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**CONVENTION BETWEEN ITALY AND KENYA
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME**

Date of Conclusion: 15 October 1979.

Entry into Force: In accordance with Article 29 of the Convention, it shall enter into force on the date of the exchange of instruments of ratification. Its provisions will have retroactive effect as of 1 January 1979. As soon as the instruments of ratification are exchanged, subscribers shall be notified.

The Government of the Republic of Kenya and the Government of the Italian Republic,

Desiring to conclude a Convention to avoid double taxation and to prevent fiscal evasion with respect to taxes on income,

Have agreed upon the following measure:

**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 each Contracting State 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 and taxes on the total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which the Convention shall apply are, in particular:
 - (a) In the case of Kenya:
 - (i) the income tax;
(hereinafter referred to as "Kenyan 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);even if they are collected by withholding taxes at the source
(hereinafter referred to as "Italian tax").
4. The Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes. At the end

of each year, the competent authorities of the Contracting States shall notify to each other any changes which have been made in their respective taxation laws.

**Article 3
General definitions**

1. In this Convention, unless the context otherwise requires:
 - (a) The term "Kenya" means the Republic of Kenya, including any area outside the territorial waters of Kenya which, in accordance with international law, has been or may be designated, under the laws of Kenya concerning the Continental Shelf, as an area over which Kenya may exercise sovereign rights with respect to the exploration for and exploitation of natural resources;
 - (b) The term "Italy" means the Republic of Italy including any area beyond the territorial waters of Italy; specifically it includes the sea-bed and the sub-soil contiguous to the territory of the Peninsula and the Italian Islands situated beyond the territorial waters within bounds indicated by the Italian law on the exploration and the exploitation of their natural resources;
 - (c) The terms "a Contracting State" and "the other Contracting State" mean Kenya or Italy as the context requires;
 - (d) The term "person" includes an individual, an estate, a trust, 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

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Contracting State and an enterprise carried on by a resident of the other Contracting State;

- (g) The term "international traffic" means any transport by a ship or aircraft operated by an enterprise 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;
- (h) The term "national" means:
 - (i) any individual possessing the nationality of a Contracting State,
 - (ii) any legal person, partnership or association deriving its status as such from the law in force in a Contracting State;
- (i) The term "competent authority" means:
 - (i) in the case of Kenya, the Minister for Finance or his authorised 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 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 the Convention.

Article 4 **Fiscal domicile**

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 taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States then his case shall be determined in accordance with the following rules:

- (a) He shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. For the purpose of this Article, a permanent home shall be where he dwells with his family. 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 not a 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 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 Contracting State in which its place of effective management is situated.

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 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, oil well or other place of extraction of natural resources;
- (g) a building site or construction or assembly project which exists for more than 6 months;
- (h) the provision of supervisory activities for more than 6 months on a building site or construction or assembly project;
- (i) a farm or plantation.

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 – other than an agent of an independent status to whom paragraph 5 applies – acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment in the first-mentioned State if:

- (a) 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; or
- (b) he maintains in that State a stock of goods or merchandise from which he regularly fulfils orders on behalf of 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. However where the activities of such an agent are devoted wholly or almost wholly to that enterprise he shall not be considered an agent of an independent status within the meaning of this paragraph.

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.

Article 6 **Income from immovable property**

1. Income from immovable property including income from agriculture or forestry may be taxed in the Contracting State in which such property is situated.

2. For the purpose of this Convention 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; 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. If an enterprise of a Contracting State, which has a permanent establishment in the other Contracting State, sells goods or merchandise of the same or similar kind as those sold by the permanent establishment, or renders services of the same or similar kind as those rendered by the permanent establishment, the profits of such activities may be attributed to the permanent establishment unless it is established that such sales or services are not attributable to the activity of the permanent establishment.

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.

4. 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, but this does not include any expenses which, under the law of that State, would not be allowed to be deducted by an independent enterprise of that State engaged in the same or similar activities.

5. Insofar as it has been customary in the 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 3 shall preclude that Contracting State from determining the profits to be taxed by 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.

6. 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.

7. 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.

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

Article 8 **Shipping and air transport**

1. Profits from the operation of 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. Profits from the operation of ships in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

However, such profits may be taxed in the other Contracting State, but the tax so charged shall be reduced by fifty percent.

3. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

4. The provisions of paragraphs 1 and 2 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 di-

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- rectly 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 if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:
 - (a) 15 percent of the gross amount of the dividends if the recipient is a company which owns at least 25 percent of the voting shares of the company paying the dividends during the period of six months immediately preceding the date of payment of the dividends;
 - (b) 20 percent of the gross amount of the dividends in all other cases.

