

CONVENTION BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF PANAMA
AND
THE GOVERNMENT OF THE ITALIAN REPUBLIC
FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT
TO TAXES ON INCOME AND THE PREVENTION OF FISCAL
EVASION

The Government of the Republic of Panama and the Government of the Italian, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

Chapter I
Scope of the Convention

Article 1
Persons Covered

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

Article 2
Taxes Covered

1. This Convention shall apply to taxes on income imposed on behalf of a 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 Convention shall apply are in particular:

a) in Panama:

1. the impuesto sobre la renta provided in the Código Fiscal, Libro IV, Título I, and its related decrees and regulations.
whether or not they are collected by withholding at source.

(hereinafter referred to as "Panamanian tax").

b) in Italy:

1. the personal income tax;
2. the corporate income tax;
3. the regional tax on productive activities;

whether or not they are collected by withholding at source.

(hereinafter referred to as "Italian tax").

4. The Convention shall apply also to any identical or substantially similar taxes that are applicable at or after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their taxation laws.

Chapter II Definitions

Article 3 General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:

- a) the term "Italy" means the Italian Republic and includes any area beyond the territorial waters which is designated as an area within which Italy, in compliance with its legislation and in conformity with the International Law, may exercise sovereign rights in respect of the exploration and exploitation of the natural resources of the seabed, the subsoil and the superjacent waters;
- b) the term "Panama" means the Republic of Panama and, when used in a geographical sense, means the territory of the Republic of Panama, including inland waters, its airspace, the territorial sea and any area outside the territorial sea upon which, in accordance with International Law and on application of its domestic legislation, the Republic of Panama exercises, or may exercise in the future, jurisdiction or sovereign rights with respect to the seabed, its

subsoil and superjacent waters, and their natural resources;

- c) the terms "a Contracting State" and "the other Contracting State" mean Italy or Panama as the context requires;
- d) the term "person" includes an individual, a company and any other body of persons;
- e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- h) the term "competent authority" means:
 - (i) in Panama, the Ministerio de Economía y Finanzas;
 - (ii) in the case of Italy, the Ministry of Economy and Finance;
- i) the term "national", in relation to a Contracting State, means:
 - (i) any individual possessing the nationality or citizenship of that Contracting State; and
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of

that State prevailing over a meaning given to the term under other laws of that State.

Article 4 Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to income tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature, and also includes that State and any political or administrative subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State situated therein.

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

- a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
- b) if the State in which he has his permanent residence or centre of vital interests cannot be determined according to paragraph a), he shall be deemed to be a resident only of the State in which he has an habitual abode;
- c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement amicably.

3. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement having regard to its place of effective management. In the absence of such agreement, such person shall not be entitled to claim any relief or exemption from tax provided for by the Convention.

Article 5 Permanent Establishment

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

- a) a place of management;
- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop;
- f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. The term "permanent establishment" also encompasses:

- a) a building site, a construction, assembly or installation project, or supervisory activities in connection therewith, but only if such site, project or activities lasts more than six months;
- b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or connected project) within a Contracting State for a period or periods aggregating more than six months within any twelve-month period;
- c) the use of a structure, installations, drilling rig, ship or other like substantial equipment for the exploration for, or exploitation of, natural resources; or in activities connected with that exploration or exploitation for a period or periods exceeding six months within any twelve month period.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1, 2 and 3, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or mostly on behalf of the enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial or financial relationships which differ from those which would have been made between

independent enterprises, he will not be considered an agent of an independent status within the meaning of this paragraph.

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

Chapter III Taxation of Income

Article 6 Income From Immovable Property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall, in any case, include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply. Usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources shall also be considered as "immovable property". Ships and aircrafts shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct utilization, 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 the 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 that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

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

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

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

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 in which the home harbor of the ship is situated or, if there is no such home harbor, 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 from the participation in a pool, a joint business or an international operating agency.

4. The provisions of this Convention shall not apply with regards to the taxes, tolls, duties or similar payments that might be applicable upon utilizing the Panama Canal.

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 State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State may make an appropriate adjustment to the amount of the tax charged therein on those profits. Any such adjustment shall be made only in accordance with the mutual agreement procedure provided for by Article 25 of this Convention.

Article 10 Dividends

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

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

- a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;
- b) 10 per cent of the gross amount of the dividends in all other cases.

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

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

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

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 and 14 shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the

dividends are paid is effectively connected with a permanent establishment 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.

6. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.

7. Notwithstanding any other provision of this Convention where a company is a resident of a Contracting State has a permanent establishment in the other Contracting State, the profits taxable under Article 7, paragraph 1, may be subject to an additional tax in that other State, in accordance with its laws, but the additional charge shall not exceed 5 per cent of the amount of those profits.

Article 11

Interest

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

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed:

- (i) 5 per cent of the gross amount of the interest if the beneficial owner is a bank, and
- (ii) 10 per cent of the gross amount of the interest in any other case.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State, if:

- a) the beneficial owner of the interest is a Contracting State, the Central Bank of a Contracting State, any of its political or administrative subdivisions or local entities; or
- b) the interest is paid in relation with the sale on credit of merchandise or equipment to an enterprise of a Contracting State; or

- c) the interest is paid to other entities or bodies (including financial institutions) as a result of financing provided by such institutions or bodies in connection with agreements concluded between the Governments of the Contracting States.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from public securities and income from bonds or debentures, including premiums or prizes attaching to such securities, bonds or debentures, as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises. Penalty charges for a late payment shall not be regarded as interest for the purpose of this Article. The term does not include the items of income which are treated as dividends according to the provisions of Article 10 of this Convention.

5. The provisions of paragraphs from 1 to 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 and paragraph 3 of Article 14 shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political or administrative subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner of the interest 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 of the interest in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

8. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

Article 12

Royalties

1. Royalties arising in a Contracting State and whose beneficial owner is a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including software, cinematograph films, or films or tapes and other means of image or sound reproduction, any patent, trade mark, drawings, designs or models, plans, secret formulas or processes, or for the use of, or the right to use, industrial, commercial, or scientific equipment or for information concerning industrial commercial or scientific experience. Furthermore, it includes payments for technical assistance, technical services and consulting services.

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, performs any commercial or industrial activities the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or perform in that other State, independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 and paragraph 3 of Article 14 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by the permanent establishment or fixed base, then such royalties 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 royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.

Article 13 Capital Gains

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

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

3. Gains from the alienation of ships or aircraft operated in international traffic 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 derived by a resident of a Contracting State from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.

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

Article 14 Services

1. Income derived by a resident of a Contracting State for services rendered in the other Contracting State, may be subject to taxes in the first mentioned State. However, such income may also be taxed in the Contracting State where the services were rendered, as long as such services qualify as professional services, consulting services, industrial commercial advice, technical or management services or similar services. Notwithstanding, the tax so charged may not exceed 10 per cent of the gross amount of the payment when the beneficial owner of said payments is a resident of the other Contracting State.

2. The term "professional services" as used in this Article include, in particular, independent, scientific, literary, artistic, and educational activities, as well as medical, legal, engineering, architectural, dental and accounting activities, or other independent activities of a similar character.

3. The provisions of paragraph 1 shall not apply if the service provider, being a resident of a Contracting State,

- (i) carries on a business in the other Contracting State through a permanent establishment situated therein; or
- (ii) has a fixed base regularly available in the other Contracting State for the purpose of performing his activities.

In either of cases (i) and (ii) abovementioned, income may be taxed in the other Contracting State but only so much of it as is attributable to that permanent establishment or fixed base, as the case may be, in accordance with the provisions of Article 7.

Article 15 Dependent Personal Services

1. Subject to the provisions of Articles 16, 18, 19, and 20, 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 there from 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 six months within any twelve month period commencing or ending in the fiscal year concerned, and
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- c) the remuneration is not borne by a permanent establishment or fixed base which the employer has in the other State.

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

4. If a resident of a Contracting State becomes a resident of the other Contracting State, payments received by such resident by virtue of his employment in the first-mentioned State as severance indemnity or other similar lump sum payments, are taxed in that Contracting State.

Article 16 Directors' Fees

Directors' fee and other similar payments, derived by a resident of a Contracting State in his capacity as sole director or 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 Sportspersons

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such

exercised in the other Contracting State, may be taxed in that other State.

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

Article 18 Pensions

Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State shall be taxable only in that State.

Article 19 Government Service

1. a) Salaries, wages and other similar remuneration paid by a Contracting State or a political or administrative subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

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

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

b) However, such pensions shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16, 17, and 18 shall apply to salaries, wages, pension in respect of services rendered in connection with a business carried on by a Contracting State or a political or administrative subdivision or a local authority thereof.

