

# Convention Between Canada and the United States of America With Respect to Taxes on Income and on Capital

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# Convention Between Canada and the United States of America With Respect to Taxes on Income and on Capital

This consolidated version of the Canada-United States Convention with Respect to Taxes on Income and on Capital signed at Washington on September 26, 1980, as amended by the Protocols signed on June 14, 1983, March 28, 1984, March 17, 1995, July 29, 1997 and September 21, 2007, is provided for convenience of reference only and has no official sanction.

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Canada and the United States of America, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, have agreed as follows:

## Article I – Personal Scope

This Convention is generally applicable to persons who are residents of one or both of the Contracting States.

## Article II – Taxes Covered

1. This Convention shall apply to taxes on income and on capital imposed on behalf of each Contracting State, irrespective of the manner in which they are levied.
2. Notwithstanding paragraph 1, the taxes existing on March 17, 1995 to which the Convention shall apply are:
  - (a) in the case of Canada, the taxes imposed by the Government of Canada under the *Income Tax Act*; and
  - (b) in the case of the United States, the Federal income taxes imposed by the *Internal Revenue Code* of 1986. However, the Convention shall apply to:
    - (i) the United States accumulated earnings tax and personal holding company tax, to the extent, and only to the extent, necessary to implement the provisions of paragraphs 5 and 8 of Article X (Dividends);
    - (ii) the United States excise taxes imposed with respect to private foundations, to the extent, and only to the extent, necessary to implement the provisions of paragraph 4 of Article XXI (Exempt Organizations);
    - (iii) the United States social security taxes, to the extent, and only to the extent, necessary to implement the provisions of paragraph 2 of Article XXIV (Elimination of Double Taxation) and paragraph 4 of Article XXIX (Miscellaneous Rules); and
    - (iv) the United States estate taxes imposed by the *Internal Revenue Code* of 1986, to the extent, and only to the extent, necessary to implement the provisions of paragraph 3(g) of Article XXVI (Mutual Agreement Procedure) and Article XXIX B (Taxes Imposed by Reason of Death).
3. The Convention shall apply also to:
  - (a) any taxes identical or substantially similar to those taxes to which the Convention applies under paragraph 2; and
  - (b) taxes on capital;

which are imposed after March 17, 1995 in addition to, or in place of, the taxes to which the Convention applies under paragraph 2.

## Article III – General Definitions

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

(a) when used in a geographical sense, the term "Canada" means the territory of Canada, including any area beyond the territorial seas of Canada which, in accordance with international law and the laws of Canada, is an area within which Canada may exercise rights with respect to the seabed and subsoil and their natural resources;

(b) the term "United States" means:

(i) the United States of America, but does not include Puerto Rico, the Virgin Islands, Guam or any other United States possession or territory; and

(ii) when used in a geographical sense, such term also includes any area beyond the territorial seas of the United States which, in accordance with international law and the laws of the United States, is an area within which the United States may exercise rights with respect to the seabed and subsoil and their natural resources;

(c) the term "Canadian tax" means the taxes referred to in Article II (Taxes Covered) that are imposed on income by Canada;

(d) the term "United States tax" means the taxes referred to in Article II (Taxes Covered), other than in subparagraph (b)(i) to (iv) of paragraph 2 thereof, that are imposed on income by the United States;

(e) the term "person" includes an individual, an estate, a trust, a company and any other body of persons;

(f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(g) the term "competent authority" means:

(i) in the case of Canada, the Minister of National Revenue or his authorized representative; and

(ii) in the case of the United States, the Secretary of the Treasury or his delegate;

(h) the term "international traffic" with reference to a resident of a Contracting State means any voyage of a ship or aircraft to transport passengers or property (whether or not operated or used by that resident) except where the principal purpose of the voyage is to transport passengers or property between places within the other Contracting State;

(i) the term "State" means any national State, whether or not a Contracting State;

(j) the term "the 1942 Convention" means the Convention and Protocol between Canada and the United States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion in the case of Income Taxes signed at Washington on March 4, 1942, as amended by the Convention signed at Ottawa on June 12, 1950, by the Convention signed at Ottawa on August 8, 1956 and by the Supplementary Convention signed at Washington on October 25, 1966.;and

k) the term "national" of a Contracting State means:

- (i) any individual possessing the citizenship or nationality of that State; and
- (ii) any legal person, partnership or association deriving its status as such from the laws in force in that State.

2. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires and subject to the provisions of Article XXVI (Mutual Agreement Procedure), have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

## Article IV – Residence

1. For the purposes of this Convention, the term "resident" of a Contracting State means any person that, under the laws of that State, is liable to tax therein by reason of that person's domicile, residence, citizenship, place of management, place of incorporation or any other criterion of a similar nature, but in the case of an estate or trust, only to the extent that income derived by the estate or trust is liable to tax in that State, either in its hands or in the hands of its beneficiaries. For the purposes of this paragraph, an individual who is not a resident of Canada under this paragraph and who is a United States citizen or an alien admitted to the United States for permanent residence (a "green card" holder) is a resident of the United States only if the individual has a substantial presence, permanent home or habitual abode in the United States, and that individual's personal and economic relations are closer to the United States than to any third State. The term "resident" of a Contracting State is understood to include:

(a) the Government of that State or a political subdivision or local authority thereof or any agency or instrumentality of any such government, subdivision or authority, and

(b)

(i) a trust, organization or other arrangement that is operated exclusively to administer or provide pension, retirement or employee benefits; and

(ii) a not-for-profit organization

that was constituted in that State and that is, by reason of its nature as such, generally exempt from income taxation 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 of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both States or in neither State, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);

(b) if the Contracting State in which he has his centre of vital interests cannot be determined, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

(c) if he has an habitual abode in both States or in neither State, he shall be deemed to be a resident of the Contracting State of which he is a citizen; and

(d) if he is a citizen of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a company is a resident of both Contracting States, then

(a) if it is created under the laws in force in a Contracting State, but not under the laws in force in the other Contracting State, it shall be deemed to be a resident only of the first-mentioned State, and

(b) in any other case, the competent authorities of the Contracting States shall endeavor to settle the question of residency by mutual agreement and determine the mode of application of the Convention to the company. In the absence of such agreement, the company shall not be considered a resident of either Contracting State for purposes of claiming any benefits under this Convention.

4. Where by reason of the provisions of paragraph 1 an estate, trust or other person (other than an individual or a company) is a resident of both Contracting States, the competent authorities of the States shall by mutual agreement endeavor to settle the question and to determine the mode of application of the Convention to such person.

5. Notwithstanding the provisions of the preceding paragraphs, an individual shall be deemed to be a resident of a Contracting State if:

(a) the individual is an employee of that State or of a political subdivision, local authority or instrumentality thereof rendering services in the discharge of functions of a governmental nature in the other Contracting State or in a third State; and

(b) the individual is subjected in the first-mentioned State to similar obligations in respect of taxes on income as are residents of the first-mentioned State.

The spouse and dependent children residing with such an individual and meeting the requirements of subparagraph (b) above shall also be deemed to be residents of the first-mentioned State.

6. An amount of income, profit or gain shall be considered to be derived by a person who is a resident of a Contracting State where:

(a) the person is considered under the taxation law of that State to have derived the amount through an entity (other than an entity that is a resident of the other Contracting State), and

(b) by reason of the entity being treated as fiscally transparent under the laws of that the first-mentioned State, the treatment of the amount under the taxation law of that State is the same as its treatment would be if that amount had been derived directly by that person.

7. An amount of income, profit or gain shall be considered not to be paid to or derived by a person who is a resident of a Contracting State where:

(a) the person is considered under the taxation law of the other Contracting State to have derived the amount through an entity that is not a resident of the first-mentioned State, but by reason of the entity not being treated as fiscally transparent under the laws of that State, the treatment of the amount under the taxation law of that State is not the same as its treatment would be if that amount had been derived directly by that person ; or

(b) the person is considered under the taxation law of the other Contracting State to have received the amount from an entity that is a resident of that other State, but by reason of the entity being treated as fiscally transparent under the laws of the first-mentioned State, the treatment of the amount under the taxation law of that State is not the same as its treatment would be if that entity were not treated as fiscally transparent under the laws of that State.

## Article V – Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of a resident of a Contracting State is wholly or partly carried on.
2. The term "permanent establishment" shall include especially:
  - (a) a place of management;
  - (b) a branch;
  - (c) an office;
  - (d) a factory;
  - (e) a workshop; and
  - (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. A building site or construction or installation project constitutes a permanent establishment if, but only if, it lasts more than 12 months.
4. The use of an installation or drilling rig or ship in a Contracting State to explore for or exploit natural resources constitutes a permanent establishment if, but only if, such use is for more than three months in any twelve-month period.
5. A person acting in a Contracting State on behalf of a resident of the other Contracting State—other than an agent of an independent status to whom paragraph 7 applies—shall be deemed to be a permanent establishment in the first-mentioned State if such person has, and habitually exercises in that State, an authority to conclude contracts in the name of the resident.
6. Notwithstanding the provisions of paragraphs 1, 2, 5 and 9, the term "permanent establishment" shall be deemed not to include a fixed place of business used solely for, or a person referred to in paragraph 5 engaged solely in, one or more of the following activities:
  - (a) the use of facilities for the purpose of storage, display or delivery of goods or merchandise belonging to the resident;
  - (b) the maintenance of a stock of goods or merchandise belonging to the resident for the purpose of storage, display or delivery;
  - (c) the maintenance of a stock of goods or merchandise belonging to the resident for the purpose of processing by another person;
  - (d) the purchase of goods or merchandise, or the collection of information, for the resident; and
  - (e) advertising, the supply of information, scientific research or similar activities which have a preparatory or auxiliary character, for the resident.
7. A resident of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because such resident carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
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 constitute either company a permanent establishment of the other.
9. Subject to paragraph 3, where an enterprise of a Contracting State provides services in the other Contracting State, if that enterprise is found not to have a permanent establishment in that other State

