No. 3654

ITALY
and
UNITED STATES OF AMERICA

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income. Signed at Washington, on 30 March 1955

Official texts: English and Italian.

Registered by Italy on 10 January 1957.

ITALIE
et
ÉTATS-UNIS D'AMÉRIQUE

Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu. Signée à Washington, le 30 mars 1955

Textes officiels anglais et italien.

Enregistrée par l'Italie le 10 janvier 1957.

No. 3654. CONVENTION[1] BETWEEN THE ITALIAN REPUBLIC AND THE UNITED STATES OF AMERICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME. SIGNED AT WASHINGTON, ON 30 MARCH 1955

The President of the United States of America and the President of the Italian Republic being desirous of concluding a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have appointed for that purpose as their respective Plenipotentiaries:
The President of the United States of America :

John Foster Dulles, Secretary of State of the United States of America; and

The President of the Italian Republic :

Gaetano Martino, Minister of Foreign Affairs of the Italian Republic;
who, having communicated to one another their respective full powers, found in good and due form, have agreed upon the following Articles :

Article I

The taxes referred to in this Convention are :

(*a*) In the case of the United States :

the Federal income tax, including surtaxes.

(*b*) In the case of Italy :

(1) Tax on land (*l'imposta sul reddito dei terreni*).
(2) Tax on buildings (*l'imposta sul reddito dei fabbricati*).
(3) Tax on movable wealth (*l'imposta sui redditi di ricchezza mobile*).
(4) Tax on agricultural income (*l'imposta sui redditi agrari*).
(5) Complementary tax (*l'imposta complementare progressiva sul reddito*).

Article II

(1) As used in this Convention :

(*a*) The term "United States" means the United States of America, and when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

[1] Came into force on 26 October 1956, upon the exchange of the instruments of ratification at Rome, with retroactive effect from 1 January 1956, in accordance with article XXI.

(*b*) The term " Italy " means the Italian Republic.

(*c*) The term " permanent establishment " means a branch, office, factory, warehouse or other fixed place of business, but does not include the casual and temporary use of merely storage facilities, nor does it include an agency unless the agent has and exercises a general authority to negotiate and conclude contracts on behalf of an enterprise or has a stock of merchandise from which he regularly fills orders on its behalf. An enterprise of one of the contracting States shall not be deemed to have a permanent establishment in the other State merely because it carries on business dealings in such other State through a bona fide commission agent, broker or custodian acting in the ordinary course of his business as such. The fact that an enterprise of one of the contracting States maintains in the other State a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute such fixed place of business a permanent establishment of such enterprise. The fact that a corporation of one contracting State has a subsidiary corporation which is a corporation of the other State or which is engaged in trade or business in the other State shall not of itself constitute that subsidiary corporation a permanent etablishment of its parent corporation.

(*d*) The term " enterprise of one of the contracting States " means, as the case may be, " United States enterprise " or " Italian enterprise ".

(*e*) The term " enterprise " includes every form of undertaking whether carried on by an individual, partnership, corporation, or any other entity.

(*f*) The term " United States enterprise " means an enterprise carried on in the United States by a resident of the United States or by a United States corporation or other entity; the term " United States corporation or other entity " means a corporation or other entity created or organized in the United States or under the law of the United States or of any State or Territory of the United States.

(*g*) The term " Italian enterprise " means an enterprise carried on in Italy by a resident of Italy or by an Italian corporation or other entity; the term " Italian corporation or other entity " means a corporation or other entity created or organized in Italy or under Italian laws, or a partnership so created or organized.

(*h*) The term " competent authorities " means, in the case of the United States, the Commissioner of Internal Revenue as authorized by the Secretary of the Treasury; and in the case of Italy, the Ministry of Finance, General Directorship for Direct Taxation.

(2) In the application of the provisions of the present Convention by one of the contracting States any term not otherwise defined shall, unless the context otherwise requires, have the meaning which such term has under the tax laws of such State.

Article III

(1) An enterprise of one of the contracting States shall not be subject to tax by the other contracting State in respect of its industrial and commercial profits unless it is engaged in trade or business in such other State through a permanent establishment situated therein. If it is so engaged such other State may impose its tax upon the entire income of such enterprise from sources within such other State.

(2) In determining the industrial or commercial profits from sources within one of the contracting States of an enterprise of the other contracting State, no profits shall be deemed to arise from the mere purchase of goods or merchandise within the former contracting State by such enterprise.

(3) Where an enterprise of one of the contracting States is engaged in trade or business in the other contracting State through a permanent establishment situated therein, there shall be attributed to such permanent establishment the industrial or commercial profits which it might be expected to derive if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment, and the profits so attributed shall, subject to the law of such other contracting State, be deemed to be income from sources within such other contracting State and shall be assessed according to the lax of such other contracting State.

(4) The competent authorities of the two contracting States may lay down rules by agreement for the apportionment of industrial and commercial profits.

(5) In the determination of the net industrial and commercial profits of the permanent establishment there shall be allowed as deductions all expenses, wherever incurred, reasonably allocable to the permanent establishment, including executive and general administrative expenses so allocable.

Article IV

Where an enterprise of one of the contracting States, by reason of its participation in the management or the financial structure of an enterprise of the other contracting State, makes with or imposes on the latter, in their commercial or financial relations, conditions different from those which would be made with an independent enterprise, any profits which would normally 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 V

(1) Income which an enterprise of one of the contracting States derives from the operation of ships or aircraft registered in that State shall be exempt from taxation in the other contracting State.

(2) The present Convention shall be deemed to suspend the arrangement between the United States and Italy providing for relief from double income taxation on shipping profits, effected by exchange of notes dated March 10, 1926 and May 5, 1926.[1]

Article VI

If one of the contracting States imposes a tax based on property and income, an enterprise of the other contracting State

(1) shall be subject to such tax for the part which is based on property only with respect to property used or employed in the former State in the activity of such enterprise, and

(2) shall be exempt from such tax for the part based on income, if the enterprise is exempt from tax on income according to Article III or Article V of this Convention.

Article VII

(1) The rate of tax imposed by one of the contracting States upon dividends received from sources within such State by a resident or corporation or other entity of the other contracting State not having a permanent establishment in the former State shall not exceed 15 percent.

(2) It is agreed, however, that the rate of tax imposed at the source on dividends shall not exceed five percent if the shareholder is a corporation controlling, directly or indirectly, at least 95 percent of the entire voting power in the corporation paying the dividend, and if not more than 25 percent of the gross income of such paying corporation is derived from interest and dividends other than interest and dividends received from its own subsidiary corporations. Such reduction of the rate to five percent shall not apply if the relationship of the two corporations has been arranged or is maintained primarily with the intention of securing such reduced rate.

(3) Each of the contracting States reserves the right to increase the rates of tax provided in this Article and, if either State so increases such rates in the case of residents or corporations or other entities of the other State, either State may terminate this Article by giving written notice of termination to the other State, through diplomatic channels, on or before the thirtieth day of June of any calendar year, and in such event this Article shall cease to be effective on and after the first day of January in the year next following that in which notice is given.

[1] League of Nations, *Treaty Series*, Vol. CXIII, p. 21.