

**CONVENTION BETWEEN  
THE GOVERNMENT OF THE ITALIAN REPUBLIC AND  
THE GOVERNMENT OF THE STATE OF KUWAIT  
FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON  
INCOME AND THE PREVENTION OF FISCAL EVASION<sup>1</sup>**

The Government of the Italian Republic and the Government of the State of Kuwait, desiring to conclude a Convention to avoid double taxation with respect to taxes on income and to prevent fiscal evasion, have agreed upon the following:

CHAPTER I - Scope of the Convention

*Article 1 - Personal scope*

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

*Article 2 - Taxes covered*

1. This Convention shall apply to taxes on income imposed on behalf of each Contracting State, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on realised capital appreciation.
3. The existing taxes to which the Convention shall apply are, in particular:
  - (a) in the case of Kuwait:
    1. the corporate income tax;
    2. any other contribution collected in place of the income tax including the percentage of the net profits of shareholding companies paid to the Kuwait Foundation for the Advancement of Sciences; and
    3. the Zakat, whether or not they are collected by withholding at source (hereinafter referred to as "Kuwait tax");

---

<sup>1</sup> Date of Conclusion: 17 December 1987. Entry into Force: 11 January 1993. Effective Date: Retroactively, 1 January 1984 (see Article 29). A Protocol of 15 December 1989 amending Article 21(2) of the treaty is effective as the main treaty. The text below is reproduced as amended by the Protocol of 15 December 1989 and by the Protocol signed in Kuwait City the 17 March 1998 (in force from 25 March 2000).

(b) in the case of Italy:

1. the personal income tax (l'imposta sul reddito delle persone fisiche); and
2. the corporation income tax (l'imposta sul reddito delle persone giuridiche), whether or not they are collected by withholding at 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 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.

## CHAPTER II - Definitions

### Article 3 - *General definitions*

1. In this Convention, unless the context otherwise requires:

(a) the terms "Kuwait" means the State of Kuwait and includes any area beyond the territorial waters of Kuwait which, in accordance with the laws of Kuwait concerning the exploration and exploitation of natural resources, may be designated as an area within which the rights of Kuwait with respect to the seabed and subsoil and natural resources may be exercised;

(b) the term "Italy" means the Italian Republic 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, may be designated as an area within which the rights of Italy with respect to the seabed and subsoil and natural resources may be exercised;

(c) the terms "a Contracting State" and "the other Contracting State" mean Kuwait or Italy as the context requires;

(d) the term "person" comprises an individual, a company and any other body of persons;

(e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes<sup>2</sup>;

(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 or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

---

<sup>2</sup> Amended by art.2 of the Protocol signed in Kuwait City the 17 March 1998.

The main treaty established that: "*the term "company" means any body corporate established in accordance with public or private law and includes, in the case of Kuwait, the State of Kuwait and its political subdivisions and local authorities of any entity which is treated as a body corporate for tax purposes*".

(h) the term "nationals" means:

1. all individuals possessing the nationality of a Contracting State;
2. all legal persons, partnerships and associations deriving their status as such from the laws in force in a Contracting State;

(i) the term "competent authority" means:

1. in the case of Kuwait: 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 relating to the taxes which are the subject of this Convention.

#### Article 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 situated in that State.

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

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

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

(c) if he has an habitual abode in both Contracting States or in neither of them, 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.

#### 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, but not exclusively:
  - (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 six months.
3. The term "permanent establishment" shall not be deemed to include:
  - (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
  - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
  - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
  - (e) the maintenance of a fixed place of business solely for the purpose of carrying on scientific research for the enterprise or any other activity of a preparatory or auxiliary character.
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; or he has no such authority but maintains in the first-mentioned State a stock of goods or merchandise from which he regularly sells goods or merchandise on behalf of the enterprise.
5. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it is dealing in that State through a broker, general commission agent or any other agent for an independent status, provided that such persons are acting in the ordinary course of their business.
6. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise) shall not of itself constitute either company a permanent establishment of the other.

## CHAPTER III - Taxation of Income

### *Article 6 - Income from immovable property*

1. Income 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 sources 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, or from the extraction or exploitation of natural resources, and to gains from the alienation of any property.
4. The provisions of paragraphs 1 and 3 shall also apply to income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

### *Article 7 - Business profits*

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.
4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude the 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 this Article.

#### Article 8 - *Shipping and air transport*

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State 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.

#### Article 9 - *The 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, if the beneficial owner of the dividends holds, directly or indirectly, 75%<sup>3</sup> or more of the capital of the company paying the dividends, such dividends may also be taxed in the

---

<sup>3</sup> Amended by art.3 of the Protocol of 17 March 1998. The main treaty established that: “*However, if the beneficial owner of the dividends holds, directly or indirectly, 25% or more of the capital of the company paying the dividends...*”

Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but the tax so charged shall not exceed 5% of the gross amount of the dividends.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations. The 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 law 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.

#### Article 11 - *Interest*

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.

2. 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 the debtor's profits and premiums and prizes attached to such securities, bonds and debentures 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.

3. Paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State, in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the 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.

4. 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.

5. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payment shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

#### *Article 12 - Royalties*

1. Royalties arising in 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 that 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 10% 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 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, but shall not include fees for consultancy and technical assistance services connected to the above properties and activities.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with 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 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 liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

#### Article 13 - *Capital gains*

1. Gains from the alienation of immovable property, as defined in 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 a fixed base, may be taxed in that other State.
3. Gains from the alienation of ships or aircraft, operated in international traffic, or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. Gains from the alienation of 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 a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.
2. The term "professional services" includes, especially, independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

#### Article 15 - *Dependent personal services*

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

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

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

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

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

#### *Article 16 - Directors' fees*

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

#### *Article 17 - Artists and athletes*

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 artist, 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.

2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

#### *Article 18 - Pensions*

Subject to the provisions of 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 taxed only in that State.

#### *Article 19 - Government service*

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political or administrative subdivision or a local authority thereof to 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 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 remuneration and pensions in respect of services rendered in connection with business carried on by one of the Contracting States or a political or administrative subdivision or a local authority thereof.

#### *Article 20 - Professors and teachers*

A professor or a teacher who makes a temporary visit to a Contracting State for a period not exceeding two years for the purpose of teaching or conducting research at a university, college, school or other educational institution, and who is, or immediately before such visit was, a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State in respect of remuneration for such teaching or research.

#### *Article 21 - Students*

1. Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

2. Notwithstanding the provisions of paragraph 1, remuneration which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education or training derives from temporary services rendered in the first-mentioned Contracting State shall not be taxed in the same State, provided that such services are in connection with his education or training and that the remuneration for such services is necessary to supplement the resources available to him for the purpose of his maintenance.

#### *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, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such a case the items of income are taxable in that other Contracting State according to its own law.

#### CHAPTER IV - Methods for Elimination of Double Taxation

##### *Article 23 - 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 Kuwait, 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 Kuwait but in an amount not exceeding the 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 final withholding tax by request of the recipient of the said income in accordance with the Italian law.

3. In the case of Kuwait:

If a resident of Kuwait owns items of income which are taxable in Italy, Kuwait may tax these items of income and may give relief for the Italian taxes suffered in accordance with the provisions of its domestic laws. In such a case, Kuwait shall deduct from the taxes so calculated the income paid in Italy but in amount not exceeding that proportion of the aforesaid Kuwaiti tax which such items of income bear to the entire income.

4. Tax shall be determined with regard to residents of both Contracting States in accordance with their respective domestic laws unless otherwise provided for in this Convention.

#### CHAPTER V - Special Provisions

##### *Article 24 - Non-discrimination*

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances 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 personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents also by way of government or social subsidies.
3. Except where the provisions of Article 9, paragraph 5 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.
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 on income of every kind and description.

#### *Article 25 - Mutual agreement procedure*

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within two years from the first notification of the act resulting in taxation not in accordance with the provisions of this 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 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 paragraph. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

## *Article 26 - Exchange of information*

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by this Convention in so far as the taxation thereunder is not contrary to the Convention as well as to prevent fiscal evasion. 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 or the administrative practices 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 information, the disclosure of which would be contrary to public policy (order public).

## *Article 27 - Diplomatic agents and consular officers*

Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

## *Article 28 - Refunds*

1. Taxes withheld at 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 25 of this Convention.

## CHAPTER VI - Final Provisions

### *Article 29 - Entry into force*

1. This Convention shall be subject to ratification in accordance with the constitutional requirements of the two Contracting States and the instruments of ratification shall be exchanged through diplomatic channels as soon as possible.
2. The Convention shall enter into force on the date of the exchange of instruments of ratification and its provisions shall have effect:
  - (a) in respect of taxes withheld at source, to amounts derived on or after 1st January 1984;
  - (b) in respect of other taxes on income to taxes chargeable for any taxable period beginning on or after 1st January 1984.
3. Claims for refund or credits arising in accordance with this Convention in respect of any tax payable by residents of either of the Contracting States referring to the periods beginning on or after the 1st January 1984 and until the entry in force of this Convention shall be lodged within two years from the date of entry into force of this Convention or from the date the tax was charged whichever is later.

### *Article 30 - Termination*

This Convention shall remain in force for a period of five years and shall continue in force thereafter for similar period or periods unless either Contracting State notifies the other in writing, six months before the expiry of the initial or any subsequent period of its intention to terminate the Convention. In such event, the Convention shall cease to have effect:

- (a) in respect of taxes withheld at source, to amounts derived on or after 1st January in the calendar year next following that in which the notice is given;
- (b) in respect of other taxes on income to taxes chargeable for any taxable period beginning on or after 1st January in the calendar year next following that in which the notice is given.

In witness whereof the undersigned, duly authorised thereto, have signed this Convention.

Done in duplicate at Rome on the 17th of December 1987, corresponding to 26 Rabie Al Akhar 4-1408 H, in the Arabic, Italian and English languages, all texts being equally authentic. In case of divergency, the English text shall prevail.

