



THE
JAMAICA GAZETTE
SUPPLEMENT

PROCLAMATIONS, RULES AND REGULATIONS

3843

Vol. CXLIII

THURSDAY, DECEMBER 31, 2020

No. 173

No. 228

THE INCOME TAX ACT

THE INCOME TAX (DOUBLE TAXATION RELIEF) (ITALIAN REPUBLIC) ORDER, 2020

WHEREAS it is provided by section 83(1) of the Income Tax Act, that if the Minister by order declares that arrangements specified in the order have been made with the Government of any territory outside of Jamaica with a view to affording relief from double taxation in relation to income tax, and any tax of a similar character imposed by the laws of that territory, and that it is expedient that those arrangements should have effect, the arrangements shall have effect in relation to income tax, notwithstanding anything contained in any enactment:

AND WHEREAS by Agreement between the Government of the Italian Republic and the Government of Jamaica dated January 19, 2018, arrangements were made, among other things, for the elimination of double taxation:

NOW THEREFORE, in exercise of the powers conferred on the Minister by section 83(1) of the Income Tax Act and all other powers hereunto enabling, the following order is hereby made:—

1. This Order may be cited as the Income Tax (Double Taxation Relief) (Italian Republic) Order, 2020.

2. It is hereby declared that—

- (a) the arrangements specified in the Agreement set out in the Schedule to this Order have been made with the Government of the Italian Republic with a view to affording relief from double taxation in relation to income tax, and taxes of a similar character imposed by the laws of the Italian Republic; and
- (b) it is expedient that those arrangements should have effect.

SCHEDULE

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE ITALIAN REPUBLIC

AND

THE GOVERNMENT OF JAMAICA

FOR THE ELIMINATION OF DOUBLE TAXATION WITH RESPECT TO
TAXES ON INCOME AND THE PREVENTION OF TAX EVASION AND
AVOIDANCE

AGREEMENT

BETWEEN THE GOVERNMENT OF THE ITALIAN REPUBLIC AND THE GOVERNMENT
OF JAMAICA FOR THE ELIMINATION OF DOUBLE TAXATION WITH RESPECT TO
TAXES ON INCOME AND THE PREVENTION OF TAX EVASION AND AVOIDANCE

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

Desiring to further develop their economic relationship and to enhance their co-operation
in tax matters,

Intending to eliminate double taxation with respect to the taxes covered by this Agreement
without creating opportunities for non-taxation or reduced taxation through tax evasion or
avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs
provided in this Agreement for the indirect benefit of residents of third jurisdictions)

Have agreed as follows:

SCOPE OF THE AGREEMENT

Article 1

PERSONS COVERED

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

Article 2

TAXES COVERED

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

3. The existing taxes to which the Agreement shall apply are in particular:

(a) in Jamaica:

the income tax (hereinafter referred to as "Jamaican Tax");

(b) in Italy:

(i) the personal income tax (l'imposta sul reddito delle persone fisiche);

(ii) the corporate income tax (l'imposta sul reddito delle società);

(iii) the regional tax on productive activities (l'imposta regionale sulle attività produttive);

whether or not they are collected by withholding at source (hereinafter referred to as "Italian Tax".)

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

Article 3**GENERAL DEFINITIONS**

1. For the purposes of this Agreement, unless the context otherwise requires:

- (a) the term "Jamaica" means the island of Jamaica, the Morant Cays, the Pedro Cays, and their dependencies and includes the archipelagic waters and territorial sea of Jamaica and any area outside such territorial waters which in accordance with international law has been or may hereafter be designated under Jamaica Law as an area within which Jamaica may exercise sovereign rights for the purpose of exploring and exploiting the natural resources of sea-bed or its subsoil and the superjacent waters and with regards to other activities for economic exploration and exploitation of the area;
- (b) the term "Italy" means the Italian Republic and includes any area beyond the territorial waters which is designated as an area within which Italy, in compliance with its legislation and in conformity with International Law, may exercise sovereign rights in respect of the exploration and exploitation of the natural resources of the seabed, the subsoil and the superjacent waters;
- (c) the terms "a Contracting State" and "the other Contracting State" mean Jamaica 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 anybody corporate or any entity that is treated as a body corporate for tax purposes;
- (f) the term "enterprise" applies to the carrying on of any business;
- (g) 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;
- (h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise that 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;
- (i) the term "competent authority" means:
 - (i) in the case of Jamaica, the Minister responsible for finance or his authorised representative, and
 - (ii) in the case of Italy, the Ministry of Economy and Finance or its authorised representatives.

- (j) 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 laws in force in a Contracting State.
- (k) the term “recognised pension fund” of a state means an entity or arrangement established in that State that is treated as a separate person under the taxation laws of that State and:
 - (i) that is established and operated exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits to individuals and that is regulated as such by that State or one of its political subdivisions or local authority or
 - (ii) that is established and operated exclusively or almost exclusively to invest funds for the benefit of entities or arrangements referred to in subparagraph (i).