by virtue of the preceding paragraphs of this Article, that enterprise shall be deemed to provide those services through a permanent establishment in that other State if and only if:

(a) those services are performed in that other State by an individual who is present in that other State for a period or periods aggregating 183 days or more in any twelve - month period, and, during that period or periods, more than 50 percent of the gross active business revenues of the enterprise consists of income derived from the services performed in that other State by that individual; or

(b) the services are provided in that other State for an aggregate of 183 days or more in any twelve - month period with respect to the same or connected project for customers who are either residents of that other State or who maintain a permanent establishment in that other State and the services are provided in respect of that permanent establishment.

10. For the purposes of the Convention, the provisions of this Article shall be applied in determining whether any person has a permanent establishment in any State.

## Article VI – Income from Real Property

1. Income derived by a resident of a Contracting State from real property (including income from agriculture, forestry or other natural resources) situated in the other Contracting State may be taxed in that other State.

2. For the purposes of this Convention, the term "real property" shall have the meaning which it has under the taxation laws of the Contracting State in which the property in question is situated and shall include any option or similar right in respect thereof. The term shall in any case include usufruct of real property, rights to explore for or to exploit mineral deposits, sources and other natural resources and rights to amounts computed by reference to the amount or value of production from such resources; ships and aircraft shall not be regarded as real property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of real property and to income from the alienation of such property.

## Article VII – Business Profits

1. The business profits of a resident of a Contracting State shall be taxable only in that State unless the resident carries on business in the other Contracting State through a permanent establishment situated therein. If the resident carries on, or has carried on, business as aforesaid, the business profits of the resident may be taxed in the other State but only so much of them as are attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where a resident of a Contracting State carries on, or has carried 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 business profits which it might be expected to make if it were a distinct and separate person engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the resident and with any other person related to the resident (within the meaning of paragraph 2 of Article IX (Related Persons)).

3. In determining the business profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. Nothing in this paragraph shall require a Contracting State to allow the deduction of any expenditure which, by reason of its nature, is not generally allowed as a deduction under the taxation laws of that State.



4. No business profits shall be attributed to a permanent establishment of a resident of a Contracting State by reason of the use thereof for either the mere purchase of goods or merchandise or the mere provision of executive, managerial or administrative facilities or services for such resident.

5. For the purposes of the preceding paragraphs, the business profits to be attributed to a permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

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

7. For the purposes of the Convention, the business profits attributable to a permanent establishment shall include only those profits derived from the assets or activities of the permanent establishment.

## Article VIII – Transportation

1. Notwithstanding the provisions of Articles VII (Business Profits), XII (Royalties) and XIII (Gains), profits derived by a resident of a Contracting State from the operation of ships or aircraft in international traffic, and gains derived by a resident of a Contracting State from the alienation of ships, aircraft or containers (including trailers and related equipment for the transport of containers) used principally in international traffic, shall be exempt from tax in the other Contracting State.

2. For the purposes of this Convention, profits derived by a resident of a Contracting State from the operation of ships or aircraft in international traffic include profits from:

(a) the rental of ships or aircraft operated in international traffic;

(b) the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used in international traffic; and

(c) the rental of ships, aircraft or containers (including trailers and related equipment for the transport of containers) provided that such profits are incidental to profits referred to in paragraph 1, 2(a) or 2(b).

3. Notwithstanding the provisions of Article VII (Business Profits), profits derived by a resident of a Contracting State from a voyage of a ship where the principal purpose of the voyage is to transport passengers or property between places in the other Contracting State may be taxed in that other State.

4. Notwithstanding the provisions of Articles VII (Business Profits) and XII (Royalties), profits of a resident of a Contracting State engaged in the operation of motor vehicles or a railway as a common carrier or a contract carrier derived from:

(a) the transportation of passengers or property between a point outside the other Contracting State and any other point; or

(b) the rental of motor vehicles (including trailers) or railway rolling stock, or the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used to transport passengers or property between a point outside the other Contracting State and any other point

shall be exempt from tax in that other Contracting State.

