of the text of a treaty takes place by the consent of all the States participating in its drawing up except as provided in paragraph 2.
2. The adoption of the text of a treaty at an international conference takes place by the vote of two thirds of the States present and voting, unless by the same majority they shall decide to apply a different rule.

Article 10
Authentication of the text
The text of a treaty is established as authentic and definitive:
(a) by such procedure as may be provided for in the text or agreed upon by the States participating in its drawing up; or
(b) failing such procedure, by the signature, signature ad referendum or initialling by the representatives of those States of the text of the treaty or of the Final Act of a conference incorporating the text.

Article 11
Means of expressing consent to be bound by a treaty
The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed.

Article 12
Consent to be bound by a treaty expressed by signature
1. The consent of a State to be bound by a treaty is expressed by the signature of its representative when:
(a) the treaty provides that signature shall have that effect;
(b) it is otherwise established that the negotiating States were agreed that signature should have that effect; or
(c) the intention of the State to give that effect to the signature appears from the full powers of its representative or was expressed during the negotiation.
2. For the purposes of paragraph 1:
(a) the initialling of a text constitutes a signature of the treaty when it is established that the negotiating States so agreed;
(b) the signature ad referendum of a treaty by a representative, if confirmed by his State, constitutes a full signature of the treaty.

Article 13
Consent to be bound by a treaty expressed by an exchange of instruments constituting a treaty
The consent of States to be bound by a treaty constituted by instruments exchanged between them is expressed by that exchange when:
(a) the instruments provide that their exchange shall have that effect; or
(b) it is otherwise established that those States were agreed that the exchange of instruments should have that effect.

Article 14
Consent to be bound by a treaty expressed by ratification, acceptance or approval
1. The consent of a State to be bound by a treaty is expressed by ratification when:
(a) the treaty provides for such consent to be expressed by means of ratification;
(b) it is otherwise established that the negotiating States were agreed that ratification should be required;
(c) the representative of the State has signed the treaty subject to ratification; or
(d) the intention of the State to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation.
2. The consent of a State to be bound by a treaty is expressed by acceptance or approval under conditions similar to those which apply to ratification.

Article 15
Consent to be bound by a treaty expressed by accession
The consent of a State to be bound by a treaty is expressed by accession when:
(a) the treaty provides that such consent may be expressed by that State by means of accession;
(b) it is otherwise established that the negotiating States were agreed that such consent may be expressed by that State by means of accession; or
(c) all the parties have subsequently agreed that such consent may be expressed by that State by means of accession.

Article 16
Exchange or deposit of instruments of ratification, acceptance, approval or accession
Unless the treaty otherwise provides, instruments of ratification, acceptance, approval or accession establish the consent of a State to be bound by a treaty upon:
(a) their exchange between the contracting States;
(b) their deposit with the depositary; or
(c) their notification to the contracting States or to the depositary, if so agreed.

Article 17
Consent to be bound by part of a treaty and choice of differing provisions
1. Without prejudice to articles 19 to 23, the consent of a State to be bound by part of a treaty is effective only if the treaty so permits or the other contracting States so agree.
2. The consent of a State to be bound by a treaty which permits a choice between differing provisions is effective only if it is made clear to which of the provisions the consent relates.

Article 18
Obligation not to defeat the object and purpose of a treaty prior to its entry into force
A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:
(a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or
(b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.

SECTION 2. RESERVATIONS
Article 19
Formulation of reservations
A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:
(a) the reservation is prohibited by the treaty;
(b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or
(c) in cases not failing under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

Article 20
Acceptance of and objection to reservations
1. A reservation expressly authorized by a treaty does not require any subsequent acceptance by the other contracting States unless the treaty so provides.
2. When it appears from the limited number of the negotiating States and the object and purpose of a treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.
3. When a treaty is a constituent instrument of an international organization and unless it otherwise provides, a reservation requires the acceptance of the competent organ of that organization.
4. In cases not falling under the preceding paragraphs and unless the treaty otherwise provides:
(a) acceptance by another contracting State of a reservation constitutes the reserving State a party to the treaty in relation to that other State if or when the treaty is in force for those States;
(b) an objection by another contracting State to a reservation does not preclude the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is definitely expressed by the objecting State;
(c) an act expressing a State's consent to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State has accepted the reservation.
5. For the purposes of paragraphs 2 and 4 and unless the treaty otherwise provides, a reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

Article 21
Legal effects of reservations and of objections to reservations
1. A reservation established with regard to another party in accordance with articles 19, 20 and 23:
(a) modifies for the reserving State in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and
(b) modifies those provisions to the same extent for that other party in its relations with the reserving State.
2. The reservation does not modify the provisions of the treaty for the other parties to the treaty inter se.
3. When a State objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation.