2. As regards the application of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4

RESIDENT

1. For the purposes of this Agreement, the term resident of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature and also includes that State and any political subdivision or local authority thereof as well as a recognized pension fund of that State. This term, however, 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 only 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 only 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 does not have a permanent home available to him in either State, he shall be deemed to be a resident only 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 only of the State of which he is a national;

- (d) if he is a national of both States or 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, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Agreement, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Agreement except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States.

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, the term "permanent establishment" except as otherwise specified in this Article, means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop; and
- (f) a mine, an oil or gas well; a quarry or any other place of extraction of natural resources.

3. The term "permanent establishment" likewise encompasses a building site or construction, assembly, installation or dredging project, or a drilling rig or ship (used for the exploration or development of natural resources within a Contracting State, but only if such site, project or activity continues within that State for a period or periods aggregating more than six (6) months, in any twelve (12) month period.

For the sole purpose of determining whether the six (6) months period referred to in paragraph 3 has been exceeded,

- (a) where an enterprise of a Contracting State carries on activities in the other Contracting State at a place that constitutes a building site or construction, assembly, installation or dredging project, or a drilling rig or ship used for the exploration or development of natural resources and these activities are carried on during one or more periods of time that, in the aggregate, exceed 30 days without exceeding six months, and

- (b) connected activities are carried on at the same building site or construction, assembly, installation or dredging project, or drilling rig or ship used for the exploration or development of natural resources during different periods of time, each exceeding 30 days, by one or more enterprises closely related to the first-mentioned enterprise, these different periods of time shall be added to the period of time during which the first-mentioned enterprise has carried on activities at that building site or construction, assembly, installation or dredging project, or drilling rig or ship used for the exploration or development of natural resources.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not 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;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2 but subject to the provisions of paragraph 7, where a person is acting in a Contracting State on behalf of an enterprise of the other Contracting State and, in doing so, habitually conclude contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are:

- (i) in the name of the enterprise; or
- (ii) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use; or
- (iii) for the provision of services by that enterprise,

that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which,

if exercised through a fixed place of business (other than a fixed place of business to which paragraph 5 would apply), would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. Paragraph 5 shall not apply where the person acting in a Contracting State on behalf of an enterprise of the other Contracting State carries on business in the first-mentioned State as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.

7. For the purposes of this Article, a person or enterprise is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person or enterprise shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than fifty (50) per cent of the beneficial interest in the other (or, in the case of a company, more than fifty (50) per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person or enterprise possesses directly or indirectly more than fifty (50) per cent of the beneficial interest (or, in the case of a company, more than fifty (50) per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise.

8. 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 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 have the meaning which it has under 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 the 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 determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business 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. In so far as it has been customary in a 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 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. 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.

6. 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.

7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, 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 ships or 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. 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.

3. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include:

- (a) profits derived from the rental on a bare boat basis or on a full (time or voyage) basis of ships or aircraft used in international traffic;
- (b) notwithstanding the provisions of Article 12, profits derived from the use, maintenance or rental of containers (including trailers, barges and related equipment for the transport of containers), if such profits are incidental to the other profits from the operation of ships or aircraft in international traffic.

4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

ASSOCIATED ENTERPRISES

1. 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.

2. Where a Contracting State includes in the profits of an enterprise of that State—and taxes accordingly—profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall, make an appropriate adjustment to the amount of the tax charged therein on those profits. Any such adjustment shall only be made in accordance with the mutual agreement procedure in Article 26.

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 beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

- (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly or indirectly at least 25 per cent of the capital of the company paying the dividends;
- (b) 10 per cent of the gross amount of the dividends in all other cases.

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 laws 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 15, 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.

6. Notwithstanding any other provisions of this Agreement, where an enterprise of a Contracting State has a permanent establishment in the other Contracting State, the profits taxable under paragraph 1 of Article 7, may be subject to a withholding tax in that other Contracting State in accordance with the laws of that State when the profits are remitted to the head office; and that withholding tax, which is the only withholding tax for which the permanent establishment may be liable under this Article, shall not exceed 5 per cent of the amount of those profits after deducting there from the corporation tax imposed thereon in that other Contracting 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 laws of that state, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.
3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if the recipient is the beneficial owner of the interest and:
 - (a) is the State, a political subdivision or local authority thereof, or the Central Bank;
 - (b) the interest is paid by the State in which the interest arises or by a political subdivision, a local authority or statutory body thereof;
 - (c) the interest is paid in respect of a loan, debt-claim or credit that is owed to, or made, provided, guaranteed or insured by, that State or a political subdivision, local authority or export financing agency thereof;
 - (d) is a public financial institution established in accordance with the laws of the Contracting States.
4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as all other income assimilated to income from money lent in accordance with the taxation law of the Contracting State in which the income arises. Penalty charges for late payment shall not be regarded as interest for the purposes of this Article.
5. The provisions of paragraphs 1 and 2 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 a case, the provisions of Article 7 or Article 15, as the case may be, shall apply.
6. Interest shall be deemed to arise in a Contracting State when the payer is 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 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 such a 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 Agreement.

