

LN. 31 of 1986

INCOME TAX ACT, 1948

(ACT NO. LIV OF 1948)

**Double Taxation Relief, (Taxes on Income) (Republic of Italy)
Order, 1986**

IN exercise of the powers conferred by section 68A of the Income Tax Act, 1948, the Deputy Prime Minister and Minister of Finance and Customs has made the following order: –

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (Republic of Italy) Order, 1986. Citation.

2. It is hereby declared –

Arrangements
to have effect.

(a) that the arrangements specified in the Agreement set out in the Schedule to this Order have been made with the Government of the Republic of Italy with a view to affording relief from double taxation in relation to the following taxes imposed by the laws of the Republic 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*);

even if they are collected by withholding taxes at the source (hereinafter referred to as "Italian tax");

(b) that it is expedient that those arrangements should have effect.

SCHEDULE
AGREEMENT
BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF MALTA
AND
THE GOVERNMENT OF 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 Malta 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 as follows:

CHAPTER I

Scope of the Agreement

ARTICLE 1

Personal Scope

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 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 and salaries paid by enterprises, as well as taxes on capital appreciation.

(3) The existing taxes to which this Agreement shall apply are:

(a) 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*);

even if they are collected by withholding taxes at the source (hereinafter referred to as "Italian tax");

(b) in the case of Malta:
the income tax and surtax, including prepayments of tax whether made by deduction at source or otherwise,
(hereinafter referred to as "Malta tax").

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

(5) Where the Agreement provides that income arising in a Contracting State shall be relieved from tax in that State, either in full or in part, and, under the law in force in the other Contracting State, such income is subject to tax by reference to the amount thereof which is remitted to or received in that other State and not by reference to the full amount thereof, then the relief to be allowed in the first mentioned State shall apply only to so much of the income as is remitted to or received in the other State.

CHAPTER II

Definitions

ARTICLE 3

General Definitions

(1) In this Agreement, unless the context otherwise requires:

(a) the term "Italy" means the Republic of Italy;

(b) the term "Malta" means the Republic of Malta;

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

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

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

(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 “national” means:

(i) in respect of Italy, any individual possessing the nationality of Italy, and any legal person, partnership and association deriving its status as such from the law in force in Italy;

(ii) in respect of Malta, any citizen of Malta as provided for in Chapter III of the Constitution of Malta and in the Maltese Citizenship Act, 1965, and any legal person, partnership or association deriving its status as such from the law in force in Malta;

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

(i) the term “competent authority” means:

(i) in the case of Italy, the Ministry of Finance;

(ii) in the case of Malta, the Minister responsible for finance or his authorised representative.

(2) In the application of this Agreement by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of this Agreement.

ARTICLE 4

Fiscal Domicile

(1) For the purpose of this Agreement, the term “resident of a Contracting State” means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. The term does not include any person who is liable to tax in that Contracting State in respect only of income from sources situated in that State.

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

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

(b) If the Contracting State in which he has his centre of vital interests cannot be determined, or if he has no permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

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

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

(3) Where by reasons 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.

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, quarry or other place of extraction of natural resources;

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

(h) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel, where activities of this nature continue (for the same or a connected project) within the country for a period or periods aggregating more than twelve months within any two-year 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 for collecting information for the enterprise;

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

(4) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State — other than an agent of an independent status to whom paragraph (5) applies — shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

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

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

CHAPTER III

Taxation of Income

ARTICLE 6

Income from Immovable Property

(1) Income from immovable property may be taxed in the Contracting State in which such property is situated.

(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, rights to which the provisions of general law respecting immovable property apply. The term shall also include 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; 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 professional 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 the determination of 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) In so far as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph (2) shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles embodied in this Article.

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

(6) For the purpose 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 Agreement, 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 or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.

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

ARTICLE 9

Associated Enterprises

Where -

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

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

ARTICLE 10

Dividends

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

(2) However, such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of that State, but:

(a) where the dividends are paid by a company resident of Italy to a resident of Malta who is the beneficial owner thereof, the Italian tax so charged shall not exceed 15 per cent of the gross amount of the dividends;

(b) where the dividends are paid by a company resident of Malta to a resident of Italy who is the beneficial owner thereof:

(i) Malta tax shall not exceed that chargeable on the company paying the dividends in respect of the profits so distributed;

(ii) notwithstanding the provisions of sub-paragraph (i), Malta tax shall not exceed 15 per cent of the gross amount of the dividends if such dividends are paid out of gains or profits earned in any year in respect of which the company is in receipt of tax benefits under the provisions regulating aids to industries in Malta, and the shareholder submits returns and accounts to the taxation authorities of Malta in respect of his income liable to Malta tax for the relative year of assessment:

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

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

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

(4) The provisions of paragraphs (1) and (2) shall not apply if the recipient 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 professional services from a fixed base situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case the dividends are taxable in that other Contracting State according to its own law.