Article 22
Withdrawal of reservations and of objections to reservations
1. Unless the treaty otherwise provides, a reservation may be withdrawn at any time and the consent of a State which has accepted the reservation is not required for its withdrawal.
2. Unless the treaty otherwise provides, an objection to a reservation may be withdrawn at any time.
3. Unless the treaty otherwise provides, or it is otherwise agreed:
(a) the withdrawal of a reservation becomes operative in relation to another contracting State only when notice of it has been received by that State;

(b) the withdrawal of an objection to a reservation becomes operative only when notice of it has been received by the State which formulated the reservation.

Article 23
Procedure regarding reservations
1. A reservation, an express acceptance of a reservation and an objection to a reservation must be formulated in writing and communicated to the contracting States and other States entitled to become parties to the treaty.
2. If formulated when signing the treaty subject to ratification, acceptance or approval, a reservation must be formally confirmed by the reserving State when expressing its consent to be bound by the treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation.
3. An express acceptance of, or an objection to, a reservation made previously to confirmation of the reservation does not itself require confirmation.
4. The withdrawal of a reservation or of an objection to a reservation must be formulated in writing.

SECTION 3. ENTRY INTO FORCE AND PROVISIONAL, APPLICATION OF TREATIES
Article 24
Entry into force
1. A treaty enters into force in such manner and upon such date as it may provide or as the negotiating States may agree.
2. Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States.
3. When the consent of a State to be bound by a treaty is established on a date after the treaty has come into force, the treaty enters into force for that State on that date, unless the treaty otherwise provides.
4. The provisions of a treaty regulating the authentication of its text, the establishment of the consent of States to be bound by the treaty, the manner or date of its entry into force, reservations, the functions of the depositary and other matters arising necessarily before the entry into force of the treaty apply from the time of the adoption of its text.

Article 25
Provisional application
1. A treaty or a part of a treaty is applied provisionally pending its entry into force if:
(a) the treaty itself so provides; or
(b) the negotiating States have in some other manner so agreed.
2. Unless the treaty otherwise provides or the negotiating States have otherwise agreed, the provisional application of a treaty or a part of a treaty with respect to a State shall be terminated if that State notifies the other States between which the treaty is being applied provisionally of its intention not to become a party to the treaty.

PART III.
OBSERVANCE, APPLICATION AND INTERPRETATION OF TREATIES
SECTION 1. OBSERVANCE OF TREATIES
Article 26
“Pacta sunt servanda”
Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

Article 27
Internal law and observance of treaties
A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46.

SECTION 2. APPLICATION OF TREATIES
Article 28
Non-retroactivity of treaties
Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.

Article 29
Territorial scope of treaties
Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.

Article 30
Application of successive treaties relating to the same subject matter
1. Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States Parties to successive treaties relating to the same subject matter shall be determined in accordance with the following paragraphs.
2. When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.
3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.
4. When the parties to the later treaty do not include all the parties to the earlier one:
(a) as between States Parties to both treaties the same rule applies as in paragraph 3;
(b) as between a State party to both treaties and a State party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations.

5. Paragraph 4 is without prejudice to article 41, or to any question of the termination or suspension of the operation of a treaty under article 60 or to any question of responsibility which may arise for a State from the conclusion or application of a treaty the provisions of which are incompatible with its obligations towards another State under another treaty.

SECTION 3. INTERPRETATION OF TREATIES
Article 31
General rule of interpretation
1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
(a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
(b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
3. There shall be taken into account, together with the context:
(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
(c) any relevant rules of international law applicable in the relations between the parties.
4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 32
Supplementary means of interpretation
Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:
(a) leaves the meaning ambiguous or obscure; or
(b) leads to a result which is manifestly absurd or unreasonable.

Article 33
Interpretation of treaties authenticated in two or more languages
1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.
2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.
3. The terms of the treaty are presumed to have the same meaning in each authentic text.
4. Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

SECTION 4. TREATIES AND THIRD STATES
Article 34
General rule regarding third States
A treaty does not create either obligations or rights for a third State without its consent.