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 laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State the tax so charged shall not exceed 10 per cent 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:

- (a) the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process;
- (b) the use of, or the right to use, any industrial, commercial or scientific equipment;
- (c) the supply of information concerning industrial, commercial or scientific experience; or
- (d) the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films and films or tapes for television or radio broadcasting.

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 15, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of one of the Contracting States 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 the 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 laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13

SERVICE FEES

1. Fees for services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, notwithstanding the provisions of Article 15 and subject to the provisions of Articles 8, 17 and 18, fees for services arising in a Contracting State may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the fees is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount of the fees.

3. The term "Service Fees" as used in this Article means any payment in consideration for any service of a managerial, technical or Consultancy nature, unless the payment is made:

- (a) to an employee of the person making the payment;
- (b) for teaching in an educational institution or for teaching by an educational institution; or
- (c) by an individual for services for the personal use of an individual.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of fees for services, being a resident of a Contracting State, carries on business in the other Contracting State in which the fees for services arise through a permanent establishment situated in that other State, or performs in the other Contracting State independent personal services from a fixed base situated in that other State, and the fees for services are effectively connected with such permanent establishment or fixed base. In such cases the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. The provisions of paragraphs 1 and 2 shall not apply to routine support and administrative services related to the ordinary course of business. These services include accounting and finance control, financial management, insolvency, taxation, procurement and warehousing, legal and personnel matters and the provision of advice related to the ordinary course of business.

In such cases the provisions of Article 7 or Article 15, as the case may be, shall apply.

6. For the purposes of this Article, fees for services shall be deemed to arise in a Contracting State if:

- (a) the services are performed in that State by a resident of the other Contracting State having a physical presence in the first-mentioned State; or
- (b) subject to paragraph 5, the payer is a resident of that State and the fees are paid to a closely related person unless the payer carries on business in the other Contracting State or a third State through a permanent establishment situated in that State, or performs independent personal services through a fixed base situated in the other Contracting State or a third State and such fees are borne by that permanent establishment or fixed base; or
- (c) the payer has in that State a permanent establishment or a fixed base in connection with which the obligation to pay the fees for services was incurred and such fees are borne by that permanent establishment or fixed base.

7. For the purposes of this Article, a person is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise. For the purposes of this Article, an individual shall be connected to another individual if the individual is related to that other individual by blood relationship, marriage or adoption.

8. Where, by reason of a special relationship between the payer and the beneficial owner of the fees for services or between both of them and some other person, the amount of the fees, having regard to the services 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 fees shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 14

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 including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) may be taxed in that other Contracting 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 in which the place of effective management of the enterprise is situated.

4. Gains derived by a resident of a Contracting State from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the other Contracting State if, at any time during the 365 days preceding the alienation, those shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property (real property) as defined in Article 6 situated in that other State.

5. Gains from the alienation of shares or other rights, which directly or indirectly entitle the owner of such shares or rights to the enjoyment of immovable property situated in a Contracting State, may be taxed in that State.

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 15

INDEPENDENT PERSONAL SERVICES

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

- (a) If he has a fixed base regularly available in the other Contracting State for purpose of performing the activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State;
- (b) if he is present in the other Contracting State for a period or periods amounting to or exceeding in the aggregate 183 days in any 12 month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from the activities performed in that other State may be taxed in that 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 16

INCOME FROM EMPLOYMENT

1. Subject to the provisions of Articles 17, 18, 19, 20 and 22 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 there from 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 any twelve month period commencing or ending 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 which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

4. Payments derived by virtue of an employment in a Contracting State as severance payment or other similar lump sum related to that employment shall be taxable only in that Contracting State.

Article 17

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 18

ARTISTES AND SPORTSPERSONS

1. Notwithstanding the provisions of Articles 15 and 16, 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 a sportsperson, from that resident's 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 a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 15 and 16, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by a resident of a Contracting State as an entertainer or sportsperson shall be exempt from tax by the

other Contracting State if the visit to that other State is substantially supported by public funds of the first mentioned State or a political subdivision or local authority thereof.

Article 19

PENSIONS

1. Subject to the provisions of paragraph 2 of Article 20, pensions, annuities and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

2. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

3. Other similar remuneration means payments out of a pension fund or pension scheme in which individuals may participate in order to secure retirement benefits, where such fund or scheme is regulated in accordance with the laws of that Contracting State and recognized as such for tax purposes.