5. The provisions of paragraphs 1, 3 and 4 shall also apply to profits or gains referred to in those paragraphs derived by a resident of a Contracting State from the participation in a pool, a joint business or an international operating agency.

6. Notwithstanding the provisions of Article XII (Royalties), profits derived by a resident of a Contracting State from the use, maintenance or rental of railway rolling stock, motor vehicles, trailers or containers (including trailers and related equipment for the transport of containers) used in the other Contracting State for a period or periods not expected to exceed in the aggregate 183 days in any twelve-month period shall be exempt from tax in the other Contracting State except to the extent that such profits are attributable to a permanent establishment in the other State and liable to tax in the other State by reason of Article VII (Business Profits).

## Article IX – Related Persons

1. Where a person in a Contracting State and a person in the other Contracting State are related and where the arrangements between them differ from those which would be made between unrelated persons, each State may adjust the amount of the income, loss or tax payable to reflect the income, deductions, credits or allowances which would, but for those arrangements, have been taken into account in computing such income, loss or tax.

2. For the purposes of this Article, a person shall be deemed to be related to another person if either person participates directly or indirectly in the management or control of the other, or if any third person or persons participate directly or indirectly in the management or control of both.

3. Where an adjustment is made or to be made by a Contracting State in accordance with paragraph 1, the other Contracting State shall (notwithstanding any time or procedural limitations in the domestic law of that other State) make a corresponding adjustment to the income, loss or tax of the related person in that other State if:

(a) it agrees with the first-mentioned adjustment; and

(b) within six years from the end of the taxable year to which the first-mentioned adjustment relates, the competent authority of the other State has been notified of the first-mentioned adjustment. The competent authorities, however, may agree to consider cases where the corresponding adjustment would not otherwise be barred by any time or procedural limitations in the other State, even if the notification is not made within the six-year period.

4. In the event that the notification referred to in paragraph 3 is not given within the time period referred to therein, and the competent authorities have not agreed to otherwise consider the case in accordance with paragraph 3(b), the competent authority of the Contracting State which has made or is to make the first-mentioned adjustment may provide relief from double taxation where appropriate.

5. The provisions of paragraphs 3 and 4 shall not apply in the case of fraud, willful default or neglect or gross negligence.

## Article X – 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 a resident of the other Contracting State is the beneficial owner of such dividends, 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 which owns at least 10 per cent of the voting stock of the company paying the dividends (for this

purpose, a company that is a resident of a Contracting State shall be considered to own the voting stock owned by an entity that is considered fiscally transparent under the laws of that State and that is not a resident of the Contracting State of which the company paying the dividends is a resident, in proportion to the company's ownership interest in that entity);

(b) 15 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. For the purposes of this Article, the term "dividends" means income from shares or other rights, not being debt-claims, participating in profits, as well as income subjected to the same taxation treatment as income from shares under the laws of the State of which the payer is a resident.

4. The provisions of paragraph 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on, or has carried on, business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, and the holding in respect of which the dividends are paid is effectively connected to such permanent establishment. In such case, the provisions of Article VII (Business Profits) shall apply.

5. Where a company is a resident of a Contracting State, the other Contracting State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

6. Nothing in this Convention shall be construed as preventing a Contracting State from imposing a tax on the earnings of a company attributable to permanent establishments in that State, in addition to the tax which would be chargeable on the earnings of a company which is a resident of that State, provided that any additional tax so imposed shall not exceed 5 per cent of the amount of such earnings which have not been subjected to such additional tax in previous taxation years. For the purposes of this paragraph, the term "earnings" means the amount by which the business profits attributable to permanent establishments in a Contracting State (including gains from the alienation of property forming part of the business property of such permanent establishments) in a year and previous years exceeds the sum of:

(a) business losses attributable to such permanent establishments (including losses from the alienation of property forming part of the business property of such permanent establishments) in such year and previous years;

(b) all taxes, other than the additional tax referred to in this paragraph, imposed on such profits in that State;

(c) the profits reinvested in that State, provided that where that State is Canada, such amount shall be determined in accordance with the existing provisions of the law of Canada regarding the computation of the allowance in respect of investment in property in Canada, and any subsequent modification of those provisions which shall not affect the general principle hereof; and

(d) five hundred thousand Canadian dollars (\$500,000) or its equivalent in United States currency, less any amounts deducted by the company, or by an associated company with respect to the same or a similar business, under this subparagraph (d); for the purposes of this subparagraph (d) a company is associated with another company if one company directly or indirectly controls the other, or both companies are directly or indirectly controlled by the same person or persons, or if the two companies deal with each other not at arm's length.