(5) Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, or subject the company’s undistributed profits to a tax on 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 be taxed in the Contracting State in which it arises, according to the law of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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

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

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

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

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

(5) The provisions of paragraphs (1) and (2) shall not apply if the recipient 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 professional services from a fixed base situated therein and the debt-claims in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the interest is taxable in that other Contracting State according to its own law.

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

(7) Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, 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 recipient in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 12

Royalties

(1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if such resident is the beneficial owner of the royalties and the royalties consist of payments of any kind received as consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, cinematographic films or tapes for television or broadcasting.

(2) Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State if the royalties consist of payments of any kind received as a consideration for the use of, or the right to use, any patent, trade mark, design, model, plan, secret formula or process, industrial, commercial or scientific equipment, or information concerning industrial, commercial or scientific experience. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 10 per cent of the gross amount of such royalties.

(3) The provisions of paragraphs (1) and (2) shall not apply if the recipient 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 professional 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 of fixed base. In such a case the royalties are taxable in that other Contracting State according to its own law.

(4) 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 in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

(5) Where, owing to a special relationship between the payer and the recipient 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 recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 13

Capital Gains

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

(2) Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) of such a fixed base, may be taxed in the other State. However, gains from the alienation of ships or aircraft operated in international traffic, as well as gains from the alienation of 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.

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

ARTICLE 14

Independent Personal Services

(1) Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State. However, such income may be taxed in the other Contracting State in the following circumstances:

(a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities (in which case only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State); or

(b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days during any calendar year.

(2) The term “professional services” includes, especially, independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers architects, dentists and accountants.

ARTICLE 15

Dependent Personal Services

(1) Subject to the provisions of Articles 16, 18, 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 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 in respect of an employment exercised aboard a ship or aircraft in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

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 or other similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17

Artists and Athletes

(1) Notwithstanding the provisions of Articles 14 and 15, income derived by entertainers, such as theatre, motion picture, radio or television artists, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

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

ARTICLE 18

Pensions and Annuities

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

(2) As used in this Article:

(a) the term “pensions and other similar remuneration” means periodic payments made after retirement in consideration of past employment, or by way of compensation for injuries received in connection with past employment.

(b) the term “annuity” means a stated sum paid periodically during life, or during a specified or ascertainable period of time, under an obligation to make the 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) However, 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; or

(ii) 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) However, such pension shall be taxable only in the other Contracting State if the recipient is a national of and a resident of that State.

(3) The provisions of Articles 15,16 and 18 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.

(4) The provisions of paragraph (1) (a) shall likewise apply in respect of remuneration paid, under a development assistance programme of a Contracting State, a political or administrative subdivision or a local authority thereof, out of funds exclusively supplied by that State, those subdivisions or local authorities thereof, to a specialist or volunteer seconded to the other Contracting State with the consent of that other State.

ARTICLE 20

Teachers, Students and Trainees

(1) 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 be exempt from tax in the first-mentioned Contracting State in respect of remuneration for such teaching or research.

(2) Payments which a student or trainee who is or was formerly a resident of a Contracting State and who is present in the other Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall be exempt from tax in that other Contracting State, provided that such payments are made to him from outside that other Contracting State.

(3) Remuneration which a trainee who is or was formerly a resident of a Contracting State derives from an employment which he exercises in the other Contracting State for the purpose of practical training for a period of time which is reasonably required to conclude his training shall not be taxed in that other State.

(4) Remuneration which a student who is or was formerly a resident of a Contracting State derives from a part time employment which he exercises in the other Contracting State for a period of time which is reasonably required to conclude his studies shall not be taxed in that other 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 Agreement shall be taxable only in that State.

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

CHAPTER IV

Method for Elimination of Double Taxation

ARTICLE 22

Elimination of Double Taxation

(1) Double taxation shall be eliminated in accordance with the following paragraphs of this Article.

(2) If a resident of Italy owns items of income which are taxable in Malta, 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 a case, Italy shall deduct from the taxes so calculated the Malta tax on income, but in an amount not exceeding that proportion of the aforesaid Italian tax which such items of income bear to the entire income.

