

ADDITIONAL PROTOCOL

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

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

It is understood that:

1. With reference to Article 4:

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

2. With reference to Article 5:

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

3. With reference to Article 7:

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

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

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

5. With reference to Article 13:



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

6. In relation with Article 25:

a) It is understood that an exchange of information will only be requested once the requesting Contracting State has exhausted all regular sources of information available under the internal taxation procedure.

b) It is understood that the administrative assistance provided for in Article 25 does not include (i) measures aimed only at the simple collection of pieces of evidence, or (ii) when it is improbable that the requested information will be relevant for controlling or administering tax matters of a given taxpayer in a Contracting State.

c) It is understood that the tax authorities of the requesting State shall provide the following information to the tax authorities of the requested State when making a request for information under Article 25 of the Convention:

- (i) information sufficient to identify the person under examination or investigation (typically, name, date and place of birth and, to the extent known, an address, tax identification number, an account number or similar identifying information)
- (ii) the period of time for which the information is requested;
- (iii) a statement of the information sought including its nature and the form in which the requesting State wishes to receive the information from the requested State;
- (iv) the tax purpose for which the information is sought;
- (v) to the extent known, the name and address of any person believed to be in possession of the requested information.

d) It is further understood that Article 25 of the Convention shall not commit the Contracting States to exchange information on an automatic basis.

e) It is understood that in case of an exchange of information, the administrative procedural rules regarding taxpayers' rights provided for in the requested Contracting State remain applicable before the information is transmitted to the requesting Contracting State. It is further understood that this provision aims at guaranteeing the taxpayer a fair procedure and not at preventing or unduly delaying the exchange of information process. In those cases, a rule in the requesting Contracting State providing for an extension of the period prescribed for the assessment shall not be considered as contrary to the non-discrimination principle.

7. With reference to Italy,

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

b) Claims for refund, that shall be produced within the time limit fixed by the law of the Contracting State which is obliged to carry out the refund, shall be accompanied by an official



certificate of the Contracting State of which the taxpayer is a resident certifying the existence of the conditions required for being entitled to the application of the allowances provided for by this Convention.

c) The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this Article, in accordance with the provisions of Article 24 of this Convention.

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

9. Assessment of the operation of the Convention.

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

10. Implementing legislation.

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

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

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

THE GOVERNMENT OF THE ITALIAN
REPUBLIC

Rome, 30 DIC 2010

SILVIO BERLUSCONI
President of the Council of Ministers



THE GOVERNMENT OF THE
REPUBLIC OF PANAMA

Panama City, 30 DIC 2010

RICARDO MARTINELLI BERROCAL
President of the Republic



LAVORI PREPARATORI

Camera dei deputati (atto n. 3086):

Presentato dal Ministro degli affari esteri (GENTILONI).

Assegnato alla III commissione (affari esteri e comunitari), in sede referente, il 26 gennaio 2016 con pareri delle commissioni I, V e VI.

Esaminato dalla III commissione, in sede referente, il 30 marzo e il 27 aprile 2016.

Esaminato in aula il 2 maggio 2016 e approvato il 17 maggio 2016.

