

**CONVENTION BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF ALBANIA
AND THE GOVERNMENT OF THE REPUBLIC OF ITALY
FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON
INCOME AND ON CAPITAL AND THE PREVENTION OF FISCAL EVASION**

THE GOVERNMENT OF THE REPUBLIC OF ALBANIA
AND
THE GOVERNMENT OF THE REPUBLIC OF ITALY

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

Have agreed upon the following measures:

Art. 1. Personal scope. - This Convention shall apply to persons who are residents of one or both of the Contracting States.

Art. 2. Taxes covered. - 1) This Convention shall apply to taxes on income and on capital imposed on behalf of each Contracting State or of its political or administrative 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 the case of Albania:

- 1) tatimi mbi te ardhurat personale (the individual income tax);
- 2) tatimi mbi fitimin (the profit tax);
- 3) tatimi mbi biznesin e vogel (the taxes on small businesses); even if they are collected by withholding taxes at the source (hereinafter referred to as "Albanian tax").

b) in the case of Italy:

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

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

Art. 3. General definitions. - 1) For the purposes of this Convention, unless the context otherwise requires:

a) the term “Albania” means the territory of the Republic of Albania including also any area outside the territorial sea of Albania which has been or may hereafter be designated under the laws of Albania and in accordance with the Agreement between Albania and Italy for the delimitation of the continental shelf between the two Countries, signed at Tirane on 18th december 1992, as an area within which the rights of Albania to the sea-bed and subsoil and their natural resources may be exercised;

b) the term “Italy” means the Republic of Italy and includes any area beyond the territorial waters of Italy which, in accordance with the laws of Italy concerning the exploration and exploitation of natural resources and with the Agreement between Albania and Italy for the delimitation of the continental shelf between the two Countries, signed at Tirane on 18th december 1992, may be designated as an area within which the rights of Italy with respect to the sea-bed and subsoil and their natural resources may be exercised;

c) the terms “a Contracting State” and “the other Contracting State” mean Albania or Italy, as the context requires;

d) the term “person” includes an individual, a company and any other body of persons;

e) the term “company” means any body corporate or any entity which is treated under the laws of the Contracting States from which it derives its status as such as a body corporate for tax purposes;

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

g) the term “international traffic” means any transport by a ship, an aircraft or a road-transport vehicle operated by an enterprise which has its place of effective management in a Contracting State, except when the ship, the aircraft or the road-transport vehicle is operated solely between places in the other, Contracting State;

h) the term "nationals" means:

- 1) any individual possessing the nationality of a Contracting State;
- 2) any legal person, partnership or association deriving their status as such from the laws in force in a Contracting State;

i) the term "competent authority" means:

- 1) in the case of Albania, the Minister of Finance or his authorized representative;
- 2) in the case of Italy, the Ministry of Finance.

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 Contracting State concerning the taxes to which the Convention applies.

Art. 4. Resident. - 1) For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the law of that State, is liable to tax therein by reason of his domicile, residence, place of management, or any other criterion of a similar nature. But 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 or capital situated therein.

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

a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (center of vital interests);

b) if the Contracting 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 Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

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

d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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

Art. 5. Permanent establishment. - 1) For the purposes of this Convention, the term “permanent establishment” means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

2) The term “permanent establishment” shall include especially:

a) a place of management;

b) a branch;

c) an office;

d) a factory;

e) a workshop;

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

g) a building site or construction, or assembly project which exists for more than twelve months.

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

a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;

e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character for the enterprise.

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

a) he has, and habitually exercises in that State, an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or

b) he has, and habitually exercises in that State, an authority to fill orders on behalf of the enterprise from a stock of goods or merchandise which is maintained in that State and which belongs to 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.

Art. 6, 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 be defined in accordance with 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 shall also be considered as "immovable property". Ships, boats and aircraft shall not be regarded as immovable property.

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

4) 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.

Art. 7. Business profits. - 1) The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2) Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3) In the determination of the profits of a permanent establishment, there shall be allowed as deduction 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 embodied 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.

Art. 8. International transport. - 1) Profits from the operation of ships, aircraft or road-transport vehicles in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2) If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour, of the ship is situated, or, if there is no such home harbour in the Contracting State of which the operator of the ship is a resident.

3) The provisions of paragraph 1 shall also apply to profits derived from the participation in a pool, a joint business or in an international operating agency.

Art. 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.