Article 35
Treaties providing for obligations for third States
An obligation arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to be the means of establishing the obligation and the third State expressly accepts that obligation in writing.

Article 36
Treaties providing for rights for third States
1. A right arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third State, or to a group of States to which it belongs, or to all States, and the third State assents thereto. Its assent shall be presumed so long as the contrary is not indicated, unless the treaty otherwise provides.
2. A State exercising a right in accordance with paragraph 1 shall comply with the conditions for its exercise provided for in the treaty or established in conformity with the treaty.

Article 37
Revocation or modification of obligations or rights of third States
1. When an obligation has arisen for a third State in conformity with article 35, the obligation may be revoked or modified only with the consent of the parties to the treaty and of the third State, unless it is established that they had otherwise agreed.
2. When a right has arisen for a third State in conformity with article 36, the right may not be revoked or modified by the parties if it is established that the right was intended not to be revocable or subject to modification without the consent of the third State.

Article 38
Rules in a treaty becoming binding on third States through international custom
Nothing in articles 34 to 37 precludes a rule set forth in a treaty from becoming binding upon a third State as a customary rule of international law, recognized as such.

PART IV.
AMENDMENT AND MODIFICATION OF TREATIES
Article 39
General rule regarding the amendment of treaties
A treaty may be amended by agreement between the parties. The rules laid down in Part II apply to such an agreement except insofar as the treaty may otherwise provide.

Article 40
Amendment of multilateral treaties
1. Unless the treaty otherwise provides, the amendment of multilateral treaties shall be governed by the following paragraphs.
2. Any proposal to amend a multilateral treaty as between all the parties must be notified to all the contracting States, each one of which shall have the right to take part in:
(a) the decision as to the action to be taken in regard to such proposal;
(b) the negotiation and conclusion of any agreement for the amendment of the treaty.
3. Every State entitled to become a party to the treaty shall also be entitled to become a party to the treaty as amended.
4. The amending agreement does not bind any State already a party to the treaty which does not become a party to the amending agreement; article 30, paragraph 4 (b), applies in relation to such State.
5. Any State which becomes a party to the treaty after the entry into force of the amending agreement shall, failing an expression of a different intention by that State:
(a) be considered as a party to the treaty as amended; and
(b) be considered as a party to the unamended treaty in relation to any party to the treaty not bound by the amending agreement.

Article 41
Agreements to modify multilateral treaties between certain of the parties only
1. Two or more of the parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone if:
(a) the possibility of such a modification is provided for by the treaty; or
(b) the modification in question is not prohibited by the treaty and:
(i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;
(ii) does not relate to a provision, derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole.
2. Unless in a case falling under paragraph 1 (a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of the modification to the treaty for which it provides.

PART V.
INVALIDITY, TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES
SECTION 1. GENERAL PROVISIONS
Article 42
Validity and continuance in force of treaties
1. The validity of a treaty or of the consent of a State to be bound by a treaty may be impeached only through the application of the present Convention.
2. The termination of a treaty, its denunciation or the withdrawal of a party, may take place only as a result of the application of the provisions of the treaty or of the present Convention. The same rule applies to suspension of the operation of a treaty.

Article 43
Obligations imposed by international law independently of a treaty
The invalidity, termination or denunciation of a treaty, the withdrawal of a party from it, or the suspension of its operation, as a result of the application of the present Convention or of the provisions of the treaty, shall not in any way impair the duty of any State to fulfil any obligation embodied in the treaty to which it would be subject under international law independently of the treaty.

Article 44
Separability of treaty provisions
1. A right of a party, provided for in a treaty or arising under article 56, to denounce, withdraw from or suspend the operation of the treaty may be exercised only with respect to the whole treaty unless the treaty otherwise provides or the parties otherwise agree.
2. A ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty recognized in the present Convention may be invoked only with respect to the whole treaty except as provided in the following paragraphs or in article 60.
3. If the ground relates solely to particular clauses, it may be invoked only with respect to those clauses where:
(a) the said clauses are separable from the remainder of the treaty with regard to their application;
(b) it appears from the treaty or is otherwise established that acceptance of those clauses was not an essential basis of the consent of the other party or parties to be bound by the treaty as a whole; and
(c) continued performance of the remainder of the treaty would not be unjust.

