

Agreement
Between The Republic Of Turkey And The Republic Of Italy
For The Avoidance Of Double Taxation With Respect to Taxes On Income
And The Prevention Of Fiscal Evasion

The Government Of The Republic Of Turkey
And
The Government Of The Republic Of Italy

Desiring to conclude an Agreement for the avoidance of double taxation with respect to taxes on income and the prevention of fiscal evasion.

HAVE AGREED UPON THE FOLLOWING MEASURES :

Chapter 1

SCOPE OF THE AGREEMENT

Article 1

PERSONAL SCOPE

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

Article 2

TAXES COVERED

1. This Agreement shall apply to taxes on income 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 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 capital appreciation.

3. The existing taxes to which the Agreement shall apply are, in particular:

a) in the case of Turkey:

(i) the income tax (gelir vergisi);

(ii) the corporation tax (kurumlar vergisi);

(iii) the levy on behalf of the fund for the support of the defense industry (savunma sanayii destekleme fonu);

(iv) the levy on behalf of the fund for the encouragement of social charity and solidarity (sosyal yardımlaşma ve dayanışmayı teşvik fonu); and

(v) the levy on behalf of the fund for business apprentices and for the improvement and enlargement of the vocational and technical training (çıraklık, mesleki ve teknik eğitimi geliştirme ve yaygınlaştırma fonu);

(hereinafter referred to as "Turkish tax")

b) in the case of Italy :

(i) the personal income tax (l'imposta sul reddito delle persone fisiche);

(ii) the corporate income tax (l'imposta sul reddito delle persone giuridiche);

(iii) the local income tax (l'imposta locale sui redditi);

whether or not they are collected by withholding at source;

(hereinafter referred to as "Italian tax").

4. This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of the Agreement 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. For the purposes of this Agreement, unless the context otherwise requires:

a) (i) the term "Turkey" means the territory of the Republic of Turkey, including any area in which the laws of Turkey are in force, as well as the continental shelf over which Turkey has in accordance with international law, sovereign rights to explore and exploit its natural resources;

(ii) the term "Italy" means the Republic of Italy and includes any area beyond the territorial waters of Italy which, in accordance with customary international law and the laws of Italy concerning the exploration and the exploitation of natural resources, may be designated as an area within which the rights of Italy with respect to the sea-bed and subsoil and natural resources may be exercised;

b) the terms "a Contracting State" and "the other Contracting State" mean Turkey or Italy as the context requires;

c) the term "tax" means any tax covered by Article 2 of this Agreement;

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 as a body corporate for tax purposes;

f) the term "national" means,

(i) in relation to Turkey, all individuals possessing Turkish Nationality in accordance with the Turkish Nationality Code, and all legal persons, partnerships or associations deriving their status as such from the laws in force in Turkey;

(ii) in relation to Italy, all individuals possessing the nationality of Italy all legal persons, partnerships and associations deriving their status as such from the laws in force in Italy;

g) 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;

h) the term "competent authority" means :

(i) in Turkey, the Ministry of Finance and Customs;

(ii) in Italy, the Ministry of Finance;

i) the term "international traffic" means any transport by a ship, an aircraft or a road vehicle operated by an enterprise of a Contracting State, except when the ship, aircraft or road vehicle is operated solely between places situated in the other Contracting State.

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

Article 4

RESIDENT

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, legal head office, 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 State in which he has a permanent home available to him, if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

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

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

d) if he is a national of both 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 Contracting State in which its place of effective management is situated. However, where such person has its place of effective management in one of the States and its legal head office in the other State, then the competent authorities of the Contracting State shall consult to determine by mutual agreement whether the legal head office of such a person as to be considered as the actual place of effective management or not.

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, 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, an oil or gas well, a quarry or any other place of extraction of natural resources;

g) (i) a building site, a construction or assembly project or supervisory activities in connection therewith, but only if such site, project or activities continue for a period of more than six months,

(ii) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project), within the country for a period or periods aggregating more than six months within any 12-month period.

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 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 Contracting State if such a person:

a) 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

b) has no such authority, but habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

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

Chapter III

TAXATION OF INCOME

Article 6

INCOME FROM IMMOVABLE PROPERTY

1. Income 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, as well as 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.

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. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

INTERNATIONAL TRANSPORT

1. Profits derived by an enterprise of a Contracting State from the operation of ships, aircraft or road vehicles in international traffic shall be taxable only in that State.

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

Article 9

ASSOCIATED ENTERPRISES

1. Where

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

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State-and taxes accordingly-profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are by the first mentioned State claimed to be profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits, where that other State considers the adjustment justified. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10

DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 15 percent of the gross amount of the dividends.

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

4. Profits of a company of a Contracting State carrying on business in the other Contracting State through a permanent establishment situated therein may, after having been taxed under Article 7, be taxed on the remaining amount in the Contracting State in which the permanent establishment is situated and in accordance with paragraph 2.