Article 20 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. The benefits of this Article shall extend only for a period not exceeding six consecutive years from the date of his arrival in the first-mentioned State.

Article 21 Other income

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

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 and 14 shall apply.

3. Where, by reason of a special relationship between the persons who have carried on activities from which income referred to in paragraph 1 are derived, the payment for such activities exceeds the amount which would have been agreed upon by independent persons, the provisions of paragraph 1 shall apply only to the last mentioned amount. In such 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 the Convention.

4. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the income is paid to take advantage of this Article by means of that creation or assignment.

Chapter IV
Methods for Elimination of Double Taxation

Article 22
Elimination of Double Taxation

Double taxation shall be avoided as follows:

1. In the case of Panama, where a resident of Panama derives income which, in accordance with the provisions of this Convention, may be taxed in Italy, Panama will exempt such income from taxes.

2. In the case of Italy:

If a resident of Italy owns items of income which are taxable in Panama, 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 Panama but in an amount not exceeding that proportion of the aforesaid Italian tax which such items of income bear to the entire income.

The tax paid in Panama for which deduction is granted is only the pro rata amount corresponding to the foreign income which is included in the aggregate income.

However, no deduction shall be granted if the item of income is subjected in Italy to a substitute tax or to a final withholding tax, or to substitute taxation at the same rate as the final withholding tax, also by request of the recipient, in accordance with Italian law.

3. Where in accordance with any provision of the Convention income derived by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

Chapter V
Special Provisions

Article 23
Non discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement

connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other 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 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

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

6. However, the provisions mentioned in the previous paragraphs of this Article will not limit the application of the domestic provisions for the prevention of fiscal evasion and tax avoidance.

Article 24 **Mutual Agreement Procedure**

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 23, to that of the Contracting State of which he is a

national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 25

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political or administrative subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

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

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institutions, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 26

Members of Diplomatic Missions and Consular Posts

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of International Law or under the provisions of special agreements.

Chapter VI

Final Provisions

Article 27

Entry into Force

1. The Governments of the Contracting States shall notify each other, the completion of the internal procedures required by each Contracting State for the entry into force of this Convention.

2. The Convention shall enter into force on the first day of the fourth month following the date of receipt of the later of the notifications referred to in paragraph 1 and its provisions shall have effect:

- a) with respect to withholding taxes, on income derived on or after January 1st of the calendar year following the year in which this Convention enters into force;
- b) with respect to income taxes and other taxes (other than withholding taxes), for any tax year beginning on or after January 1st of the calendar year following the year in which this Convention enters into force;
- c) with respect to the exchange of information, the requests may be performed with regards to information relating to any date within 3 years prior to the entry into force of this Convention.

Article 28 Limitation on Benefits

1. 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 for in this Convention by the other Contracting State if the main purpose or one of the main purposes of the creation or existence of such resident or any person connected with such resident was to obtain the benefits under this Convention that would not otherwise be available.

2. 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 enterprises situated in the other Contracting State, if the main purpose or one of the main purposes of the creation of such enterprises or of the transactions undertaken between them, was to obtain the benefits under this Convention, that would not otherwise be available.

Article 29 Termination

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving written notice of termination at least six months before the end of any calendar year beginning on or after the expiration of a period of five years from the

date of its entry into force. In such event, the Convention shall cease to have effect:

- a) with respect to withholding taxes, on income derived on or after January 1st of the calendar year following the year in which the notice of termination is given;
- b) with respect to income taxes and other taxes (other than withholding taxes), for any tax year beginning on or after January 1st of the calendar year following the year the notice of termination is given.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Convention

DONE in two originals, each in the Italian, Spanish and English languages, all texts being equally authentic. In case of divergence between any of the texts, it shall be resolved in accordance with the English text.

**FOR THE GOVERNMENT OF
THE REPUBLIC OF PANAMA**
Panama, December 30, 2010
(SIGNED)
**RICARDO MARTINELLI
BERROCAL**
President of the Republic

**FOR THE GOVERNMENT OF
THE ITALIAN REPUBLIC**
Roma, December 30, 2010
(SIGNED)
SILVIO BERLUSCONI
President of the Council of
Ministers

ADDITIONAL PROTOCOL

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

At the signing of the Convention concluded today between the Government of the Italian Republic and the Government of the Republic of Panama 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 Convention.