4. In cases falling under articles 49 and 50, the State entitled to invoke the fraud or corruption may do so with respect either to the whole treaty or, subject to paragraph 3, to the particular clauses alone.
5. In cases falling under articles 51, 52 and 53, no separation of the provisions of the treaty is permitted.

Article 45
Loss of a right to invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty
A State may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty under articles 46 to 50 or articles 60 and 62 if, after becoming aware of the facts:
(a) it shall have expressly agreed that the treaty is valid or remains in force or continues in operation, as the case may be; or
(b) it must by reason of its conduct be considered as having acquiesced in the validity of the treaty or in its maintenance in force or in operation, as the case may be.

SECTION 2. INVALIDITY OF TREATIES
Article 46
Provisions of internal law regarding competence to conclude treaties
1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.
2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.

Article 47
Specific restrictions on authority to express the consent of a State
If the authority of a representative to express the consent of a State to be bound by a particular treaty has been made subject to a specific restriction, his omission to observe that restriction may not be invoked as invalidating the consent expressed by him unless the restriction was notified to the other negotiating States prior to his expressing such consent.

Article 48
Error
1. A State may invoke an error in a treaty as invalidating its consent to be bound by the treaty if the error relates to a fact or situation which was assumed by that State to exist at the time when the treaty was concluded and formed an essential basis of its consent to be bound by the treaty.
2. Paragraph 1 shall not apply if the State in question contributed by its own conduct to the error or if the circumstances were such as to put that State on notice of a possible error.
3. An error relating only to the wording of the text of a treaty does not affect its validity; article 79 then applies.

Article 49
Fraud
If a State has been induced to conclude a treaty by the fraudulent conduct of another negotiating State, the State may invoke the fraud as invalidating its consent to be bound by the treaty.

Article 50
Corruption of a representative of a State
If the expression of a State’s consent to be bound by a treaty has been procured through the corruption of its representative directly or indirectly by another negotiating State, the State may invoke such corruption as invalidating its consent to be bound by the treaty.

Article 51
Coercion of a representative of a State
The expression of a State’s consent to be bound by a treaty which has been procured by the coercion of its representative through acts or threats directed against him shall be without any legal effect.

Article 52
Coercion of a State by the threat or use of force
A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.

Article 53
Treaties conflicting with a peremptory norm of general international law (“jus cogens”)
A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

SECTION 3. TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES
Article 54
Termination of or withdrawal from a treaty under its provisions or by consent of the parties
The termination of a treaty or the withdrawal of a party may take place:
(a) in conformity with the provisions of the treaty; or
(b) at any time by consent of all the parties after consultation with the other contracting States.

Article 55
Reduction of the parties to a multilateral treaty below the number necessary for its entry into force
Unless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number necessary for its entry into force.

Article 56
Denunciation of or withdrawal from a treaty containing no provision regarding termination, denunciation or withdrawal
1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless:
(a) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or
(b) a right of denunciation or withdrawal may be implied by the nature of the treaty.
2. A party shall give not less than twelve months' notice of its intention to denounce or withdraw from a treaty under paragraph 1.

Article 57
Suspension of the operation of a treaty under its provisions or by consent of the parties
The operation of a treaty in regard to all the parties or to a particular party may be suspended:
(a) in conformity with the provisions of the treaty; or
(b) at any time by consent of all the parties after consultation with the other contracting States.

Article 58
Suspension of the operation of a multilateral treaty by agreement between certain of the parties only
1. Two or more parties to a multilateral treaty may conclude an agreement to suspend the operation of provisions of the treaty, temporarily and as between themselves alone, if:
(a) the possibility of such a suspension is provided for by the treaty; or
(b) the suspension in question is not prohibited by the treaty and:
(i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;
(ii) is not incompatible with the object and purpose of the treaty.
2. Unless in a case falling under paragraph 1 (a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of those provisions of the treaty the operation of which they intend to suspend.

Article 59
Termination or suspension of the operation of a treaty implied by conclusion of a later treaty
1. A treaty shall be considered as terminated if all the parties to it conclude a later treaty relating to the same subject matter and:
(a) it appears from the later treaty or is otherwise established that the parties intended that the matter should be governed by that treaty; or
(b) the provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time.
2. The earlier treaty shall be considered as only suspended in operation if it appears from the later treaty or is otherwise established that such was the intention of the parties.