5. 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.

6. Subject to the provisions of paragraph 4 of this Article, 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 may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. 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.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State carries on business in the other Contracting State, in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debtclaim 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.

5. 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.

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

Article 12

ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

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

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 paid, 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 a 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 Agreement.

Article 13

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property, referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in the other State.

3. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft or road vehicles operated in international traffic, or movable property pertaining to the operation of such ships or aircraft or road vehicles, shall be taxable only in that State.

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

5. The provisions of paragraph 4 shall not affect the right of one of the States to levy according to its own law a tax on gains derived by a resident of the other State from the alienation of shares or bonds issued by a company which is a resident of the first-mentioned State (other than shares and bonds quoted on a stock exchange of that State) if the alienation takes place to a resident of the first-mentioned State and if the period between acquisition and alienation does not exceed one year.

Article 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State. However, such income may also be taxed in the other Contracting State if such services or activities are performed in that other State and if:

a) he has a fixed base regularly available to him in that other State for the purpose of performing those services or activities; or

b) he is present in that other State for the purpose of performing those services or activities for a period or periods amounting in the aggregate to 183 days or more in any continuous period of 12 months.

In such circumstances, only so much of the income as is attributable to that fixed base or is derived from the services or activities performed during his presence in that other State, as the case may be, may be taxed in that other State.

2. Income derived by an enterprise of a Contracting State in respect of professional services or other activities of a similar character shall be taxable only in that State. However, such income may also be taxed in the other Contracting State if such services or activities are performed in that other State and if:

a) the enterprise has a permanent establishment in that other State through which the services or activities are performed; or

b) the period or periods during which the services are performed exceed in the aggregate 183 days in any continuous period of 12 months.

In such circumstances only so much of the income as is attributable to that permanent establishment or to the services or activities performed in that other State, as the case may be, may be taxed in that other State. In either case, the enterprise may elect to be taxed in that other State in respect of such income in accordance with the provisions of Article 7 of this Agreement as if the income were attributable to a permanent establishment of the enterprise situated in that other State. This election shall not affect the right of that other State to impose a withholding tax on such income.

3. 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, and other activities requiring specific professional skill.

Article 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 the calendar 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 by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft or road vehicle operated in international traffic, by an enterprise of the other Contracting State, may be taxed in that other State.

Article 16

DIRECTORS' FEES

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

Article 17

ARTISTES AND ATHLETES

1. Notwithstanding the provisions of Article 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 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.

3. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting State by artistes or athletes if the visit to that State is substantially supported by public funds of the other Contracting State or a political or administrative subdivision or a local authority thereof.

Article 18

PENSIONS

1. Subject to the provisions of paragraph 2 of Article 19 of this Agreement, pensions and other similar remuneration paid in consideration of past employment to a resident of a Contracting State and any annuity paid to such a resident shall be taxable only in that State.

2. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make payments in return for adequate and full consideration in money or money's worth.

Article 19

GOVERNMENT SERVICE

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

b) Notwithstanding the provisions of sub-paragraph 1 - a) of this Article, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the recipient is a resident of that other Contracting State who:

- (i) is a national of that State not being a national of the first mentioned State; or
- (ii) not being a national of the first-mentioned State did not become a resident of that State solely for the purpose of performing the services.

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

b) Notwithstanding the provisions of sub-paragraph 2 - a) of this Article, 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 of this Agreement shall apply to remuneration or pensions in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or a political or an administrative subdivision or a local authority thereof.

Article 20

PROFESSORS AND TEACHERS

A professor or 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 not be taxed in the first-mentioned Contracting State in respect of remuneration for such teaching or research, provided that such remunerations arise from sources outside that first-mentioned Contracting State.

Article 21

STUDENTS

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned 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.

Article 22

OTHER INCOME

Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement, shall be taxable only in the other Contracting State.

Chapter IV

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 Turkey:

Where a resident of Turkey derives income which, in accordance with the provisions of this Agreement, may be taxed in Italy and in Turkey, Turkey shall, subject to the provisions of Turkish taxation laws regarding credit for foreign taxes (which shall not affect the general principle hereof), allow as a deduction from the tax on income of that person, an amount equal to the tax on income paid in Italy.

Such deduction shall not, however, exceed that part of the income tax computed in Turkey before the deduction is given, which is appropriate to the income which may be taxed in Italy.

However, no deduction will be granted if the item of income is subjected in Turkey to a final withholding tax by request of the recipient of the said income in accordance with the Turkish law.

3. In the case of Italy:

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

In such case, Italy shall deduct from the taxes so calculated the income tax paid in Turkey 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.