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

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 including any other item which is deemed to be a dividend or distribution of a company which is subjected to the same taxation treatment as income from shares by the taxation law of that 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 in the other Contracting State of which the company paying the dividends is a resident, a trade or business through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the holding by virtue 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 Contracting 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 undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

6. Notwithstanding any provision of this Convention: a company which is a resident of Kenya and which has a permanent establishment in Kenya shall remain subject to an additional rate of tax in accordance with the provisions of Kenya law, but such additional rate shall not exceed 7.5 percent.

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, 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 15 percent of the amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.
3. 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 of the State in which the income arises.
4. 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 in the other Contracting State in which the interest arises, a trade or business through a permanent establishment situated therein, or performs in that other State professional 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 a case the interest is taxable in that other Contracting State according to its own laws.
5. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political or an 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 that interest is borne by that 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.
6. 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 laws 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 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 15 percent of the gross amount of the royalties.

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, 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, and includes payments of any kind in respect of motion picture films and works on films or tapes for use in connection with radio or television.

4. 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 in the other Contracting State in which the royalties arise a trade or business 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 or fixed base. In such a case, the royalties are taxable in that other Contracting State according to its own laws.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political or an 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 fixed base in connection with which the obligation to pay the royalties was incurred, and those royalties are borne by that permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

6. Where, 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 Convention.

Article 13

Gains from the alienation of property

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) or of such a fixed base may be taxed in the other State. However, gains from the alienation of ships and aircraft operated in international traffic and of movable property pertaining to the operations of such ships and aircraft shall be taxable only in the Contracting State in which the place of effective management is situated.

3. Gains from the alienation of:

- (a) shares of a company, the property of which consists principally of immovable property situated in a Contracting State, and
 - (b) an interest in a partnership or a trust, the property of which consists principally of immovable property situated in a Contracting State,
- may be taxed in that State.

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

5. The provisions of paragraph 4 shall not affect the right of either of the Contracting States to levy, according to its law, a tax on gains from the alienation of any property derived by an individual who is a resident of the other Contracting State and has been a resident of the first-mentioned State at any time during the seven years immediately preceding the alienation of the property.

Article 14

Independent personal services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of a similar character shall be taxable only in that State unless:

- (a) he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities, in which case so much of the income may be taxed in that other State as is attributable to that fixed base; or
- (b) he is present in the other Contracting State for the purpose of performing his activities for a period or periods exceeding in the aggregate 183 days in the taxable year concerned, in which case so much of the income may be taxed in that other State as is attributable to the activities performed 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.

Kenya-Italy - 6**Article 15****Dependent personal services**

1. Subject to the provisions of Articles 16, 18 and 19, 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 taxable 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 shall be taxable only 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 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 entertainers, such as theatre, motion picture, radio or television artistes, 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.

3. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting State by entertainers or athletes if the visit to that Contracting State is wholly or substantially supported by public funds of the other Contracting State, including any political or administrative subdivision, local authority or statutory body thereof.

Article 18**Pensions and annuities**

1. Subject to the provisions of paragraph 2 of Article 19 pensions and annuities arising in a Contracting State and

paid to a resident of the other Contracting State may be taxed in that other State.

2. However, pensions arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the State in which they arise, and according to the law of that State, but in the case of periodic pension payments, the tax so charged shall not exceed 5 percent of the gross amount of the payment.

3. Annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the State in which they arise, and according to the law of that State; but the tax so charged shall not exceed 5 percent of the gross amount of the payment.

Article 19**Governmental functions**

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. 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 local authority thereof shall be taxable only in that State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration or pension 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.

Article 20**Students**

1. Payments which a student, apprentice or business trainee who is, or was immediately before visiting one of the Contracting States, a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that first-mentioned State, provided that such payments are made to him from sources outside that State.

2. The benefits of this Article shall extend only for such period of time as may be reasonably or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article for more than three consecutive years.

Article 21**Teachers**

1. A professor or teacher who visits 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 in that Contracting State and who is, or was immediately before such visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching or research in respect of which he is subject to tax in the other Contracting State.

2. This Article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.

Article 22
Income not expressly mentioned

1. Subject to the provisions of paragraph 2 of this Article, items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Convention shall be taxable only in that Contracting State.

2. However, if such income is derived by a resident of a Contracting State from sources in the other Contracting State, such income may also be taxed in the State in which it arises, and according to the law of that State.

Article 23
Elimination of double taxation

1. In the case of Kenya, double taxation shall be avoided as follows:

Subject to the provisions of the law of Kenya regarding the allowance as a credit to a resident of Kenya against Kenyan tax of tax payable in a territory outside Kenya, tax payable 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 any Kenyan tax payable in respect of that income; provided that such credit shall not exceed the Kenyan tax, computed before allowing any such credit, which is appropriate to the income derived from Italy.

