UNITED STATE-ITALY INCOME AND CAPITAL TAX CONVENTION

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 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).

GENERAL EFFECTIVE DATE UNDER ARTICLE 28: 1 JANUARY 1985

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TAX CONVENTION WITH ITALY

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE 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, TOGETHER WITH A SUPPLEMENTARY PROTOCOL AND EXCHANGE OF NOTES, SIGNED AT ROME ON APRIL 17, 1984

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, June 22, 1984.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the 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 (referred to hereafter as

"the Convention"), together with a supplementary Protocol and exchange of notes signed at Rome on April 17,1984.

The Convention will replace the present income tax treaty with Italy which was signed at Washington on March 30, 1955 and has been in force since 1956. It reflects important changes in the United States and Italian tax laws and the development of model tax treaties by the United States and the Organization for Economic Cooperation and Development (OECD).

The Convention generally follows the pattern of the U.S. model income tax convention, with certain modifications. The Convention sets forth agreed definitions of terms; rules allocating taxing jurisdiction between the country of source of income and the country of residence of the beneficial owner with respect to each type of income (e.g. profits, wages and salaries, royalties, interest); the method to be used by each country to avoid double taxation; and procedures for administrative cooperation.

The Convention retains the provision of the 1955 treaty for a reduced tax rate of 5 percent at source on dividends paid by a corporation which is a resident of one country to a corporation which is a resident of the other country. The Convention extends this benefit to corporations which own 50 percent or more of the voting stock of the paying corporation. The 1955 treaty required 95 percent ownership to be eligible for the benefit. The new Convention introduces a 10 percent rate (rather than 15) on dividends paid to a company owning between 10 and 50 percent of the voting stock of the paying company. The 5 and 10 percent rates do not apply if the recipient company derives more than a certain proportion of its income from passive investments, e.g., as a holding company. All other dividends paid to residents of the other country may be taxed at source at a rate not exceeding 15 percent.

The Convention also introduces a limitation, not contained in the 1955 treaty, on the taxation at source of interest paid to residents of the other country. The limit is 15 percent in general, with exemption at source of interest derived by the other government or a wholly owned government instrumentality and of interest derived by a resident of the other country on debt guaranteed or insured by that government or a wholly owned government instrumentality.

One important feature of the Convention is that it covers the Italian local income tax, as well as national income taxes. This is of particular importance with respect to Italian taxes on royalties derived by United States residents, since the Italian local tax is imposed on such payments and is not covered by the 1955 treaty. The new Convention limits the aggregate tax at source on royalties to a maximum of 10 percent, with reduced rates of 5, 7, and 8 percent applicable to copyright royalties, income from the leasing of tangible property and film rentals, respectively. Income from the leasing of containers used in international traffic and income from certain leasing of ships and aircraft is exempt from tax at source under the article governing international transportation income; such leasing is not treated as a royalty.

Other provisions of the Convention reflect the views of the Senate as expressed in its consideration of other recent United States tax treaties. For example, the protocol includes an article limiting the benefits of the Convention to residents of the two countries, conforms the language on capital gains

taxation to recently enacted provisions of United States law, and authorizes the General Accounting Office to obtain access to certain tax information relevant to its function of overseeing the administration of United States tax law.

Under the Convention, each country agrees to exempt from tax the social security benefits paid to residents of the other country, unless they are citizens solely of the paying country. This is viewed as a special provision to alleviate the hardship imposed on many Italian retirees by the recent introduction of an effective 15 percent U.S. tax on social security benefits paid to nonresidential aliens.

The protocol clarifies and supplements certain provisions of the Convention. In the accompanying exchange of notes, the Italian Government expresses its concern over the application by some states of the United States of the unitary method of apportioning profits to the United States activities of Italian resident companies. That approach is of particular concern to Italy because the Italian local income tax is subject to the Convention rules, while state and local income taxes in the United States are not. If such taxes on Italian residents increase significantly, Italy reserves the right to reopen discussions on this issue and, in particular, if a state or locality taxes the international transportation income of Italian shipping or airline companies. Italy reserves the right to impose its local tax on United States shipping or airline companies.