Article 20

GOVERNMENT SERVICE

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such salaries, wages and other similar 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) Notwithstanding the provisions of paragraph 1, any pension and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivisions or authority shall be taxable only in that State.

(b) However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 16, 17, 18 and 19 shall apply to salaries, wages, pensions and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 21**STUDENTS**

1. A student, business apprentice or trainee 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 for the purpose of his education or training shall be exempt from tax in that first-mentioned State on the following payments or income received or derived by him for the purpose of his maintenance, education or training:

- (a) payments derived from sources outside that Contracting State for the purpose of his maintenance, education, study or training;
- (b) grants, scholarships or awards supplied by the Government, or a scientific, educational, cultural or other tax-exempt organization.

2. The benefits of this Article shall extend only for a period not exceeding six consecutive years from the date of his arrival in the first-mentioned State.

Article 22**TEACHERS AND RESEARCHERS**

1. An individual who visits a Contracting State for the purpose of teaching or engaging in research at a university, college or other educational institution recognized in accordance with the laws of that Contracting State, and who was immediately before that visit a resident of the other Contracting State, shall be exempt from tax by the first-mentioned Contracting State on any remuneration for such teaching or research for a period not exceeding two years from the date of his first arrival in that State for such purpose.

2. The provision of paragraph 1 shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

Article 23**OTHER INCOME**

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement 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 15, as the case may be, shall apply.

Article 24**ELIMINATION OF DOUBLE TAXATION**

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

subject to the provisions of the laws of Jamaica regarding the allowance as a credit against Jamaican tax or tax paid in a territory outside of Jamaica (which shall not affect the general principles thereof) where a resident of Jamaica derives income, which in accordance with the provisions of this Agreement may be taxed in Italy, Jamaica shall allow a deduction from the tax on the income of that resident an amount equal to the income tax paid in Italy and where a company which is a resident of Italy pays a dividend to a company resident in Jamaica, which controls directly or indirectly at least 10% of the tax payable in Italy by that first-mentioned company in respect of the profits out of which such dividend is paid.

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

residents of Italy deriving items of income which, in accordance with the provisions of this Agreement, may be taxed in Jamaica, may include such items of income in the tax base upon which taxes are imposed in Italy, subject to the applicable provisions of the Italian law.

In such a case, Italy shall allow as a deduction from the tax so computed the income taxes paid in Jamaica but the deduction shall not exceed the proportion of the Italian tax attributable to such items of income that such items bear to the entire income.

However, no deduction shall be allowed in cases where, in accordance with Italian laws, the item of income is subjected in Italy to a final withholding tax or to substitute taxation at the same rate as the final withholding tax, whether at the request of the recipient or otherwise.

3. Where, in accordance with any provision of the Agreement, income derived by a resident of a Contracting State is exempt from tax in that State, that State may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

Article 25**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, in particular with respect to residence, 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 that it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, paragraph 6 of Article 12 or paragraph 8 of Article 13 apply, interest, royalties, technical fees 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 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 companies of the first-mentioned State are or may be subjected.

5. In this Article, the term "taxation" means taxes that are subject of this Agreement.

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

Article 26

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 the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those Contracting 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 25, to that of the Contracting State of which he is a national. The case must be presented within three (3) years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

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 which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

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 Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly including through a joint commission consisting of themselves or their representatives for the purpose of reaching an agreement in the sense of the preceding paragraphs. The competent authorities, through consultations, shall develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article.

5. Notwithstanding any other treaties of which the Contracting States are or may become parties, any dispute over a measure taken by a Contracting State involving a tax covered by Article 2 or, in the case of non-discrimination, any taxation measure taken by a Contracting State, including a dispute whether this Agreement applies, shall be settled under the Agreement, unless the competent authorities of the Contracting States agree otherwise.

Article 27

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeable relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 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) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. 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. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

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

- (a) to carry out administrative measures at variance with the laws and 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 (or the public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 28

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

Article 29

REFUNDS

1. Taxes withheld at source in a Contracting State shall, at the request of the taxpayer, be refunded to the extent that the right to levy the taxes is limited by the provisions of this Agreement.

2. Claims for refund, which shall be made within the time limit fixed by the law of the Contracting State which is obliged to make the refund except for cases in which an agreement has been reached under the Mutual Agreement Procedure provided by Article 26, 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 benefits provided for by the Agreement.

3. The provisions of paragraphs 1 and 2 of this Article shall not be construed to prevent the competent authorities of the Contracting States from establishing other modes of application of the benefits provided for by the Agreement.

Article 30

ENTITLEMENT TO BENEFITS

Notwithstanding any provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement.