## PROTOCOL

At the signing of the Convention concluded today between the Government of the Italian Republic and the Government of the State of Kuwait for the avoidance of double taxation with respect to taxes on income 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:

(a) that, with reference to Article 3, letter (e) of paragraph 1, government institutions shall be deemed, according to affiliation, to be a resident of the Italian Republic or the State of Kuwait. Any institution shall be deemed to be a government institution which has been created by the government of one of the Contracting States or, in the case of the Italian Republic, of its political subdivisions, for the fulfilment of public functions and which is recognized as such by mutual agreement of the competent authorities of the Contracting States;

(b) that, with reference to Article 4, paragraph 1, in the case of the State of Kuwait, the term "resident" shall include an individual who has his domicile in the State of Kuwait and is a Kuwaiti national and a company which is incorporated in the State of Kuwait and has its place of effective management there;

(c) With reference to Articles 5 and 7, where an enterprise of a Contracting State sells goods or merchandise or carries on business in the other Contracting State through a permanent establishment situated therein, the profits of that permanent establishment shall not necessarily be determined on the total amount received by the enterprise, but shall be determined on the basis of that part of the receipts which is attributable to the actual activity of the permanent establishment for such sales or business.

Likewise, in the case of contracts for a building site of construction or assembly project carried out by an enterprise of a Contracting State through a permanent establishment situated in the other Contracting State, the profits of such permanent establishment shall not necessarily be determined on the total amount of the contract which is effectively carried out by the permanent establishment in the Contracting State where the permanent establishment is situated, but shall be determined only on the basis of that part of the receipts derived from the contract which is attributable to the actual activity of the permanent establishment.

The above is not meant as to prevent the application of the arm's length principle contained in paragraph 2 of the Article 7.<sup>4</sup>

(d) that with reference to Article 5, a person in the meaning of paragraph 5 of this Article must be both legally and financially independent from enterprise;

(e) that, with reference to Article 7, paragraph 3, the expression "expenses which are incurred for the purposes of the permanent establishment" means the expenses directly connected with the activity of the permanent establishment and that are in accordance with the international practice;

---

<sup>4</sup>The paragraph (c) has been added by the Protocol signed in Kuwait City the 17 March 1998. The existing paragraphs from (c) to (k) has been renumbered from (d) to (l).

(f) that, with reference to Article 8, an enterprise of a Contracting State deriving profits from the operation of ships and aircraft in international traffic shall not be subject to any local income tax imposed in the other Contracting State;

(g) that, with reference to Article 15, the provisions of paragraph 3 of this Article shall also apply to the remuneration received by the employees of air transport enterprises of one Contracting State performing activities in the other Contracting State;

(h) that, with reference to Article 24, nothing in this Article shall affect the right of the Contracting State to grant a tax exemption or reduction to its own nationals who are residents of that Contracting State;

(i) that, with reference to Article 25, paragraph 1, the expression "notwithstanding the remedies provided by the national laws" means that the mutual agreement procedure is not alternative with the national contentious proceedings which shall be, in any case, preventively initiated, when the claim is related to an assessment of the Italian taxes not in accordance with this Convention;

(j) that the provisions of Article 28, paragraph 3, shall not prevent the competent authorities of the Contracting States from carrying out, by mutual agreement, other practices for the allowance of the reduction for taxation purposes provided for in this Convention;

(k) that, notwithstanding the provisions of Article 29, paragraph 2, the provisions of paragraph 1 of Article 8 shall have effect in respect of profits derived during any taxable period commencing on or after the 1st January 1980;

(l) that the remuneration paid to an individual in respect of services rendered to the Italian State Railways (F.S.), to the Italian State Post Undertaking (PP.TT.), to the Italian Foreign Trade Institution (I.C.E.), to the Italian Tourism Body (E.N.I.T.) and to the Bank of Italy, and to the corresponding Kuwait bodies, are covered by the provisions concerning governmental functions and, consequently, by paragraphs 1 and 2 of Article 19 of the Convention;

(m) notwithstanding any other provision of this Convention, a resident of a Contracting State shall not receive the benefit of any reduction in or exemption from taxes provided or in this Convention by the other Contracting State if the main purpose of the creation, or existence of such resident or any person collected with such resident, was to obtain benefits under this Convention that would not otherwise be available.

Nothing in this Convention shall affect the application of the domestic provisions to prevent fiscal evasion and tax avoidance concerning the limitation of expenses and any deductions arising from transactions between enterprises of a Contracting State and associated enterprises or permanent establishments of such enterprises which are situated in the other Contracting State, if the main purpose of the transactions undertaken between them, was to obtain benefits under this Convention that would not otherwise be available.<sup>5</sup>

Done in duplicate at Rome on the 17th of December 1987, corresponding to 26 Rabie Al Akhar 4 - 1408 H, in the Italian, Arabic and English languages, all texts being equally authentic. In case of divergency, the English text shall prevail.

---

<sup>5</sup> Paragraph added by the Protocol signed in Kuwait City the 17 March 1998.