4. For the purposes of paragraphs 2 and 3 of this Article, when tax on business profits, dividends, interest or royalties arising in a Contracting State is exempted or reduced in accordance with the laws of that State, such tax which has been exempted or reduced shall be deemed to have been paid at an amount not exceeding:

- a) 36 per cent of business profits referred to under Article 7;
- b) 15 per cent of the gross amount of the dividends referred to under Article 10;
- c) 15 per cent of the gross amount of the interest referred to under Article 11;
- d) 10 per cent of the gross amount of the royalties referred to under Article 12.

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. Subject to the provisions of paragraph 4 of Article 10, the taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

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

3. Except where the provisions of paragraph 2 of Article 9, paragraph 6 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the 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 apply to taxes covered by Article 2 of this Agreement.

Article 25

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

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

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 Agreement.

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

Article 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by this Agreement insofar as the taxation thereunder is not contrary to the Agreement 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 Agreement. 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 practice of that or of the other Contracting State;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process or information, the disclosure of which would be contrary to public policy (ordre public).

Article 27

DIPLOMATIC AGENTS AND CONSULAR OFFICIERS

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

Article 28

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 Agreement.

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 Agreement.

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 Agreement.

Chapter VI

Final Provisions

Article 29

ENTRY INTO FORCE

1. Each Contracting State shall notify to the other the completion of the procedure required as far as it is concerned for the bringing into force of this Agreement. This Agreement shall enter into force on the first day of the second month following the day when the latter of these notifications has been received.

2. Its provisions shall have effect for taxes with respect to any taxable period beginning on or after the first day of January of the calendar year next following that of entry into force of the Agreement.

3. The existing Agreement between the Government of the Republic of Turkey and the Government of the Italian Republic for the avoidance of double taxation on income arising from the exercise of maritime and air navigation, with exchange of notes, signed in Ankara on 29 th September, 1981, shall terminate and cease to have effect in respect of taxes to which this Agreement applies in accordance with the provisions of paragraph 2 of this Article.

Article 30

TERMINATION

This Agreement shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Agreement, through the end of any calendar year after the period of five years from the date on which the Agreement enters into force. In such event, the Agreement shall cease to have effect for taxes with respect to any taxable year beginning on or after the first day of January of the year next following that in which the notice of termination is given.

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

Done in duplicate at Ankara the 27 th day of July 1990, in the Turkish, Italian and English languages, all texts being equally authoritative, except in the case of doubts, when the English text shall prevail.

For the Government of
the Republic of Turkey

Ali BOZER

The Minister Of Foreign Affairs

For the Government of
the Republic of Italy

Gianni de MICHELIS

The Minister Of Foreign Affairs

PROTOCOL

At the moment of signing the Agreement between the Republic of Turkey and the Republic of Italy 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 provisions which shall constitute an integral part of the Agreement.

I. Ad Article 4

In respect of the provisions of the second sentence of paragraph 1 of Article 4, a person, who is subject to non-resident status in one of the Contracting States, is not considered to be a resident in that State in the sense of the Agreement.

II. Ad Article 7

In respect of paragraph 1 of Article 7, profits derived from the sale of goods or merchandise of the same or similar kind as those sold, or from other business activities of the same or similar kind as those effected, through a permanent establishment, may be considered attributable to that permanent establishment if it is proved that this transaction has been resorted to in order to avoid taxation in the State where the permanent establishment is situated.

III. Ad Article 7

In respect of paragraph 3 of Article 7, no deductions shall be allowed for sums which are paid (other than the reimbursement of expenses actually incurred) by the permanent establishment to the head office or any other office of the enterprise as royalties, fees or other

similar payments in respect of the use of licences, patents or other rights, as commission for services rendered or for management, or, except in the case of a banking enterprise, as interest on sums loaned to the permanent establishment.

IV. Ad Article 7

In respect of paragraph 3 of Article 7, 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.

V. Ad. Articles 10, 11 and 12

It is understood that the "beneficial owner" clause should be interpreted in the meaning that a third country resident will not be allowed to get benefits from the Tax Agreement with regard to dividends, interest and royalties derived from Turkey or Italy, but this restriction shall in no case be applied to residents of a Contracting State.

VI. Ad Article 10

In respect of paragraph 3 of article 10, it is understood that the dividends in the case of Turkey shall also include the income from investment funds and investment trusts.

VII. Ad Article 25

In respect of paragraph 1 of Article 25, the expression "irrespective of the remedies provided by the domestic law" 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 with an assessment of the taxes not in accordance with this Agreement.

VIII. Ad article 28

It is understood that the provision of paragraph 3 of Article 28 shall not affect the competent authorities of the Contracting States from the carrying out, by mutual agreement, of the other practices for the allowance of the reductions for taxation purposes provided for in this Agreement.

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

Done in duplicate at Ankara the 27 th day of July 1990, in the Turkish Italian and English languages, all texts being equally authoritative, except in the case of doubts, when the English text shall prevail.

For the Government of
the Republic of Turkey

Ali BOZER

The Minister of Foreign Affairs

For the Government of
the Republic of Italy

Gianni De MICHELIS

The Minister of Foreign Affairs