On the contrary no deduction will be granted if the items of income are subjected in Italy to a final withholding tax by request of the recipient of the said income in accordance with Italian law.

(3) Subject to the provisions of the law of Malta regarding the allowance of a credit against Malta tax in respect of foreign tax, where, in accordance with the provisions of this Agreement, there is included in a Malta assessment income from sources within Italy, the Italian tax on such income shall be allowed as a credit against the relative Malta tax payable thereon.

(4) For the purposes of paragraphs (2) and (3) of this Article, where tax on dividends, interest or royalties arising in a Contracting State is exempted or reduced for a limited period of time in accordance with the laws of that State, any such tax which has been exempted or reduced shall be deemed to have been paid in an amount not exceeding:

- (a) 15 per cent of the gross amount of the dividends referred to in Article 10;
- (b) 10 per cent of the gross amount of the interest referred to in Article 11;
and
- (c) 10 per cent of the gross amount of the royalties referred to in Article 12.

CHAPTER V

Special Provisions

ARTICLE 23

Non-discrimination

(1) The nationals of a Contracting State, whether or not they are residents of one of the Contracting States, 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.

(2) The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

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

(3) Except where the provisions of Article 9, paragraph (7) of Article 11, or paragraph (5) 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) In this Article the term “taxation” means taxes of every kind and description.

ARTICLE 24

Mutual Agreement Procedure

(1) Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is 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. This case must be presented within three years from the first notification of the action giving rise to taxation not in accordance with 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 an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the national laws of the Contracting States.

(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. They may also consult together for the elimination of double taxation in cases not provided for in 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.

ARTICLE 25

Exchange of Information

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out 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 this 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 which are the subject of the Agreement. Such persons or authorities shall use the information only for such purposes. These persons or authorities 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 one of the Contracting States 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 particulars which are 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 26

Diplomatic and Consular Officials

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

ARTICLE 27

Refunds

(1) Taxes withheld at source in a Contracting State will be refunded at the request of the taxpayer or of the Contracting State of which he is a resident, if the right to collect the said taxes is regulated by the provisions of this Agreement.

(2) Claims for refund are to be filed within the time limits prescribed by the law of the Contracting State obliged to make repayment and are to be accompanied by an official certificate from the competent authorities of the other State of which claimant is a resident. This shall certify that the conditions which give rise to entitlement to refund have been fulfilled.

(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 24 of this Agreement.

CHAPTER VI

Final Provisions

ARTICLE 28

Entry into Force

(1) This Agreement shall be ratified and the instruments of ratification shall be exchanged at Rome as soon as possible.

(2) The Agreement shall enter into force after the exchange of instruments of ratification, and its provisions shall have effect:

(a) in Italy, as respects income assessable for any taxable period commencing on or after the first day of January, 1976;

(b) in Malta, in respect of taxes which are levied for any year of assessment beginning with the year of assessment which brings to charge the income of 1976.

(3) Any claim for refund or credit arising in accordance with this Agreement in respect of any tax payable by a resident of a Contracting State referring to the taxable periods commencing on or after 1st January 1976 and until the entry into force of this Agreement shall be lodged within three years from the date of entry into force of this Agreement or from the date when the tax is charged, whichever is the later. Nothing herein contained shall reduce any longer time limit available to such resident for this purpose under the law of the Contracting State of which he is a resident.

ARTICLE 29

Termination

This Agreement shall remain in force indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting State, through diplomatic channels, written notice of termination and, in such event, the Agreement shall cease to be effective:

(a) in Italy, as respects income assessable for any taxable period commencing on or after the first day of January in the calendar year next following that in which notice of termination is given;

(b) in Malta, in respect of taxes which are levied for any year of assessment on income derived during any period commencing on the first day of January in the year next following that in which notice of termination is given, or in subsequent years.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Agreement.

DONE at Valletta this 16th day of July, 1981 in duplicate, in the Italian and English languages, both texts being equally authentic.

For the Government of
the Republic of Malta

Robert Stivala
Secretary, Ministry of Finance
Customs and People's
Financial Investments.

For the Government of
the Republic of Italy

Maurizio Battaglini
Ambassador of Italy.