Article 31**ENTRY INTO FORCE**

Each of the Contracting States shall notify the other, through the diplomatic channels, the completion of the domestic procedures required by law for the bringing into force of this Agreement. This Agreement shall enter into force thirty (30) days after the date of the later of these notifications.

2. The provisions of this Agreement shall have effect:

- (a) in respect of taxes withheld at source, to income paid or credited on or after the first day of January in the calendar year next following that in which the Agreement enters into force;
- (b) in respect of other taxes on income, on the taxes relating to the taxable years beginning on or after the first day of January in the calendar year next following that in which the Agreement enters into force.

Article 32**TERMINATION**

1. This Agreement shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Agreement, 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 Agreement enters into force.

2. In such event, the Agreement shall cease to have effect:

- (a) in respect of taxes withheld at source, to income paid or credited on or after the first day of January in the calendar year next following that in which the notice is given;
- (b) in respect of other taxes on income, on the taxes relating to the taxable years beginning on or after the first January of the calendar year next following that in which the notice is given.

In witness whereof the undersigned, duly authorised thereto, have signed this Agreement.

Done in duplicate at Kingston on the 19th of January 2018, in two originals, each in the Italian and English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF
JAMAICA:

Hon. Audley Shaw
Minister of Finance and the Public Service

FOR THE GOVERNMENT OF
THE ITALIAN REPUBLIC:

H. E. Armando Varricchio
Ambassador of Italy

PROTOCOL TO THE AGREEMENT BETWEEN THE GOVERNMENT OF THE
ITALIAN REPUBLIC AND THE GOVERNMENT OF JAMAICA FOR THE ELIMINATION
OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND THE
PREVENTION OF TAX EVASION AND AVOIDANCE

On signing the Agreement between the Government of the Italian Republic and the Government of Jamaica for the elimination of double taxation with respect to taxes on income and the prevention of tax evasion and avoidance, the signatories have agreed that the following provisions shall form an integral part of the Agreement.

(A) With reference to Article 2, paragraph 3(b), upon election of the eligible taxpayer under the provisions of the Income Tax Code providing for the Tax on Business Income- Imposta sul reddito di impresa (IRI), the latter applies in place of the Italian personal income tax, under separate taxation at the corporate tax rate.

(B) With reference to Article 3, paragraph 1(k), for the purposes of the Agreement, the term "recognized pension fund" means, in the case of Italy, a pension fund supervised by the Commissione di vigilanza sui fondi pensione - COVIP, and in the case of Jamaica, a pension fund regulated by the Financial Services Commission or any other fund recognised as a public pension fund in accordance with the laws of Jamaica.

(C) With reference to Article 7, paragraph 3, the expression "expenses which are incurred for the purposes of the business of the permanent establishment" means the expenses directly connected with the activity of the permanent establishment, and royalties, commission and interest to the extent of the actual amount of expenses reimburse, and in both cases in accordance with the taxation laws of the Contracting State in which the permanent establishment is situated.

(D) With reference to Article 11, paragraph 3(d), the term "public financial institution" shall include:

- (a) in Italy, Bank of Italy, Cassa Depositi e Prestiti - CDP, Istituto per i servizi assicurativi del commercio estero- SACE, Società italiana per le imprese all'estero- Simest;
- (b) in Jamaica, the Development Bank of Jamaica, the Jamaica Mortgage Bank, National Export-Import (EXIM) Bank Jamaica and the National Housing Trust; and any other entity established for a public financial purpose which is majority controlled or held by the State.

(E) With reference to Articles 10, 11, 12 and 13, if, after the entry into force of this Agreement, Jamaica has signed an Agreement for the avoidance of double taxation with any other State which is a member of the European Union and such Agreement contains lower tax rates (including zero rates) than those provided for under this Agreement, those rates, while in force, will automatically replace the rates of this Agreement, from the date of entry into force of such Agreement between Jamaica and that other State.

In witness whereof the undersigned, duly authorised thereto, have signed this Protocol.

Done in duplicate at Kingston on the 19th of January 2018, in two originals, each in the Italian and English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF
JAMAICA:

FOR THE GOVERNMENT OF
THE ITALIAN REPUBLIC:

Hon. Audley Shaw
Minister of Finance and the Public Service

H. E. Armando Varricchio
Ambassador of Italy

ADDITIONAL PROTOCOL ON ARBITRATION TO THE AGREEMENT BETWEEN
THE GOVERNMENT OF THE ITALIAN REPUBLIC AND THE GOVERNMENT OF
JAMAICA FOR THE ELIMINATION OF DOUBLE TAXATION WITH RESPECT TO
TAXES ON INCOME AND THE PREVENTION OF TAX EVASION AND AVOIDANCE

On signing the Agreement between the Government of the Italian Republic and the Government of Jamaica for the elimination of double taxation with respect to taxes on income and the prevention of tax evasion and avoidance, the signatories have agreed the following provisions on arbitration which shall form an integral part of the Agreement.

