

No. 30325

**REPUBLIC OF KOREA
and
ITALY**

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (with protocol). Signed at Seoul on 10 January 1989

Authentic texts: Korean, Italian and English.

Registered by the Republic of Korea on 6 October 1993.

**RÉPUBLIQUE DE CORÉE
et
ITALIE**

Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu (avec protocole). Signée à Séoul le 10 janvier 1989

Textes authentiques : coréen, italien et anglais.

Enregistrée par la République de Corée le 6 octobre 1993.

CONVENTION¹ BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF THE REPUBLIC OF ITALY FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of Korea and the Government of the Republic of Italy,

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 upon the following measures:

CHAPTER I
SCOPE OF THE CONVENTION

Article 1
PERSONAL SCOPE

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

Article 2
TAXES COVERED

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political or

¹ Came into force on 14 July 1992 by the exchange of the instruments of ratification, which took place at Rome, in accordance with article 29 (2).

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:

a) In the case of Korea:

- i) the income tax;
- ii) the corporation tax; and
- iii) the inhabitant tax where charged by reference to the income tax or the corporation tax;

whether or not they are collected by withholding at the source.

(hereinafter referred to as "Korean Tax");

b) In the case of Italy:

- i) the personal income tax (l'imposta sul reddito delle persone fisiche);
- ii) the corporate income tax (l'imposta sul reddito delle persone giuridiche);
- iii) the local income tax (l'imposta locale sui redditi);

whether or not they are collected by withholding at the source.

(hereinafter referred to as "Italian tax")

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

CHAPTER II

DEFINITIONS

Article 3

GENERAL DEFINITIONS

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

- a) the term "Korea" means the territory of the Republic of Korea including any area adjacent to the territorial sea of the Republic of Korea which has been or may hereinafter be designated, in accordance with the laws of the Republic of Korea, as an area within which the sovereign rights of the Republic of Korea with respect to the sea-bed

and sub-soil and their natural resources may be exercised;

- b) the term "Italy" means the Republic of Italy and includes any area beyond the territorial waters of Italy which, in accordance with the laws of Italy concerning the exploration and exploitation of natural resources, may be designated as an area within which the rights of Italy with respect to the sea-bed and natural resources may be exercised;
- c) the terms "a Contracting State" and "the other Contracting State" mean Korea or Italy as the context requires;
- d) the term "person" includes an individual, a company and any other body of persons ;
- e) the term "company" means any body corporate or any entity which is treated 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 "tax" means Korean tax or Italian tax, as the context requires;

- h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- i) the term "nationals" means:
 - i) all individuals possessing the nationality of a Contracting State;
 - ii) all legal persons, partnerships and associations deriving their status as such from the laws in force in a Contracting State;
- j) the term "competent authority" means:
 - i) in the case of Korea;
the Minister of Finance or his authorized representative;
 - ii) in the case of Italy; the Ministry of Finance.

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

Article 4

RESIDENT

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the law of that State, is liable to tax therein by reason of his domicile, residence, place of head or main office, main object of the activity, place of management, or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

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

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

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated. In case of doubts the competent authorities of the Contracting States shall settle the question by mutual agreement.

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business in which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" shall include especially:
 - a) a place of management;
 - b) a branch;
 - c) an office;
 - d) a factory;

- e) a workshop;
- f) a mine, quarry or other place of extraction of natural resources;
- g) a building site or construction or assembly project which exists for more than twelve months.

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

- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.

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

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

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

CHAPTER III
TAXATION OF INCOME

Article 6

INCOME FROM IMMOVABLE PROPERTY

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

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

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

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7

BUSINESS PROFITS

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

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

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

5. 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.

6. 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 of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. The provisions of paragraph 1 shall also apply to profits derived from the participation in a pool, a joint business or 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 also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

a) 10 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) 15 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States may 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 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 or Article 14, as the case may be, 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.

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 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 may 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 including a local authority thereof:

- b) the interest is paid to the Government of the other Contracting State including a local authority thereof or the central bank of that other Contracting State:
or
- c) the interest is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by any institution specified and agreed in letters exchanged between the competent authorities 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, 2 and 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 or Article 14, as the case may be, 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 is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount.