It is understood that:

1. With reference to Article 4:

If a person is considered resident of a Contracting State only for a part of the year and resident of the other Contracting State for the remaining part of the year (change of residence), the tax liability, to the extent that it depends on the place of residence, ceases in the first-mentioned State by the end of the day of the change of domicile. In the other Contracting State, the tax liability, to the extent that it depends on the place of residence, starts on the day following the change of domicile.

2. With reference to Article 5:

The periods during which directly connected activities are carried on in a Contracting State by two or more associated enterprises finalized for the realization to a single construction, building site, assembly or installation project shall be aggregated for purposes of the application of paragraph 3. Directly connected activities shall be deemed to be those related to the finalization of the project or construction, and not those of an auxiliary nature. An enterprise shall be deemed to be associated with another enterprise if one is controlled directly or indirectly by the other, or if both are controlled directly or indirectly by a third person. Where the present principle may give rise to issues of interpretation, the Competent Authorities of the Contracting States shall endeavour to settle the question by mutual agreement.

3. With reference to Article 7:

As for paragraph 3 of Article 7, the term "expenses which are incurred for the purposes of the permanent establishment" means the expenses directly connected with the activity of the permanent establishment.

4. With reference to Article 8, profits from the operation in international traffic of ships or aircrafts shall include:

- a) profits derived from the rental on a bare boat basis of ships or aircraft used in international traffic,
- b) profits derived from the use or rental of containers if such profits are incidental to the other profits from the operation of ships or aircraft in international traffic.

5. With reference to Article 13:

Notwithstanding the provisions of paragraph 5, gains derived by a resident of a Contracting State from the alienation of shares or comparable interests representing more than 10 percent of the voting rights or capital in a company resident of the other contracting State, and those shares or comparable interests have been held by the alienator for less than a twelve-month period, may also be taxed in that other State.

6. In relation with Article 25:

- a) It is understood that an exchange of information will only be requested once the requesting Contracting State has exhausted all regular sources of information available under the internal taxation procedure.
- b) It is understood that the administrative assistance provided for in Article 25 does not include (i) measures aimed only at the simple collection of pieces of evidence, or (ii) when it is improbable that the requested information will be relevant for controlling or administering tax matters of a given taxpayer in a Contracting State.
- c) It is understood that the tax authorities of the requesting State shall provide the following information to the tax authorities of the requested State when making a request for information under Article 25 of the Convention:

- (i) information sufficient to identify the person under examination or investigation (typically, name, date and place of birth and, to the extent known, an address, tax identification number, an account number or similar identifying information)
 - (ii) the period of time for which the information is requested;
 - (iii) a statement of the information sought including its nature and the form in which the requesting State wishes to receive the information from the requested State;
 - (iv) the tax purpose for which the information is sought;
 - (v) to the extent known, the name and address of any person believed to be in possession of the requested information.
- d) It is further understood that Article 25 of the Convention shall not commit the Contracting States to exchange information on an automatic basis.
- e) It is understood that in case of an exchange of information, the administrative procedural rules regarding taxpayers' rights provided for in the requested Contracting State remain applicable before the information is transmitted to the requesting Contracting State. It is further understood that this provision aims at guaranteeing the taxpayer a fair procedure and not at preventing or unduly delaying the exchange of information process. In those cases, a rule in the requesting Contracting State providing for an extension of the period prescribed for the assessment shall not be considered as contrary to the non-discrimination principle.
7. With reference to Italy,
- a) 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.

- b) 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.
- c) 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 24 of this Convention.

8. Nothing in this Convention shall prevent either Contracting State in applying its domestic tax laws in order to prevent fiscal evasion and tax avoidance.

9. Assessment of the operation of the Convention.

The Competent Authorities will consult each other on an ongoing basis to assess the effectiveness of the Convention's functioning as well as its responsiveness to their respective and mutual interests.

10. Implementing legislation.

The Contracting Parties shall enact any legislation necessary to comply with, and give effect to, the terms of the Agreement.

DONE in two originals, each in the Spanish, Italian and English languages, all texts being equally authentic. In case of divergence between any of the texts, it shall be resolved in accordance with the English text.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Additional Protocol.

**FOR THE GOVERNMENT OF
THE REPUBLIC OF PANAMA**
Panama, December 30, 2010
(SIGNED)
**RICARDO MARTINELLI
BERROCAL**
President of the Republic

**FOR THE GOVERNMENT OF
THE ITALIAN REPUBLIC**
Roma, December 30, 2010
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SILVIO BERLUSCONI
President of the Council of
Ministers