The Convention will enter into force upon the exchange of instruments of ratification. The provisions of the Convention will have effect as follows:

(a) with respect to taxes withheld at 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; and

(b) with respect to other taxes, for taxable periods beginning on or after January 1 of the year in which this Convention enters into force.

The Convention will remain in effect indefinitely unless terminated by one of the Contracting States. Either State may terminate the Convention after it has been in force for five years by giving at least six months' notice through diplomatic channels.

A technical memorandum explaining in detail the provisions of the Convention is being prepared by the Department of the Treasury and will be submitted separately to the Senate Committee on Foreign Relations.

The Department of the Treasury, with the cooperation of the Department of State, was primarily responsible for the negotiation of this Convention. It has the approval of both Departments.

Respectfully submitted,

GEORGE P. SHULTZ.

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *July 3, 1984.*

To the Senate of the United States:

I transmit herewith, for Senate advice and consent to ratification, the 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 ("the Convention"), together with a supplementary Protocol and exchange of notes, signed at Rome on April 17, 1984. 1 also transmit the report of the Department of State on the Convention.

Important changes in United States and Italian tax laws and the development of a model tax treaty by the United States made it necessary to replace the existing income tax convention with Italy, which has been in force since 1956.

Among the principal features of the new Convention are the inclusion of the Italian local income tax among the taxes covered by the Convention and a reduction in the tax at source on most dividends. The Convention also introduces a limitation on the taxation at source of interest paid to residents of the other country. It provides a maximum rate of tax at source of 10 percent on royalties.

The protocol provides that the benefits of the Convention are limited to residents of the two countries, and otherwise clarifies and supplements the Convention. The exchange of notes sets out certain understandings between the two governments.

I recommend that the Senate give early and favorable consideration to the Convention, together with the supplementary Protocol and exchange of notes, and give advice and consent to ratification.

RONALD REAGAN.

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

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA
A PROCLAMATION

CONSIDERING THAT:

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, together with

a supplementary protocol and exchange of notes, was signed at Rome on April 17, 1984, the texts of which in the English and Italian languages are hereto annexed;

The Senate of the United States of America by its resolution of December 16, 1985, two-thirds of the Senators present concurring therein, gave its advice and consent to ratification of the Convention, together with the supplementary protocol and exchange of notes, subject to the following understanding:

> "That the indirect credit available to a United States corporation with respect to dividends from a company which is a resident of Italy is not available if such company is a resident of the United States under United States law";

The Convention, together with the supplementary protocol and exchange of notes, was ratified by the President of the United States of America, subject to the above understanding, on December 23, 1985, in pursuance of the advice and consent of the Senate, and was ratified on the part of Italy on December 13, 1985;

The instruments of ratification of the Convention, the supplementary protocol and exchange of notes were exchanged at Washington on December 30, 1985, and accordingly the Convention entered into force on that date, its provisions to have effect as specified in Article 28;

NOW, THEREFORE, I, Ronald Reagan, President of the United States of America, proclaim and make public the Convention, the supplementary protocol and exchange of notes to the end that they be observed and fulfilled with good faith on and after December 30, 1985, by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

IN TESTIMONY WHEREOF, I have signed this proclamation and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this ninth day of September in the year of our Lord one thousand nine hundred eighty six and of the Independence of the United States of America the two hundred eleventh.

By the President:

(s) Ronald Reagan.

George P. Shultz, Secretary of State.

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

The Government of the United States of America and the Government of Republic of Italy, desiring to conclude a convention for the avoidance of double taxation with respect to taxes on income and the prevention of fraud or fiscal evasion, have agreed as follows:

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 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.