In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

Article 12

ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the 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 the royalties. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this limitation.
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or tapes for television or broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a

permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

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

of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13

CAPITAL GAINS

1. Gains 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 of which the enterprise is a resident.

4. Gains derived by a resident of a Contracting State from the alienation of shares in a company which is a resident of the other Contracting State may be taxed in that other State, if the resident holds or held at anytime during the previous two years more than 25 per cent of capital in the company.

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

INDEPENDENT PERSONAL SERVICES

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

- a) If he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in 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 in the fiscal year concerned;

in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

Article 15

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

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

- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State;
and
- c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State, shall be taxable only in that State.

Article 16

DIRECTORS' FEES

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

Article 17

ARTISTES AND ATHLETES

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or

television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

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

3. Notwithstanding the provisions of paragraph 1, income derived by an entertainer or an athlete from his personal activities as such in a Contracting State shall be taxable only in the other Contracting State if his visit to the first-mentioned State is supported substantially from the public funds of that other State or of one of its political or administrative subdivisions or local authorities.

Article 18

PENSIONS

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

Article 19

GOVERNMENT SERVICE

1. a) Remuneration, other than a pension, paid by a Contracting State or a political or administrative subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
 - b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
 - i) is a national of that State, or
 - ii) did not become a resident of that State solely for the purpose of rendering the services.

2. a) Any pension paid by, or out of funds created by, a Contracting State or a political or administrative subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
 - b) However, such pension shall be taxable only in the other Contracting State if the individual is a national of, and a resident of, that State.

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

Article 20

STUDENTS AND APPRENTICES

An individual who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely as a student or as a business or technical apprentice shall be exempt from tax in that first-mentioned State for a period not exceeding five years on -

- a) all remittances from abroad for the purposes of his maintenance, education or training; and
- b) any remuneration for dependent personal services rendered in the first-mentioned State with a view to supplementing the resources available to him for such purposes.

Article 21

PROFESSORS AND TEACHERS

A professor or teacher who makes a temporary visit to a Contracting State 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 for a period not exceeding two years in respect of remuneration for such teaching or research.

Article 22

OTHER INCOME

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

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

CHAPTER IV
ELIMINATION OF DOUBLE TAXATION

Article 23
METHOD FOR ELIMINATION OF
DOUBLE TAXATION

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

2. If a resident of Italy owns items of income which are taxable in Korea, 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 case, Italy shall deduct from the taxes so calculated the Korean tax paid 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.

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

3. Subject to the provisions of Korean tax law regarding the allowance as a credit against Korean tax of tax payable in any country other than Korea (as it may be amended from

time to time without changing the general principle hereof), the Italian tax paid (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) under the laws of Italy and in accordance with this Convention, whether directly or by deduction, in respect of income from sources within Italy shall be allowed as a credit against Korean tax payable in respect of that income. The credit shall not, however, exceed that proportion of Korean tax which the income from sources within Italy bears to the entire income subject to Korean tax.

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 in accordance with the laws of that State, such tax which has been exempted or reduced shall be deemed to have been paid at an amount of:

- a) 7.50% of the gross amount of the dividends referred to in paragraph 3 of Article 10;
- b) 7.50% of the gross amount of the interest referred to in paragraph 4 of Article 11; and
- c) 10% of the gross amount of the royalties referred to in paragraph 3 of Article 12.

This provision shall apply only in respect of dividends, interest and royalties paid during a period of five years starting from the first day of January of the calendar year next following that of entry into force of the Convention.

CHAPTER V
SPECIAL PROVISIONS

Article 24
NON-DISCRIMINATION

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

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

3. Except where the provisions of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of

a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first mentioned State.

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

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

Article 25

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, 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 24, to that of the Contracting State of which he is a national.

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

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

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

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

of representatives of the competent authorities of the Contracting States.

Article 26

EXCHANGE OF INFORMATION

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

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

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

Article 27

DIPLOMATIC AGENTS AND CONSULAR OFFICERS

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

Article 28

REFUNDS

1. Taxes withheld at the source in a Contracting State will be refunded by request of the taxpayer or of the State

of which he is a resident if the right to collect the said taxes is affected by the provisions of this Convention.

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

3. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article, in accordance with the provisions of Article 25 of this Convention.