2. In the case of Italy, double taxation shall be avoided as follows:

If a resident of Italy owns items of income which are taxable in the Republic of Kenya, Italy, in determining its income taxes specified in Article 2 of this Convention, may include in the basis upon which such taxes are imposed the said items of income, unless specific provisions of this Convention otherwise provide.

In such a case, Italy shall deduct from the taxes so calculated the Kenyan tax on income paid in Kenya 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 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. For the purpose of paragraphs 1 and 2 of this Article where tax on business profits arising in a Contracting State is exempted or reduced for a limited period of time 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 not exceeding 25% of the business profits referred to under Article 7.

Article 24
Non-discrimination

1. The 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.

In particular, nationals of a Contracting State who are taxable in the other Contracting State shall, if they are residents of that other Contracting State, receive any personal allowances, reliefs and reductions for taxation purposes on account of civil status which that other Contracting State grants to its residents, but no otherwise.

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. 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.

4. In this Article the term "taxation" means taxes which are the subject of this Convention.

Article 25
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 Convention, 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. The claim must be lodged within two years from the date of the assessment or of the withholding of tax at the source whichever is the later.

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 Convention.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any dif-

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difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly 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 the carrying out of this Convention and of the domestic laws of the Contracting States or preventing fraud or fiscal evasion concerning taxes covered by this Convention insofar as the taxation thereunder is in accordance with this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any person or authorities other than those concerned with the assessment or collection of the taxes which are the subject of the Convention.

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 or the 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.

Article 27 **Diplomatic and consular officials**

Nothing in this Convention 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 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 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 shall by mutual agreement settle the mode of application

of this Article, in accordance with the provisions of Article 25 of this Convention.

Article 29 **Entry into force**

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

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

- (a) In the case of Kenya:
 - (i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after 1st January 1979; and
 - (ii) in respect of other tax for any taxation year beginning on or after 1st January 1979.
- (b) In the case of Italy:
 - in respect of income assessable for any taxable period commencing on or after 1st January 1979.

Article 30 **Termination**

This Convention shall remain in force until denounced by one of the Contracting States. Either Contracting State may denounce the Convention through diplomatic channels not earlier than five years after its entry into force by giving notice of termination at least six months before the end of the calendar year. In such event, the Convention shall cease to have effect:

- (a) In the case of Kenya:
 - (i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the 1st January in the calendar year next following that in which the notice of termination is given; and
 - (ii) in respect of other tax for any taxation year beginning on or after 1st January in the calendar year next following that in which the notice of termination is given.
- (b) In the case of Italy:
 - in respect of income assessable for any taxable period commencing on or after 1st January in the calendar year next following that in which the notice of termination is given.

In witness whereof the undersigned, duly authorised thereto, have signed the present Convention.

Done in duplicate at Nairobi the 15th day of October, 1979 in the English and Italian languages, both texts being equally authoritative.

ADDITIONAL PROTOCOL

to the Convention between the Republic of Kenya and 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 Republic of Kenya 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 said Convention.

It is understood:

- (a) that, with reference to Article 7, paragraph 2, the expression "it is established" means that the competent authorities of both Contracting States, in application of the exchange of information, agree that the profits are attributable to the permanent establishment;
- (b) that, with reference to Article 7, paragraph 4, the expression "expenses which are incurred for the purposes of the permanent establishment" means the expenses directly connected with the activity of the permanent establishment;
- (c) that, with reference to Article 8, paragraph 2, when a Contracting State determines the profits derived from the operation of ships in international traffic as a percentage of the gross amount derived by an enterprise from transporting passengers or freight embarked in that State, this percentage shall not exceed 5 percent of the said gross amount;
- (d) that, with reference to Article 22, the tax imposed in a Contracting State on "management or professional fees" paid to a resident of the other Contracting State shall not exceed 20 percent of the gross amount of such "management or professional fees";
- (e) that, with reference to Article 25, paragraph 1, the expression "notwithstanding the remedies provided by the national laws" means that the mutual agreement procedure is not an alternative to the national contentions proceedings which shall be, in any case, preventively initiated, when the claim is related with an assessment of taxes not in accordance with this Convention;
- (f) that 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;
- (g) that, notwithstanding the provisions of paragraph 2 of Article 29, the provisions of paragraph 1 of Article 8 shall have effect in respect of income derived during any taxable period commencing on or after the 1st January 1970.

Done in duplicate at Nairobi the 15th October day of 1979, in the English and Italian languages, both texts being equally authoritative.