Article 60
Termination or suspension of the operation of a treaty as a consequence of its breach
1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.
2. A material breach of a multilateral treaty by one of the parties entitles:
(a) the other parties by unanimous agreement to suspend the operation of the treaty in whole or in part or to terminate it either:
(i) in the relations between themselves and the defaulting State; or
(ii) as between all the parties;
(b) a party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State;
(c) any party other than the defaulting State to invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.
3. A material breach of a treaty, for the purposes of this article, consists in:
(a) a repudiation of the treaty not sanctioned by the present Convention; or
(b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty.
4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach.
5. Paragraphs 1 to 3 do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties.

Article 61
Supervening impossibility of performance
1. A party may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty. If the impossibility is temporary, it may be invoked only as a ground for suspending the operation of the treaty.

2. Impossibility of performance may not be invoked by a party as a ground for terminating, withdrawing from or suspending the operation of a treaty if the impossibility is the result of a breach by that party either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

Article 62

Fundamental change of circumstances

1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:

(a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and

(b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty.

2. A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty:

(a) if the treaty establishes a boundary; or

(b) if the fundamental change is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

3. If, under the foregoing paragraphs, a party may invoke a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty it may also invoke the change as a ground for suspending the operation of the treaty.

Article 63

Severance of diplomatic or consular relations

The severance of diplomatic or consular relations between parties to a treaty does not affect the legal relations established between them by the treaty except insofar as the existence of diplomatic or consular relations is indispensable for the application of the treaty.

Article 64

Emergence of a new peremptory norm of general international law ("jus cogens")

If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.

SECTION 4. PROCEDURE

Article 65

Procedure to be followed with respect to invalidity, termination, withdrawal from or suspension of the operation of a treaty

1. A party which, under the provisions of the present Convention, invokes either a defect in its consent to be bound by a treaty or a ground for impeaching the validity of a treaty, terminating it, withdrawing from it or suspending its operation, must notify the other parties of its claim. The notification shall indicate the measure proposed to be taken with respect to the treaty and the reasons therefor.

2. If, after the expiry of a period which, except in cases of special urgency, shall not be less than three months after the receipt of the notification, no party has raised any objection, the party making the notification may carry out in the manner provided in article 67 the measure which it has proposed.

3. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations.

4. Nothing in the foregoing paragraphs shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes.

5. Without prejudice to article 45, the fact that a State has not previously made the notification prescribed in paragraph 1 shall not prevent it from making such notification in answer to another party claiming performance of the treaty or alleging its violation.

Article 66

Procedures for judicial settlement, arbitration and conciliation

If, under paragraph 3 of article 65, no solution has been reached within a period of 12 months following the date on which the objection was raised, the following procedures shall be followed:

(a) any one of the parties to a dispute concerning the application or the interpretation of article 53 or 64 may, by a written application, submit it to the International Court of Justice for a decision unless the parties by common consent agree to submit the dispute to arbitration;

(b) any one of the parties to a dispute concerning the application or the interpretation of any of the other articles in part V of the present Convention may set in motion the procedure specified in the Annex to the Convention by submitting a request to that effect to the Secretary-General of the United Nations.

Article 67

Instruments for declaring invalid, terminating, withdrawing from or suspending the operation of a treaty

1. The notification provided for under article 65, paragraph 1, must be made in writing.

2. Any act of declaring invalid, terminating, withdrawing from or suspending the operation of a treaty pursuant to the provisions of the treaty or of paragraphs 2 or 3 of article 65 shall be carried out through an instrument communicated to the other parties. If the instrument is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

Article 68

Revocation of notifications and instruments provided for in articles 65 and 67

A notification or instrument provided for in article 65 or 67 may be revoked at any time before it takes effect.

SECTION 5. CONSEQUENCES OF THE INVALIDITY, TERMINATION OR SUSPENSION OF THE OPERATION OF A TREATY
Article 69
Consequences of the invalidity of a treaty
1. A treaty the invalidity of which is established under the present Convention is void. The provisions of a void treaty have no legal force.
2. If acts have nevertheless been performed in reliance on such a treaty:
(a) each party may require any other party to establish as far as possible in their mutual relations the position that would have existed if the acts had not been performed;
(b) acts performed in good faith before the invalidity was invoked are not rendered unlawful by reason only of the invalidity of the treaty.
3. In cases falling under article 49, 50, 51 or 52, paragraph 2 does not apply with respect to the party to which the fraud, the act of corruption or the coercion is imputable.
4. In the case of the invalidity of a particular State's consent to be bound by a multilateral treaty, the foregoing rules apply in the relations between that State and the parties to the treaty.