Art. 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 recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

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

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

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

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

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

Art. 11. Interest. - 1) Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2) However, such interest may also be taxed in the Contracting State in which it arises, and according to the law of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 5 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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

a) the payer of the interest is the Government of that Contracting State or a local authority thereof, or

b) the interest is paid to the Government of the other Contracting State or local authority thereof or any agency or instrumentality (including a financial institution) wholly owned by that other Contracting State or local authority thereof, or

c) the interest is paid to any other agency or instrumentality (including a financial institution) in relation to loans made in application of an agreement concluded between the Governments of the Contracting States.

4) The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises.

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

6) Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political or 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 Contracting State in which the permanent establishment or fixed base is situated.

7) Where, by reason of a special relationship between the payer and the 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 law of each Contracting State, due regard being had to the other provisions of this Convention.

Art. 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 law of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 5 per cent of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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

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

5) Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political or administrative subdivision, a local authority of 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 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 that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

Art. 13. Capital gains. - 1) Gains from the alienation of immovable property, as defined in paragraph 2 of Article 6, may be taxed in the Contracting State in which such property is situated.

2) Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State. Gains from the alienation of ships, aircraft or road-transport vehicles operated in international traffic or movable property pertaining to the operation of such ships, aircraft or road-transport vehicles shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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

Art. 14. Independent personal services. - 1) Income derived by an individual who is a resident of a Contracting State in respect of professional or other similar services 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 the other State; or

b) if he stays in the other Contracting State for a period or periods amounting to or exceeding in the aggregate 183 days in any 12-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.

Art. 15. Dependent personal services. - 1) Subject to the provisions of Articles 16, 18, 19, 20 and 21 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, an aircraft or a road-transport vehicle in international traffic, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Art. 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.

Art. 17. Artistes and sportsmen. - 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 sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2) The income derived by entertainers or sportsmen who are residents of a Contracting State shall be exempt from tax in the other Contracting State in which these activities are exercised if the activities are exercised within the framework of a visit which is substantially supported by one or both of the Contracting States, or of political or administrative subdivisions, local authorities or public institutions thereof. In such a case, the income is taxable only in the Contracting State of which the artiste or sportsman is a resident.

3) 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, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

Art. 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.

Art. 19. Government service. - 1) a) Remuneration, other than a pension, paid by a Contracting State or a political or administrative subdivision or a local authority thereof to any 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.

2) a) Any pension paid by, or out of funds created by, a Contracting State or a political or administrative subdivision or a local authority thereof to any 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 national of and a resident of that State.

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

Art. 20. Professors, teachers and researchers. - 1) Remunerations which a professor, teacher or researcher 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 a period not exceeding two years for the purpose of carrying out advanced study or research or for teaching at a university, college, school or other educational institution receives for such work shall not be taxed in that State, provided that such remuneration is subject to tax in the other Contracting State.

2) This Article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.

Art. 21. Students, apprentices and business trainees. - 1) Payment which a student, an apprentice or a 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 Contracting State for a period not exceeding five years 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.

2) Income derived by a student, an apprentice or a business trainee in respect of activities exercised in a Contracting State in which he is pre-: sent solely for the purpose of his education or training, shall not be taxable in that State, during a reasonable period of time for such an education or training unless it exceeds the amount necessary for his maintenance education or training.

Art. 22. Other income. - 1) Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Article' 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 in dependent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the items of income are taxable in that other Contracting State according to its own law.

3) Where, by reason of a special relationship between the persons who have carried on activities from which incomes referred to in paragraph 1, are derived, remunerations for such activities exceed the amount which would have been agreed upon by independent persons, the provision of paragraph 1 shall apply only to the last-mentioned amount. In such case, the excess part shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

Art. 23. Capital. - 1) Capital represented by immovable property referred to in paragraph 2 of Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2) Capital represented by 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, aircraft or road-transport vehicles operated in international traffic and by movable property pertaining to the operation of such ships, aircraft or road-transport vehicles, 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.

Art. 24. Elimination of double taxation. - 1) It is agreed that double taxation shall be avoided in accordance with the following paragraphs of this Article.

2) In the case of Italy:

If a resident of Italy owns items of income which are taxable in Albania, Italy, in determining its income taxes specified in Article 2 of this Convention, may include in the basis upon which such taxes are imposed the said items of income, unless specific provisions of this Convention otherwise provide.

In such a case, Italy shall deduct from the taxes so calculated the income tax paid in Albania 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 the Italian law.

3) In the case of Albania:

Where a resident of Albania derives income which, in accordance with the provisions of this Convention may be taxed in Italy, Albania, shall allow as a deduction from its tax on the income of that resident an amount equal to the income tax paid in Italy. Such deduction shall not, however, exceed that part of the Albanian income tax as computed before the deduction is given, which is attributable to the income which may be taxed in Italy.