Article 1

MANDATORY BINDING ARBITRATION

1. Where:

- (a) under paragraph 1 of Article 26 of the Agreement, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Agreement; and
- (b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 of Article 26 of the Agreement within a period of two years beginning on the start date referred to in paragraph 8 or 9 of this Article, as the case may be (unless, prior to the expiration of that period the competent authorities of the Contracting States have agreed to a different time period with respect to that case and have notified the person who presented the case of such agreement),

any unresolved issues arising from the case shall, if the person so requests in writing, be submitted to arbitration in the manner described in Articles from 1 to 8 of this Protocol, according to any rules or procedures agreed upon by the competent authorities of the Contracting States pursuant to the provisions of paragraph 10 of this Article.

2. Where a competent authority has suspended the mutual agreement procedure referred to in paragraph 1 because a case with respect to one or more of the same issues is pending before court or administrative tribunal, the period provided in subparagraph (b) of paragraph 1 will stop running until either a final decision has been rendered by the court or administrative tribunal or the case has been suspended or withdrawn. In addition, where a person who presented a case and a competent authority have agreed to suspend the mutual agreement process, the period provided in subparagraph (b) of paragraph 1 will stop running until the suspension has been lifted.

3. Where both competent authorities agree that a person directly affected by the case has failed to provide in a timely manner any additional material information requested by either competent authority after the start of the period provided in subparagraph (b) of paragraph 1, the period provided in subparagraph (b) of paragraph 1 shall be extended for an amount of time equal to the period beginning on the date by which the information was requested and ending on the date on which that information was provided.

4. (a) The arbitration decision with respect to the issues submitted to arbitration shall be implemented through the mutual agreement concerning the case referred to in paragraph 1. The arbitration decision shall be final.

(b) The arbitration decision shall be binding on both Contracting States except in the following cases:

- (i) if a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision. In such a case, the case shall not be eligible for any further consideration by the competent authorities. The mutual agreement that implements the arbitration decision on the case shall be considered not to be accepted by a person directly affected by the case if any person directly affected by the case does not, within 60 days after the date on which notification of the mutual agreement is sent to the person, withdraw all issues resolved in the mutual agreement implementing the arbitration decision from consideration by any court or administrative tribunal or otherwise terminate any pending court or administrative proceedings with respect to such issues in a manner consistent with that mutual agreement.
- (ii) if a final decision of the courts of one of the Contracting States holds that the arbitration decision is invalid. In such a case, the request for arbitration under paragraph 1 shall be considered not to have been made, and the arbitration shall be considered not to have taken place (except for the purposes of Articles 3 (Confidentiality of Arbitration Proceedings) and 7 (Costs of Arbitration Proceedings) of this Protocol. In such a case, a new request for arbitration may be made unless the competent authorities agree that such a new request should not be permitted.

- (iii) if a person directly affected by the case pursues litigation on the issues which were resolved in the mutual agreement implementing the arbitration decision in any court or administrative tribunal.

5. The competent authority that received the initial request for a mutual agreement procedure as described in subparagraph (a) of paragraph 1 shall, within two calendar months of receiving the request:

- (a) send a notification to the person who presented the case that it has received the request; and
- (b) send a notification of that request, along with a copy of the request, to the competent authority of the other Contracting State.

6. Within three calendar months after a competent authority receives the request for a mutual agreement procedure (or a copy thereof from the competent authority of the other Contracting State) it shall either:

- (a) notify the person who has presented the case and the other competent authority that it has received the information necessary to undertake substantive consideration of the case; or
- (b) request additional information from that person for that purpose.

7. Where pursuant to subparagraph (b) of paragraph 6, one or both of the competent authorities have requested from the person who presented the case additional information necessary to undertake substantive consideration of the case, the competent authority that requested the additional information shall, within three calendar months of receiving the additional information from that person, notify that person and the other competent authority either:

- (a) that it has received the requested information; or
- (b) that some of the requested information is still missing.

8. Where neither competent authority has requested additional information pursuant to subparagraph (b) of paragraph 6, the start date referred to in paragraph 1 shall be the earlier of:

- (a) the date on which both competent authorities have notified the person who presented the case pursuant to subparagraph (a) of paragraph 6; and
- (b) the date that is three calendar months after the notification of the competent authority of the other Contracting State pursuant to subparagraph (b) of paragraph 5.

9. Where additional information has been requested pursuant to subparagraph (b) of paragraph 6, the start date referred to in paragraph 1 shall be the earlier of:

- (a) the latest date on which the competent authorities that requested additional information have notified the person who presented the case and the other competent authority pursuant to subparagraph (a) of paragraph 7; and

- (b) the date that is three calendar months after both competent authorities have received all information requested by either competent authority from the person who presented the case.