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 first-mentioned 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 first-mentioned 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

NOTES OF EXCHANGE

April 17, 1984

The Honorable

Maxwell M. Rabb
Embassy of the United States of America
Rome

Excellency:

I have the honor to refer to the Convention and Protocol between Italy and the United States of America for the avoidance of double taxation with respect to taxes on income and the prevention of fraud or fiscal evasion, signed today at Rome, and I should like to state on behalf of the Government of the Republic of Italy our understanding with respect to an important unresolved issue. It is the position of the Government of Italy that the so-called "unitary apportionment" method used by certain states of the United States to allocate income to the United States offices or subsidiaries of Italian companies results in inequitable taxation and imposes excessive administrative burdens on Italian companies doing business in those states. Under that method, the profit of an Italian company on its United States business is not determined on the basis of arm's length relations but is derived from a formula taking account of the income of the Italian company and its worldwide subsidiaries as well as the assets, payroll, and sales of all such companies. For an Italian multinational company with many subsidiaries in different countries to have to submit its books and records for all of these companies to a United States state in English imposes a costly burden.

It is understood that the Senate of the United States has not consented to any limitation on the taxing jurisdiction of the states by treaty and that a provision which would have restricted the use of unitary apportionment in the case of United Kingdom corporations was rejected by the Senate. The Government of Italy continues to be concerned about this issue as it affects Italian multinationals. If an acceptable provision on this subject can be devised, the United States agrees to reopen discussions with Italy on this subject.

It is further understood that in the event the methods of taxation employed by states of the United States should change after today's date in such a way as to have a substantial negative effect upon Italian residents, Italy reserves the right to reopen discussions with the United States.
It is further understood that 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 local income tax (ILOR) on such profits of enterprises of the United States, notwithstanding subparagraph 2 (b) (iii) of Article 2 (Taxes Covered) and Article 8 (Shipping and Air Transport).

I have furthermore the honor to propose that the present Note and Your Excellency's reply confirming the acceptance by the Government of the United States of America of the above proposals shall be regarded as constituting an agreement between the two Governments concerning the matters above mentioned.

Accept, Excellency the renewed assurances of my highest consideration.

Guilio Andreotti

EMBASSY OF THE UNITED STATES OF AMERICA

April 17, 1984

No. 330

His Excellency
Giulio Andreotti
Minister of Foreign Affairs of Italy

Excellency:

I have the honor to acknowledge receipt of your letter of today's date which reads as follows:

"I have the honor to refer to the Convention and Protocol between Italy and the United States of America for the avoidance of double taxation with respect to taxes on income and the prevention of fraud or fiscal evasion, signed today at Rome, and I should like to state on behalf of the Government of the Republic of Italy our understanding with respect to an important unresolved issue. It is the position of the Government of Italy that the so-called "unitary apportionment" method used by certain states of the United States to allocate income to the United States offices or subsidiaries of Italian companies results in inequitable taxation and imposes excessive administrative burdens on Italian companies doing business in those states. Under that method, the profit of an Italian company on its United States business is not determined on the basis of arm's length relations but is derived from a formula taking account of the income of the Italian company and its worldwide subsidiaries as well as the assets, payroll, and sales of all such companies. For an Italian multinational company with many subsidiaries in different countries to have to submit its books and records for all of these companies to a United States state in English imposes a costly burden.

It is understood that the Senate of the United States has not consented to any limitation on the taxing jurisdiction of the states by treaty and that a provision which would have restricted the use of unitary apportionment in the case of United Kingdom corporations was rejected by the Senate. The Government of Italy continues to be concerned about this issue as it affects Italian multinationals. If an acceptable provision on this subject can be devised, the United States agrees to reopen discussions with Italy on this subject.

It is further understood that in the event the methods of taxation employed by states of the United States should change after today's date in such a way as to have a substantial negative effect upon Italian residents, Italy reserves the right to reopen discussions with the United States.
It is further understood that 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

local income tax (ILOR) on such profits of enterprises of the United States, notwithstanding subparagraph 2 (b) (iii) of Article 2 (Taxes Covered) and Article 8 (Shipping and Air Transport).

I have furthermore the honor to propose that the present Note and Your Excellency's reply confirming the acceptance by the Government of the United States of America of the above proposals shall be regarded as constituting an agreement between the two Governments concerning the matters above mentioned."

I have the honor to inform you that the Government of the United States of America is in agreement with the above proposals.

Accept. Excellency the renewed assurances of my highest consideration.

(s) Maxwell M. Rabb