CHAPTER VI FINAL PROVISIONS

Article 29 ENTRY INTO FORCE

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at *Rome* as soon as possible.

2. The Convention shall enter into force on the date of the exchange of instruments of ratification and its provisions shall have effect:

- a) in respect of tax withheld at the source on amounts paid on or after the first day of January of the calendar year next following that in which the exchange of the instruments of ratification takes place; and
- b) in respect of other taxes for taxable periods beginning on or after the first day of January of the calendar year next following that in which the exchange of instruments of ratification takes place.

Article 30

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 notice of termination at least six months before the end of any calendar year after the period of five years from the date on which the Convention enters into force. In such event, this Convention shall cease to have effect:

- a) In respect of tax withheld at the source on amounts paid on or after the first day of January in the

calendar year next following that in which the notice is given; and

- b) In respect of other taxes for taxable periods beginning on or after the first day of January in the calendar year next following that in which the notice is given.

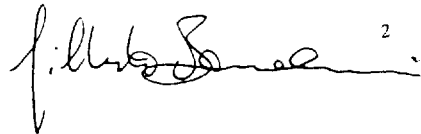
In witness thereof the undersigned, duly authorised thereto, have signed this Convention.

Done in duplicate at *Seoul* the *10th* day of *January*, 19*89*, in the Korean, Italian and English languages, all texts being equally authoritative. In case of any divergency of interpretation, the English text shall prevail.

For the Government
of the Republic of Korea:



For the Government
of the Republic of Italy:



¹ Shin Dong-won.

² Gilberto Bonalumi.

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

At the signing of the Convention concluded today between the Government of the Republic of Korea and the Government of 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 said Convention.

It is understood that:

1. With reference to Article 2, the Convention shall also apply to the Korean defense tax where charged by reference to the income tax or the corporation tax.
2. With reference to Article 5, paragraph 2, a building site or construction or assembly project is not considered as a permanent establishment if it exists for less than twelve months.
3. With reference to Article 7, paragraph 3, the expression "expenses which are incurred for the purposes of the

permanent establishment" means the expenses connected with the activity of the permanent establishment.

4. With reference to Article 11, paragraph 3 c), the provisions of that paragraph shall include the interest arising in a Contracting State in respect of loans or credits made or guaranteed, in the case of Korea, by the Export Import Bank of Korea or, in the case of Italy, by its institution equivalent to the Export Import Bank of Korea.

5. With reference to Article 19, the provisions of paragraphs 1 and 2 of this Article shall likewise apply to remuneration or pensions paid to an individual in respect of services rendered:
 - a) in the case of Korea, to the Bank of Korea, the Export Import Bank of Korea, the Korea Exchange Bank, the Korea Trade Promotion Corporation, the Korea National Tourism Corporation and other institutions controlled by government, performing functions of a governmental nature; and

 - b) in the case of Italy, to the Italian State Railways (F.S), the Italian State Post Undertaking (PP. TT.), the Italian Foreign Trade Institution (I.C.E), the Italian Tourism Body (E.N.I.T), the Italian Central Bank (Banca d' Italia) and other institutions

controlled by government, performing functions of a governmental nature.

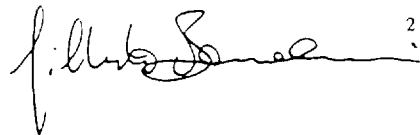
6. With reference to paragraph 1 of Article 25, the expression "irrespective of the remedies provided by the domestic law" means that the mutual agreement procedure is not alternative with the national contentious proceedings which shall be, in any case, preventively initiated, when the claim is related with an assessment of the taxes not in accordance with this Convention.
7. The provision of paragraph 3 of Article 28 shall not affect the competent authorities of the Contracting States from the carrying out, by mutual agreement, of other practices for the allowance of the reductions for taxation purposes provided for in this Convention.

Done in duplicate at *Seoul* the *10th* day of *January*, 1989, in the Korean, Italian and English languages, all texts being equally authoritative. In case of any divergency of interpretation, the English text shall prevail.

For the Government
of the Republic of Korea:

For the Government
of the Republic of Italy:

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¹ Shin Dong-won.

² Gilberto Bonalumi.