

## PROTOCOL

The Government of the United States of America and the Government of the Italian Republic, desiring to conclude a Protocol clarifying and supplementing the Convention for the Avoidance of Double Taxation with Respect to Taxes on Income and the Prevention of Fraud or Fiscal Evasion (hereinafter referred to as "the Convention") to be signed simultaneously with the signing of this Protocol, have agreed upon the following provisions, which shall be an integral part of the Convention.

### ARTICLE 1

1. For purposes of paragraph 2(b) of Article 1 (Personal Scope) of the Convention, the term "citizen" as applied to the United States shall include a former citizen or long-term resident whose loss of such status had as one of its principal purposes the avoidance of tax, but only for a period of 10 years following such loss.

2. The provisions of paragraph 2 of Article 1 (Personal Scope) of the Convention shall not affect:

(a) the benefits conferred by a Contracting State under paragraph 2 of Article 18 (Pensions, Etc.) of the Convention to residents of the other Contracting State who are nationals of that other State, even if they are also nationals of the first-mentioned State;

(b) the benefits conferred by a Contracting State under Article 4 of this Protocol.

3. For purposes of paragraph 2(a) of Article 2 (Taxes Covered) of the Convention, the Convention shall apply to the excise tax imposed by the United States on insurance premiums paid to foreign insurers only to the extent that the foreign insurer does not reinsure such risks with a person not entitled to exemption from such tax under this or any other Convention.

for accreditation of institutions in the particular field of study.

18. Nothing in Article 24 (Non-Discrimination) of the Convention shall be construed as preventing either Contracting State from imposing a tax as described in paragraph 6 of Article 10 (Dividends) or paragraph 8 of Article 11 (Interest) of the Convention.

19. With respect to paragraph 3 of Article 25 (Mutual Agreement Procedure) of the Convention, the competent authorities of the Contracting States may, in particular, agree that the conditions for the application of paragraph 10 of Article 10 (Dividends), paragraph 9 of Article 11 (Interest), paragraph 8 of Article 12 (Royalties), or paragraph 3 of Article 22 (Other Income) of the Convention are met.

20. For purposes of Article 26 (Exchange of Information) of the Convention, the Convention shall apply to taxes of every kind imposed by a Contracting State. It is understood that information may be disclosed to persons or authorities involved in the oversight of the activities for which information may be exchanged under Article 26 (Exchange of Information), and such persons shall use the information only for such oversight purposes and shall be subject to the limitations of Article 26 (Exchange of Information).

## ARTICLE 2

1. A resident of a Contracting State shall be entitled to benefits otherwise accorded to residents of a Contracting State by the Convention only to the extent provided in this Article.

2. A resident of a Contracting State shall be entitled to all the benefits of the Convention if the resident is:

(a) an individual;

(b) a qualified governmental entity;

(c) a company, if:

(i) all the shares in the class or classes of shares representing more than 50 percent of the voting

power and value of the company are regularly traded on a recognized stock exchange, or

(ii) at least 50 percent of each class of shares in the company is owned directly or indirectly by five or fewer companies entitled to benefits under clause (i), provided that in the case of indirect ownership, each intermediate owner is a person entitled to benefits of the Convention under this paragraph;

(d) described in subparagraph 5(a)(i) of Article 1 of this Protocol;

(e) described in subparagraph 5(a)(ii) of Article 1 of this Protocol, provided that more than 50 percent of the person's beneficiaries, members or participants are individuals resident in either Contracting State; or

(f) a person other than an individual, if:

(i) On at least half the days of the taxable year persons described in subparagraphs (a), (b), (c), (d) or (e) own, directly or indirectly (through a chain of ownership in which each person is entitled to benefits of the Convention under this paragraph), at least 50 percent of each class of shares or other beneficial interests in the person, and

(ii) less than 50 percent of the person's gross income for the taxable year is paid or accrued, directly or indirectly, to persons who are not residents of either Contracting State (unless the payment is attributable to a permanent establishment situated in either State), in the form of payments that are deductible for income tax purposes in the person's State of residence.

3. (a) A resident of a Contracting State not otherwise entitled to benefits shall be entitled to the benefits of this Convention with respect to an item of income derived from the other State, if:

(i) the resident is engaged in the active conduct of a trade or business in the first-mentioned State,

(ii) the income is connected with or incidental to the trade or business, and

(iii) the trade or business is substantial in relation to the activity in the other State generating the income.

(b) For purposes of this paragraph, the business of making or managing investments will not be considered an active trade or business unless the activity is banking, insurance or securities activity conducted by a bank, insurance company or registered securities dealer.

(c) Whether a trade or business is substantial for purposes of this paragraph will be determined based on all the facts and circumstances. In any case, however, a trade or business will be deemed substantial if, for the preceding taxable year, or for the average of the three preceding taxable years, the asset value, the gross income, and the payroll expense that are related to the trade or business in the first-mentioned State equal at least 7.5 percent of the resident's (and any related parties') proportionate share of the asset value, gross income and payroll expense, respectively, that are related to the activity that generated the income in the other State, and the average of the three ratios exceeds 10 percent.

(d) Income is derived in connection with a trade or business if the activity in the other State generating the income is a line of business that forms a part of or is complementary to the trade or business. Income is incidental to a trade or business if it facilitates the conduct of the trade or business in the other State.

4. A resident of a Contracting State not otherwise entitled to benefits may be granted benefits of the Convention if the competent authority of the State from which benefits are claimed so determines.

5. For purposes of this Article the term "recognized stock exchange" means:

(a) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the U.S. Securities and Exchange Commission

as a national securities exchange under the U.S. Securities Exchange Act of 1934;

(b) any stock exchange constituted and organized according to Italian laws; and

(c) any other stock exchanges agreed upon by the competent authorities of both Contracting States.

### ARTICLE 3

1. The Convention shall not restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded:

(a) by the laws of either Contracting State, or

(b) by any other agreement between the Contracting States.

2. Notwithstanding the provisions of paragraph 1(b):

(a) the provisions of Article 25 (Mutual Agreement Procedure) of the Convention exclusively shall apply to any dispute concerning whether a measure is within the scope of the Convention, and the procedures under the Convention exclusively shall apply to that dispute; and

(b) unless the competent authorities determine that a taxation measure is not within the scope of this Convention, the nondiscrimination obligations of this Convention exclusively shall apply with respect to that measure, except for such national treatment or most-favored-nation obligations as may apply to trade in goods under the General Agreement on Tariffs and Trade. No national treatment or most-favored-nation obligation under any other agreement shall apply with respect to that measure.

(c) For the purpose of this paragraph, a "measure" is a law, regulation, rule, procedure, decision, administrative action, or any similar provision or action.