PROTOCOL

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

- I With reference to Article 3, in the event of agreement being reached between Malta and Italy regulating their respective rights over the continental shelf and allied matters, the Contracting States will enter into negotiations in order to amend the definitions of Italy and Malta taking account of the agreement so reached.
- II With reference to Article 5, an offshore drilling site is included in the expression “a mine, quarry or other place of extraction of natural resources” in paragraph (2)(f) thereof.
- III With reference to paragraph (3) of Article 7, the expression “expenses which are incurred for the purposes of the permanent establishment” means expenses directly connected with the activity of the permanent establishment.
- IV
 - (a) With reference to Article 8, where profits derived from the operation of a ship in international traffic by an enterprise whose place of effective management is situated in Malta are exempt from tax under the provisions of section 86 of the Merchant Shipping Act, 1973, or under any identical or similar provisions, such profits may be taxed in Italy unless it is proved to the satisfaction of the competent authorities of Italy that not more than twenty per cent of the capital of the company owning the relative ship is owned, directly or indirectly, by persons not residents of Malta.
 - (b) With further reference to Article 8, an enterprise of a Contracting State deriving profits from the operation of ships or aircraft in international traffic shall not be subject to any local income tax imposed in the other Contracting State.
- V With reference to paragraph (1) of Article 24, the expression “notwithstanding the remedies provided by the national laws” means that the mutual agreement procedure is not alternative to the national contestation proceedings which should, in any case, be initiated within the time limits of the national law.
- VI The provisions of paragraph (3) of Article 27 shall not prevent the competent authorities of the Contracting States from adopting, by mutual agreement, other procedures for the reduction of taxation in accordance with this Agreement.

VII Notwithstanding the provisions of paragraph (2) of Article 28, the provisions of Article 8 shall be applicable as respects income derived during any taxable period commencing on or after the 1st January, 1969.

DONE at Valletta this 16th day of July, 1981 in duplicate, in the Italian and English languages, both texts being equally authentic.

For the Government
the Republic of Malta

Robert Stivala
Secretary, Ministry of Finance
Customs and People's
Financial Investments.

For the Government of
the Republic of Italy

Maurizio Battaglini
Ambassador of Italy.

EXCHANGE OF LETTERS

16 July, 1981

Excellency,

I have the honour to refer to Article 12 of the Agreement between the Government of Malta and the Government of Italy for the avoidance of double taxation with respect to taxes on income and the prevention of fiscal evasion signed today at Valletta, and to propose on behalf of the Government of the Republic of Italy, that the two Governments shall agree that, if the Government of Malta concludes an Agreement with any other OECD country limiting the rate of tax on royalties referred to in paragraph (2) of the said Article to a rate less than ten per cent of the gross amount of the royalties, the two Governments shall consult each other with a view to modifying the said Article in order to extend the same treatment on a reciprocal basis. The Government of Malta shall inform the Government of Italy about any new Agreement with OECD countries which has a rate of less than ten per cent on such royalties as soon as possible.

I have furthermore the honour to propose that the present Note and Your Excellency's reply confirming the acceptance by the Government of Malta of the above proposal shall be regarded as constituting an agreement between the two Governments concerning paragraph (2) of Article 12 of the said Agreement.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

Maurizio Battaglini,
Ambassador of the
Republic of Italy.

Mr Robert Stivala,
Secretary,
Ministry of Finance, Customs and
People's Financial Investments,
Valletta.

16 July, 1981

Excellency,

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

“ I have the honour to refer to Article 12 of the agreement between the Government of Malta and the Government of Italy for the avoidance of double taxation with respect to taxes on income and the prevention of fiscal evasion signed today at Valletta, and to propose on behalf of the Government of the Republic of Italy, that the two Governments shall agree that, if the Government of Malta concludes an Agreement with any other OECD country limiting the rate of tax on royalties referred to in paragraph (2) of the said Article to a rate less than ten per cent of the gross amount of the royalties, the two Governments shall consult each other with a view to modifying the said Article in order to extend the same treatment on a reciprocal basis. The Government of Malta shall inform the Government of Italy about any new Agreement with OECD countries which has a rate of less than ten per cent on such royalties as soon as possible.

“I have furthermore the honour to propose that the present Note and Your Excellency's reply confirming the acceptance by the Government of Malta of the above proposal shall be regarded as constituting an agreement between the two Governments concerning paragraph (2) of Article 12 of the said Agreement.

“I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.”

I have the honour to inform you that the Government of Malta is in agreement with the above proposal.

I avail myself of this opportunity to extend to your Excellency the assurance of my highest consideration.

Robert J. Stivala,
Secretary
Ministry of Finance, Customs and
People's Financial Investments.

His Excellency Maurizio Battaglini,
Ambassador of the Republic of Italy.