If, however, one or both of the competent authorities send the notification referred to in subparagraph (b) of paragraph 7, such notification shall be treated as a request for additional information under subparagraph (b) of paragraph 6.

10. The competent authorities of the Contracting States shall by mutual agreement (pursuant to Article 26 of the Agreement) settle the mode of application of the provisions contained in this Protocol, including the minimum information necessary for each competent authority to undertake substantive consideration of the case. Such an agreement shall be concluded before the date on which unresolved issues in a case are first eligible to be submitted to arbitration and may be modified from time to time thereafter.

11. Notwithstanding the other provisions of this Article:

- (a) any unresolved issue arising from a mutual agreement procedure case otherwise within the scope of the arbitration process provided for by this Protocol shall not be submitted to arbitration, if a decision on this issue has already been rendered by a court or administrative tribunal of either Contracting State;
- (b) if, at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision to the competent authorities of the Contracting States, a decision concerning the issue is rendered by a court or administrative tribunal of one of the Contracting States, the arbitration process shall terminate.

12. Notwithstanding the other provisions of this Article, the following cases shall be excluded from the scope of the arbitration provisions of this Protocol:

- (a) cases involving any item of income or capital within the scope of a tax exemption or to which a zero tax rate applies;
- (b) cases concerning the application of national legislation or provisions of international agreements where tax evasion, tax fraud or abuse are involved;
- (c) cases concerning dual resident persons;
- (d) cases involving penalties related to tax fraud, wilful default and gross negligence.

Article 2

APPOINTMENT OF ARBITRATORS

1. Except to the extent that the competent authorities of the Contracting States mutually agree on different rules, paragraphs 2 through 4 shall apply for the purposes of Articles from 1 to 8 of this Protocol.

2. The following rules shall govern the appointment of the members of an arbitration panel:

- (a) The arbitration panel shall consist of three individual members with expertise or experience in international tax matters.

- (b) Each competent authority shall appoint one panel member within 60 days of the date of the request for arbitration under paragraph 1 of Article 1 of this Protocol. The two panel members so appointed shall, within 60 days of the latter of their appointments, appoint a third member who shall serve as Chair of the arbitration panel. The Chair shall not be a national or resident of either Contracting State.
- (c) Each member appointed to the arbitration panel must be impartial and independent of the competent authorities, tax administrations, and ministries of finance of the Contracting States and of all persons directly affected by the case (as well as their advisors) at the time of accepting an appointment, maintain his or her impartiality and independence throughout the proceedings, and avoid any conduct for a reasonable period of time thereafter which may damage the appearance of impartiality and independence of the arbitrators with respect to the proceedings.
- (d) Each competent authority shall provide a list of five independent persons to be appointed as members of the arbitration panel.

3. In the event that the competent authority of a Contracting State fails to appoint a member of the arbitration panel in the manner and within the time periods specified in paragraph 2 or agreed to by the competent authorities of the Contracting States, the competent authority of the other Contracting State shall appoint a member of the arbitration panel by choosing a person from the list provided by the first mentioned Contracting State under paragraph 2(d) of this Article.

4. If the two initial members of the arbitration panel fail to appoint the Chair in the manner and within the time periods specified in paragraph 2 or agreed to by the competent authorities of the Contracting States, the Chair shall be appointed by the highest ranking official of the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development that is not a national of either Contracting State.

Article 3

CONFIDENTIALITY OF ARBITRATION PROCEEDINGS

1. Solely for the purposes of the application of the provisions of this Protocol, of Article 27 of the Agreement, and of the domestic laws of the Contracting States related to the exchange of information, confidentiality, and administrative assistance, members of the arbitration panel and a maximum of three staff per member (and prospective arbitrators solely to the extent necessary to verify their ability to fulfil the requirements of arbitrators) shall be considered to be persons or authorities to whom information may be disclosed. Information received by the arbitration panel or prospective arbitrators and information that the competent authorities receive from the arbitration panel shall be considered information that is exchanged under the provisions of Article 27 (Exchange of Information) of the Agreement.

2. The competent authorities of the Contracting States shall ensure that members of the arbitration panel and their staff agree in writing, prior to their acting in an arbitration

proceeding, to treat any information relating to the arbitration proceeding consistently with the confidentiality and nondisclosure obligations described in the provisions of Article 27 of the Agreement and under the applicable laws of the Contracting States.

Article 4

RESOLUTION OF A CASE PRIOR TO THE CONCLUSION OF THE ARBITRATION

For the purposes of Article 26 of the Agreement and of Articles from 1 to 8 of this Protocol, the mutual agreement procedure, as well as the arbitration proceeding, with respect to a case shall terminate if, at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision to the competent authorities of the Contracting States:

- (a) the competent authorities reach a mutual agreement to resolve the case; or
- (b) the person who presented the case withdraws the request for arbitration or the request for a mutual agreement procedure.