7. Notwithstanding the provisions of paragraph 2,

(a) dividends paid by a company that is a resident of Canada and a non-resident-owned investment corporation to a company that is a resident of the United States, that owns at least 10 per cent of the voting stock of the company paying the dividends and that is the beneficial owner of such dividends, may be taxed in Canada at a rate not exceeding 10 per cent of the gross amount of the dividends;

(b) paragraph 2(b) and not paragraph 2(a) shall apply in the case of dividends paid by a resident of the United States that is a Regulated Investment Company; and

(c) subparagraph 2(a) shall not apply to dividends paid by a resident of the United States that is a Real Estate Investment Trust (REIT), and subparagraph 2(b) shall apply only if:

(i) the beneficial owner of the dividends is an individual holding an interest of not more than 10 percent in the REIT;

(ii) the dividends are paid with respect to a class of stock that is publicly traded and the beneficial owner of the dividends is a person holding an interest of not more than 5 percent in any class of the REIT's stock; or

(iii) the beneficial owner of the dividends is a person holding an interest of not more than 10 percent in the REIT and the REIT is diversified.

Otherwise the rate of tax applicable under the domestic law of the United States shall apply. Where an estate or a testamentary trust acquired its interest in a REIT as a consequence of an individual's death, for the purposes of this subparagraph the estate or trust shall for the five-year period following the death be deemed with respect to that interest to be an individual.

8. Notwithstanding the provisions of paragraph 5, a company which is a resident of Canada and which has income subject to tax in the United States (without regard to the provisions of the Convention) may be liable to the United States accumulated earnings tax and personal holding company tax but only if 50 per cent or more in value of the outstanding voting shares of the company is owned, directly or indirectly, throughout the last half of its taxable year by citizens or residents of the United States (other than citizens of Canada who do not have immigrant status in the United States or who have not been residents in the United States for more than three taxable years) or by residents of a third state.

## Article XI – Interest

1. Interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State may be taxed only in that other State.

2. 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 or prizes attaching to such securities, bonds or debentures, as well as income assimilated to income from money lent by the taxation laws of the Contracting State in which the income arises. However, the term "interest" does not include income dealt with in Article X (Dividends).

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on, or has carried on, business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case, the provisions of Article VII (Business Profits) shall apply.

4. For the purposes of this Article, interest shall be deemed to arise in a Contracting State when the payer is that State itself, or a political subdivision, local authority or 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 State other than that of which he is a resident a permanent establishment in connection with which

the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated and not in the State of which the payer is a resident.

5. 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 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 the Convention.

6. Notwithstanding the provisions of paragraph 1:

(a) interest arising in the United States that is contingent interest of a type that does not qualify as portfolio interest under United States law may be taxed by the United States but, if the beneficial owner of the interest is a resident of Canada, the gross amount of the interest may be taxed at a rate not exceeding the rate prescribed in subparagraph b) of paragraph 2 of Article X (Dividends);

(b) interest arising in Canada that is determined with reference to receipts, sales, income, profits or other cash flow of the debtor or a related person, to any change in the value of any property of the debtor or a related person or to any dividend, partnership distribution or similar payment made by the debtor to a related person may be taxed by Canada, and according to the laws of Canada, but if the beneficial owner is a resident of the United States, the gross amount of the interest may be taxed at a rate not exceeding the rate prescribed in subparagraph b) of paragraph 2 of Article X (Dividends); and

(c) Interest that is an excess inclusion with respect to a residual interest in a real estate mortgage investment conduit may be taxed by each State in accordance with its domestic law.

7. Where a resident of a Contracting State pays interest to a person other than a resident of the other Contracting State, that other State may not impose any tax on such interest except insofar as it arises in that other State or insofar as the debt-claim in respect of which the interest is paid is effectively connected with a permanent establishment situated in that other State.

## Article XII – 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 a resident of the other Contracting State is the beneficial owner of such royalties, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. Notwithstanding the provisions of paragraph 2,

(a) copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or artistic work (other than payments in respect of motion pictures and works on film, videotape or other means of reproduction for use in connection with television);

(b) payments for the use of, or the right to use, computer software;

(c) payments for the use of, or the right to use, any patent or any information concerning industrial, commercial or scientific experience (but not including any such information provided in connection with a rental or franchise agreement); and

(d) payments with respect to broadcasting as may be agreed for the purposes of this paragraph in an exchange of notes between the Contracting States;

arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

4. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including motion pictures and works on film, videotape or other means of reproduction for use in connection with television), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, tangible personal property or for information concerning industrial, commercial or scientific experience, and, notwithstanding the provisions of Article XIII (Gains), includes gains from the alienation of any intangible property or rights described in this paragraph to the extent that such gains are contingent on the productivity, use or subsequent disposition of such property or rights.