Article 70
Consequences of the termination of a treaty
1. Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present Convention:
(a) releases the parties from any obligation further to perform the treaty;
(b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.
2. If a State denounces or withdraws from a multilateral treaty, paragraph 1 applies in the relations between that State and each of the other parties to the treaty from the date when such denunciation or withdrawal takes effect.

Article 71
Consequences of the invalidity of a treaty which conflicts with a peremptory norm of general international law
1. In the case of a treaty which is void under article 53 the parties shall:
(a) eliminate as far as possible the consequences of any act performed in reliance on any provision which conflicts with the peremptory norm of general international law; and
(b) bring their mutual relations into conformity with the peremptory norm of general international law.
2. In the case of a treaty which becomes void and terminates under article 64, the termination of the treaty:
(a) releases the parties from any obligation further to perform the treaty;
(b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination, provided that those rights, obligations or situations may thereafter be maintained only to the extent that their maintenance is not in itself in conflict with the new peremptory norm of general international law.

Article 72
Consequences of the suspension of the operation of a treaty
1. Unless the treaty otherwise provides or the parties otherwise agree, the suspension of the operation of a treaty under its provisions or in accordance with the present Convention:
(a) releases the parties between which the operation of the treaty is suspended from the obligation to perform the treaty in their mutual relations during the period of the suspension;
(b) does not otherwise affect the legal relations between the parties established by the treaty.
2. During the period of the suspension the parties shall refrain from acts tending to obstruct the resumption of the operation of the treaty.

PART VI.
MISCELLANEOUS PROVISIONS
Article 73
Cases of State succession, State responsibility and outbreak of hostilities
The provisions of the present Convention shall not prejudge any question that may arise in regard to a treaty from a succession of States or from the international responsibility of a State or from the outbreak of hostilities between States.

Article 74
Diplomatic and consular relations and the conclusion of treaties
The severance or absence of diplomatic or consular relations between two or more States does not prevent the conclusion of treaties between those States. The conclusion of a treaty does not in itself affect the situation in regard to diplomatic or consular relations.

Article 75
Case of an aggressor State
The provisions of the present Convention are without prejudice to any obligation in relation to a treaty which may arise for an aggressor State in consequence of measures taken in conformity with the Charter of the United Nations with reference to that State's aggression.

PART VII.
DEPOSITARIES, NOTIFICATIONS, CORRECTIONS AND REGISTRATION
Article 76
Depositaries of treaties

1. The designation of the depositary of a treaty may be made by the negotiating States, either in the treaty itself or in some other manner. The depositary may be one or more States, an international organization or the chief administrative officer of the organization.
2. The functions of the depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance. In particular, the fact that a treaty has not entered into force between certain of the parties or that a difference has appeared between a State and a depositary with regard to the performance of the latter's functions shall not affect that obligation.

Article 77
Functions of depositaries
1. The functions of a depositary, unless otherwise provided in the treaty or agreed by the contracting States, comprise in particular:
(a) keeping custody of the original text of the treaty and of any full powers delivered to the depositary;
(b) preparing certified copies of the original text and preparing any further text of the treaty in such additional languages as may be required by the treaty and transmitting them to the parties and to the States entitled to become parties to the treaty;
(c) receiving any signatures to the treaty and receiving and keeping custody of any instruments, notifications and communications relating to it;
(d) examining whether the signature or any instrument, notification or communication relating to the treaty is in due and proper form and, if need be, bringing the matter to the attention of the State in question;
(e) informing the parties and the States entitled to become parties to the treaty of acts, notifications and communications relating to the treaty;
(f) informing the States entitled to become parties to the treaty when the number of signatures or of instruments of ratification, acceptance, approval or accession required for the entry into force of the treaty has been received or deposited;
(g) registering the treaty with the Secretariat of the United Nations;
(h) performing the functions specified in other provisions of the present Convention.
2. In the event of any difference appearing between a State and the depositary as to the performance of the latter's functions, the depositary shall bring the question to the attention of the signatory States and the contracting States or, where appropriate, of the competent organ of the international organization concerned.