4) Where, under the laws of one of the Contracting States any tax on business profit to which this Convention applies has been exempted or reduced for a limited period of time, for the purpose of paragraphs 2 and 3 of this Article, such tax shall be deemed to have been paid.

Art. 25. Non-discrimination. - 1) Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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

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

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

Art. 26. Mutual agreement procedure. - 1) Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of the Contracting State of which he is a national. The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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

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

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

Art. 27. 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 this Convention insofar as the taxation thereunder is not contrary to the Convention as well as to prevent fiscal evasion. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information in public court proceedings or in judicial decisions.

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

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

Art. 28. 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.

Art. 29. Refunds. – 1) Taxes withheld at the source in a Contracting State will be refunded by request of the taxpayer or of the State of which he is a resident if the right to collect the said taxes is affected by the provisions of this Convention.

2) Claims for refund, that shall be produced within the time limit fixed by the law of the Contracting State which is obliged to carry out the refund, shall be accompanied by an official certificate of the Contracting State of which the taxpayer is a resident certifying the existence of the conditions required for being entitled to the application of the allowances provided for by this Convention.

3) The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this Article, in accordance with the provisions of Article 26 of this Convention.

Art. 30. Entry into force - 1) This Convention shall be ratified and the 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 in respect of income derived or of capital owned on or after the first day of January of the calendar year following that of the entry into force of the Convention. For the purposes of Article 27 (Exchange of information), the provisions shall have effect on and after the date on which the Convention enters into force.

Art. 31. Termination. - 1) This Convention shall remain in force until terminated by a Contracting States. Either Contracting State may terminate the Convention after 5 years following its entry into force by giving the notice of termination, through diplomatic channels, at least six months before the end of any calendar year, in such event, the Convention shall cease to have effect in respect of income derived or on capital owned on or after the first day of January of the calendar year next following that in which the notice of termination is given.

In witness thereof the undersigned, duly authorized thereto, have signed this Convention.

Done in duplicate at Tirana the 12th day of december 1994, in the Albanian, Italian and English languages, all texts being equally authoritative, except in the case of doubt when the English text shall prevail.

ADDITIONAL PROTOCOL

To the Convention between the Government of the Republic of Albania and the Government of the Republic of Italy for the avoidance of double taxation with respect to taxes on income and on capital and the prevention of fiscal evasion.

At the signing of the Convention concluded today between the Government of the Republic of Albania and the Government of the Republic of Italy for the avoidance of double taxation with respect to taxes on income and on capital and the prevention of fiscal evasion the undersigned have agreed upon the following additional provisions which shall form an integral part of the said Convention.

It is understood that:

- 1) With reference to paragraph 1 of Article 3, the terms "place of effective management" shall include, in particular, the main object of business activities of the enterprise.
- 2) With reference to paragraph 3 of Article 7, the terms "expenses which are incurred for the purposes of the permanent establishment" means the expenses directly connected with the activity of the permanent establishment.
- 3) With reference to Article 8 an enterprise of a Contracting State deriving profits from the operation of ships, aircraft or road-transport vehicles in international traffic shall not be subject to any local income tax imposed in the other Contracting State.
- 4) If, in accordance with Article 9, 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 appropriate adjustments with respect to persons who are related to such person and are subject to the taxing jurisdiction of the State. Any such adjustment shall be made only in accordance with the mutual agreement procedure provided for by Article 26 and with paragraph 7 of this Additional Protocol.
- 5) With reference to paragraph 1 and 2 of Article 19, remunerations paid to an individual in respect of services rendered to the Italian Foreign Trade Institution (I.C.E.) and the Italian Institute of Culture (Istituto Italiano di Cultura) as well as to the corresponding Albanian institutions, are covered by the provisions concerning governmental functions.
- 6) With reference to Article 23, if a tax on capital will be introduced in a Contracting State, the competent authorities of the Contracting States shall agree the specific provisions to be inserted in that Article, according to the principles embodied in the same Article. They also will complete the list of taxes provided for by paragraph 3 of Article 2 of this Convention.

7) With respect to Article 26, 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 solving tax disputes.

8) The provisions of paragraph 3 of Article 29 shall not affect the competent authorities of the Contracting States from the carrying out, by mutual agreement, of other practices for the allowance of the reductions for taxation purposes provided for in this Convention.

In witness thereof the undersigned, duly authorised thereto, have signed this Additional Protocol.

Done in duplicate at Tirana the 12th day of december 1994, in the Albanian, Italian and English languages, all texts being equally authoritative, except in the case of doubt when the English text shall prevail.