5. The provisions of paragraphs 2 and 3 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on, or has carried on, business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article VII (Business Profits) shall apply.

6. For the purposes of this Article,

(a) 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 a Contracting State or not, has in a State a permanent establishment in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated and not in any other State of which the payer is a resident; and

(b) where subparagraph (a) does not operate to treat royalties as arising in either Contracting State and the royalties are for the use of, or the right to use, intangible property or tangible personal property in a Contracting State, then such royalties shall be deemed to arise in that State.

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 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 Convention.

8. Where a resident of a Contracting State pays royalties to a person other than a resident of the other Contracting State, that other State may not impose any tax on such royalties except insofar as they arise in that other State or insofar as the right or property in respect of which the royalties are paid is effectively connected with a permanent establishment situated in that other State.

## Article XIII – Gains

1. Gains derived by a resident of a Contracting State from the alienation of real property situated in the other Contracting State may be taxed in that other State.



2. Gains from the alienation of personal property forming part of the business property of a permanent establishment which a resident of a Contracting State has or had (within the twelve-month period preceding the date of alienation) in the other Contracting State, including such gains from the alienation of such a permanent establishment, may be taxed in that other State.

3. For the purposes of this Article the term "real property situated in the other Contracting State"

(a) In the case of real property situated in the United States, means a United States real property interest and real property referred to in Article VI (Income from Real Property) situated in the United States, but does not include a share of the capital stock of a company that is not a resident of the United States; and

(b) in the case of real property situated in Canada means:

(i) real property referred to in Article VI (Income from Real Property) situated in Canada;

(ii) a share of the capital stock of a company that is a resident of Canada, the value of whose shares is derived principally from real property situated in Canada; and

(iii) an interest in a partnership, trust or estate, the value of which is derived principally from real property situated in Canada.

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

5. The provisions of paragraph 4 shall not affect the right of a Contracting State to levy, according to its domestic law, a tax on gains from the alienation of any property derived by an individual who is a resident of the other Contracting State if:

(a) the individual was a resident of the first-mentioned State

(i) for at least 120 months during any period of 20 consecutive years preceding the alienation of the property; and

(ii) at any time during the 10 years immediately preceding the alienation of the property; and

(b) the property (or property for which such property was substituted in an alienation the gain on which was not recognized for the purposes of taxation in the first-mentioned State)

(i) was owned by the individual at the time the individual ceased to be a resident of the first-mentioned State; and

(ii) was not a property that the individual was treated as having alienated by reason of ceasing to be a resident of the first-mentioned State and becoming a resident of the other Contracting State.

6. Where an individual (other than a citizen of the United States) who was a resident of Canada became a resident of the United States, in determining his liability to United States taxation in respect of any gain from the alienation of a principal residence in Canada owned by him at the time he ceased to be a resident of Canada, the adjusted basis of such property shall be no less than its fair market value at that time.

7. Where at any time an individual is treated for the purposes of taxation by a Contracting State as having alienated a property and is taxed in that State by reason thereof, the individual may elect to be treated for the purposes of taxation in the other Contracting State, in the year that includes that time

and all subsequent years, as if the individual had, immediately before that time, sold and repurchased the property for an amount equal to its fair market value at that time.

8. Where a resident of a Contracting State alienates property in the course of a corporate or other organization, reorganization, amalgamation, division or similar transaction and profit, gain or income with respect to such alienation is not recognized for the purpose of taxation in that State, if requested to do so by the person who acquires the property, the competent authority of the other Contracting State may agree, in order to avoid double taxation and subject to terms and conditions satisfactory to such competent authority, to defer the recognition of the profit, gain or income with respect to such property for the purpose of taxation in that other State until such time and in such manner as may be stipulated in the agreement.

9. Where a person who is a resident of a Contracting State alienates a capital asset which may in accordance with this Article be taxed in the other Contracting State and

(a) that person owned the asset on September 26, 1980 and was resident in the first-mentioned State on that date; or

(b) the asset was acquired by that person in an alienation of property which qualified as a non-recognition transaction for the purposes of taxation in that other State;

the amount of the gain which is liable to tax in that other State in accordance with this Article shall be reduced by the proportion of the gain attributable on a monthly basis to the period ending on December 31 of the year in which the Convention enters into force, or such greater portion of the gain as is shown to the satisfaction of the competent authority of the other State to be reasonably attributable to that period. For the purposes of this paragraph the term "non-recognition transaction" includes a transaction to which paragraph 8 applies and, in the case of taxation in the United States, a transaction that would have been a non-recognition transaction but for Sections 897(d) and 897(e) of the *Internal Revenue Code*. The provisions of this paragraph shall not apply to

(c) an asset that on September 26, 1980 formed part of the business property of a permanent establishment of a resident of a Contracting State situated in the other Contracting State;

(d) an alienation by a resident of a Contracting State of an asset that was owned at any time after September 26, 1980 and before such alienation by a person who was not at all times after that date while the asset was owned by such person a resident of that State; or

(e) an alienation of an asset that was acquired by a person at any time after September 26, 1980 and before such alienation in a transaction other than a non-recognition transaction.