Article 5

TYPE OF ARBITRATION PROCESS

1. Except to the extent that the competent authorities of the Contracting States mutually agree on different rules, the following rules shall apply with respect to an arbitration proceeding pursuant to Articles from 1 to 8 of this Protocol:

- (a) After a case is submitted to arbitration, the competent authority of each Contracting State shall submit to the arbitration panel, by a date set by agreement, a proposed resolution which addresses all unresolved issues in the case (taking into account all agreements previously reached in that case between the competent authorities of the Contracting States). The proposed resolution shall be limited to a disposition of specific monetary amounts (for example, of income or expense) or, where specified, the maximum rate of tax charged pursuant to the Agreement, for each adjustment or similar issue in the case. In a case in which the competent authorities of the Contracting States have been unable to reach agreement on an issue regarding the conditions for application of a provision of the Agreement (hereinafter referred to as a "threshold question"), such as whether an individual is a resident or whether a permanent establishment exists, the competent authorities may submit alternative proposed resolutions with respect to issues the determination of which is contingent on resolution of such threshold questions.
- (b) The competent authority of each Contracting State may also submit a supporting position paper for consideration by the arbitration panel. Each competent authority that submits a proposed resolution or supporting position paper shall provide a copy to the other competent authority by the date on which the proposed resolution and supporting position paper were due. Each competent authority may also submit to the arbitration panel, by a date set by agreement, a

reply submission with respect to the proposed resolution and supporting position paper submitted by the other competent authority. A copy of any reply submission shall be provided to the other competent authority by the date on which the reply submission was due.

- (c) The arbitration panel shall select as its decision one of the proposed resolutions for the case submitted by the competent authorities with respect to each issue and any threshold questions, and shall not include a rationale or any other explanation of the decision. The arbitration decision will be adopted by a simple majority of the panel members. The arbitration panel shall deliver its decision in writing to the competent authorities of the Contracting States. The decision of the arbitration panel shall have no precedential value.

2. Prior to the beginning of arbitration proceedings, the competent authorities of the Contracting States shall ensure that each person that presented the case and their advisors agrees in writing not to disclose to any other person any information received during the course of the arbitration proceedings from either competent authority or the arbitration panel. The mutual agreement procedure under Article 26 of the Agreement, as well as the arbitration proceeding under this Protocol, with respect to the case shall terminate if, at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision to the competent authorities of the Contracting States, a person that presented the case or one of that person's advisors materially breaches that agreement.

Article 6

AGREEMENT ON A DIFFERENT RESOLUTION

Notwithstanding paragraph 4 of Article 1 of this Protocol, an arbitration decision pursuant to this Protocol shall not be binding on the Contracting States and shall not be implemented if the competent authorities of the Contracting States agree on a different resolution of all unresolved issues within three calendar months after the arbitration decision has been delivered to them.

Article 7

COSTS OF ARBITRATION PROCEEDINGS

In an arbitration proceeding under this Protocol, unless the competent authorities of the Contracting States have agreed otherwise, the following costs shall be shared equally between the Contracting States:

- (a) the expenses of the independent persons of standing that is an amount equivalent to the average of the usual amount reimbursed to high ranking civil servants of the Contracting States concerned; and
- (b) the fees of the independent persons that shall be limited to 1,000 BUROS per person for every meeting day.

Costs that are incurred by the affected person shall not be borne by the Contracting States, also in case of withdrawal of complaint.

Article 8**COMPATIBILITY**

1. Any unresolved issue arising from a mutual agreement procedure case otherwise within the scope of the arbitration process provided for in this Protocol shall not be submitted to arbitration if the issue falls within the scope of a case with respect to which an arbitration panel or similar body has previously been set up in accordance with a bilateral or multilateral Agreement that provides for mandatory binding arbitration of unresolved issues arising from a mutual agreement procedure case.

2. Nothing in this Protocol shall affect the fulfilment of wider obligations with respect to the arbitration of unresolved issues arising in the context of a mutual agreement procedure resulting from other Agreements to which the Contracting States are or will become parties.

In witness whereof the undersigned, duly authorized thereto, have signed this Protocol.

Done in duplicate at Kingston on the 19th of January 2018, in two originals, each in the Italian and English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF
JAMAICA:

FOR THE GOVERNMENT OF
THE ITALIAN REPUBLIC:

Hon. Audley Shaw
Minister of Finance and the Public Service

H. E. Armando Varricchio
Ambassador of Italy

Dated this 20th day of November, 2020.

NIGEL CLARKE
Minister of Finance and the Public Service.