Article 78
Notifications and communications
Except as the treaty or the present Convention otherwise provide, any notification or communication to be made by any State under the present Convention shall:
(a) if there is no depositary, be transmitted direct to the States for which it is intended, or if there is a depositary, to the latter;
(b) be considered as having been made by the State in question only upon its receipt by the State to which it was transmitted or, as the case may be, upon its receipt by the depositary;
(c) if transmitted to a depositary, be considered as received by the State for which it was intended only when the latter State has been informed by the depositary in accordance with article 77, paragraph 1 (e).

Article 79
Correction of errors in texts or in certified copies of treaties
1. Where, after the authentication of the text of a treaty, the signatory States and the contracting States are agreed that it contains an error, the error shall, unless they decide upon some other means of correction, be corrected:
(a) by having the appropriate correction made in the text and causing the correction to be initialled by duly authorized representatives;
(b) by executing or exchanging an instrument or instruments setting out the correction which it has been agreed to make; or
(c) by executing a corrected text of the whole treaty by the same procedure as in the case of the original text.
2. Where the treaty is one for which there is a depositary, the latter shall notify the signatory States and the contracting States of the error and of the proposal to correct it and shall specify an appropriate time-limit within which objection to the proposed correction may be raised. If, on the expiry of the time-limit:
(a) no objection has been raised, the depositary shall make and initial the correction in the text and shall execute a procès-verbal of the rectification of the text and communicate a copy of it to the parties and to the States entitled to become parties to the treaty;
(b) an objection has been raised, the depositary shall communicate the objection to the signatory States and to the contracting States.
3. The rules in paragraphs I and 2 apply also where the text has been authenticated in two or more languages and it appears that there is a lack of concordance which the signatory States and the contracting States agree should be corrected.
4. The corrected text replaces the defective text ab initio, unless the signatory States and the contracting States otherwise decide.
5. The correction of the text of a treaty that has been registered shall be notified to the Secretariat of the United Nations.
6. Where an error is discovered in a certified copy of a treaty, the depositary shall execute a procès-verbal specifying the rectification and communicate a copy of it to the signatory States and to the contracting States.

Article 80
Registration and publication of treaties
1. Treaties shall, after their entry into force, be transmitted to the Secretariat of the United Nations for registration or filing and recording, as the case may be, and for publication.
2. The designation of a depositary shall constitute authorization for it to perform the acts specified in the preceding paragraph.

PART VIII.
FINAL PROVISIONS
Article 81
Signature
The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency or parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a party to the Convention, as follows: until 30 November 1969, at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 30 April 1970, at United Nations Headquarters, New York.

Article 82
Ratification
The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 83
Accession
The present Convention shall remain open for accession by any State belonging to any of the categories mentioned in article 81. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 84
Entry into force
1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the thirty-fifth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.
Article 85
Authentic texts
The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.
DONE at Vienna this twenty-third day of May, one thousand nine hundred and sixty-nine.
ANNEX
1. A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a party to the present Convention shall be invited to nominate two conciliators, and the names of the persons so nominated shall constitute the list. The term of a conciliator, including that of any conciliator nominated to fill a casual vacancy, shall be five years and may be renewed. A conciliator whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.
2. When a request has been made to the Secretary-General under article 66, the Secretary-General shall bring the dispute before a conciliation commission constituted as follows:
The State or States constituting one of the parties to the dispute shall appoint:
(a) one conciliator of the nationality of that State or of one of those States, who may or may not be chosen from the list referred to in paragraph 1; and
(b) one conciliator not of the nationality of that State or of any of those States, who shall be chosen from the list.
The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within sixty days following the date on which the Secretary-General receives the request.
The four conciliators shall, within sixty days following the date of the last of their own appointments, appoint a fifth conciliator chosen from the list, who shall be chairman.
If the appointment of the chairman or of any of the other conciliators has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General within sixty days following the expiry of that period. The appointment of the chairman may be made by the Secretary-General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute.
Any vacancy shall be filled in the manner prescribed for the initial appointment.
3. The Conciliation Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any party to the treaty to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.
4. The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.
5. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute.
6. The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute. The report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate an amicable settlement of the dispute.
7. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.