## Article XIV – Independent Personal Services

Repealed

## Article XV – Income from Employment

1. Subject to the provisions of Articles XVIII (Pensions and Annuities) and XIX (Government Service), salaries, wages and other remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:



(a) such remuneration does not exceed ten thousand dollars (\$10,000) in the currency of that other State; or

(b) the recipient is present in that 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 the remuneration is not paid by, or on behalf of, a person who is a resident of that other State and is not borne by a permanent establishment in that other State.

3. Notwithstanding the provisions of paragraphs 1 and 2, remuneration derived by a resident of a Contracting State in respect of an employment regularly exercised in more than one State on a ship, aircraft, motor vehicle or train operated by a resident of that Contracting State shall be taxable only in that State.

## Article XVI – Artistes and Athletes

1. Notwithstanding the provisions of Articles VII (Business Profits) and XV (Income from Employment), 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 an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State, except where the amount of the gross receipts derived by such entertainer or athlete, including expenses reimbursed to him or borne on his behalf, from such activities do not exceed fifteen thousand dollars (\$15,000) in the currency of that other State for the calendar year concerned.

2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete but to another person, that income may, notwithstanding the provisions of Articles VII (Business Profits) and XV (Income from Employment), be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised. For the purposes of the preceding sentence, income of an entertainer or athlete shall be deemed not to accrue to another person if it is established that neither the entertainer or athlete, nor persons related thereto, participate directly or indirectly in the profits of such other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions or other distributions.

3. The provisions of paragraphs 1 and 2 shall not apply to the income of:

(a) an athlete in respect of his activities as an employee of a team which participates in a league with regularly scheduled games in both Contracting States; or

(b) a team described in subparagraph (a).

4. Notwithstanding the provisions of Articles VII (Business Profits) and XV (Income from Employment) an amount paid by a resident of a Contracting State to a resident of the other Contracting State as an inducement to sign an agreement relating to the performance of the services of an athlete (other than an amount referred to in paragraph 1 of Article XV (Income from Employment)) may be taxed in the first-mentioned State, but the tax so charged shall not exceed 15 per cent of the gross amount of such payment.

## Article XVII – Withholding of Taxes in Respect of Personal Services

Repealed

## Article XVIII – Pensions and Annuities

1. Pensions and annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State, but the amount of any such pension that would be excluded

from taxable income in the first-mentioned State if the recipient were a resident thereof shall be exempt from taxation in that other State.

2. However:

(a) pensions may also be taxed in the Contracting State in which they arise and according to the laws of that State; but if a resident of the other Contracting State is the beneficial owner of a periodic pension payment, the tax so charged shall not exceed 15 per cent of the gross amount of such payment; and

(b) annuities may also be taxed in the Contracting State in which they arise and according to the laws of that State; but if a resident of the other Contracting State is the beneficial owner of an annuity payment, the tax so charged shall not exceed 15 per cent of the portion of such payment that would not be excluded from taxable income in the first-mentioned State if the beneficial owner were a resident thereof.

3. For the purposes of this Convention:

(a) The term "pensions" includes any payment under a superannuation, pension or other retirement arrangement, Armed Forces retirement pay, war veterans pensions and allowances and amounts paid under a sickness, accident or disability plan, but does not include payments under an income-averaging annuity contract or, except for the purposes of Article XIX (Government Service), any benefit referred to in paragraph 5;

(b) The term "pensions" also includes a Roth IRA, within the meaning of section 408A of the Internal Revenue Code, or a plan or arrangement created pursuant to legislation enacted by a Contracting State after September 21, 2007 that the competent authorities have agreed is similar thereto. Notwithstanding the provisions of the preceding sentence, from such time that contributions have been made to the Roth IRA or similar plan or arrangement, by or for the benefit of a resident of the other Contracting State (other than rollover contributions from a Roth IRA or similar plan or arrangement described in the previous sentence that is a pension within the meaning of this subparagraph), to the extent of accretions from such time, such Roth IRA or similar plan or arrangement shall cease to be considered a pension for purposes of the provisions of this Article.

4. For the purposes of the Convention:

(a) the term "annuity" means a stated sum paid periodically at stated times during life or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered), but does not include a payment that is not a periodic payment or any annuity the cost of which was deductible for the purposes of taxation in the Contracting State in which it was acquired; and

(b) an annuity or other amount paid in respect of a life insurance or annuity contract (including a withdrawal in respect of the cash value thereof) shall be deemed to arise in a Contracting State if the person paying the annuity or other amount (in this subparagraph referred to as the "payer") is a resident of that State. However, if the payer, whether a resident of a Contracting State or not, has in a State other than that of which the payer is a resident a permanent establishment in connection with which the obligation giving rise to the annuity or other amount was incurred, and the annuity or other amount is borne by the permanent establishment, then the annuity or other amount shall be deemed to arise in the State in which the permanent establishment is situated and not in the State of which the payer is a resident.

5. Benefits under the social security legislation in a Contracting State (including tier 1 railroad retirement benefits but not including unemployment benefits) paid to a resident of the other Contracting State shall be taxable only in that other State, subject to the following conditions:

(a) a benefit under the social security legislation in the United States paid to a resident of Canada shall be taxable in Canada as though it were a benefit under the Canada Pension Plan, except that 15 per cent of the amount of the benefit shall be exempt from Canadian tax; and

(b) a benefit under the social security legislation in Canada paid to a resident of the United States shall be taxable in the United States as though it were a benefit under the Social Security Act, except that a type of benefit that is not subject to Canadian tax when paid to residents of Canada shall be exempt from United States tax.

6. Alimony and other similar amounts (including child support payments) arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable as follows:

(a) such amounts shall be taxable only in that other State;

(b) notwithstanding the provisions of subparagraph (a), the amount that would be excluded from taxable income in the first-mentioned State if the recipient were a resident thereof shall be exempt from taxation in that other State.

7. A natural person who is a citizen or resident of a Contracting State and a beneficiary of a trust, company, organization or other arrangement that is a resident of the other Contracting State, generally exempt from income taxation in that other State and operated exclusively to provide pension, retirement or employee benefits may elect to defer taxation in the first-mentioned State, subject to rules established by the competent authority of that State, with respect to any income accrued in the plan but not distributed by the plan, until such time as and to the extent that a distribution is made from the plan or any plan substituted therefor.

8. Contributions made to, or benefits accrued under, a qualifying retirement plan in a Contracting State by or on behalf of an individual shall be deductible or excludible in computing the individual's taxable income in the other Contracting State, and contributions made to the plan by the individual's employer shall be allowed as a deduction in computing the employer's profits in that other State, where:

(a) the individual performs services as an employee in that other State the remuneration from which is taxable in that other State;

(b) the individual was participating in the plan (or another similar plan for which this plan was substituted) immediately before the individual began performing the services in that other State;

(c) the individual was not a resident of that other State immediately before the individual began performing the services in that other State;

(d) the individual has performed services in that other State for the same employer (or a related employer) for no more than 60 of the 120 months preceding the individual's current taxation year;

(e) the contributions and benefits are attributable to the services performed by the individual in that other State, and are made or accrued during the period in which the individual performs those services; and

(f) with respect to contributions and benefits that are attributable to services performed during a period in the individual's current taxation year, no contributions in respect of the period are made by or on behalf of the individual to, and no services performed in that other State during the period are otherwise taken into account for purposes of determining the individual's entitlement to benefits under, any plan that would be a qualifying retirement plan in that other

State if paragraph 15 were read without reference to subparagraphs (b) and (c) of that paragraph.

This paragraph shall apply only to the extent that the contributions or benefits would qualify for tax relief in the first-mentioned State if the individual was a resident of and performed the services in that State.

9. For the purposes of United States taxation, the benefits granted under paragraph 8 to a citizen of the United States shall not exceed the benefits that would be allowed by the United States to its residents for contributions to, or benefits otherwise accrued under, a generally corresponding pension or retirement plan established in and recognized for tax purposes by the United States.

10. Contributions made to, or benefits accrued under, a qualifying retirement plan in a Contracting State by or on behalf of an individual who is a resident of the other Contracting State shall be deductible or excludible in computing the individual's taxable income in that other State, where :

(a) the individual performs services as an employee in the first-mentioned state the remuneration from which is taxable in that State and is borne by an employer who is a resident of that State or by a permanent establishment which the employer has in that State; and

(b) the contributions and benefits are attributable to those services and are made or accrued during the period in which the individual performs those services.

This paragraph shall apply only to the extent that the contributions or benefits qualify for tax relief in the first-mentioned State.

11. For the purposes of Canadian taxation, the amount of contributions otherwise allowed as a deduction under paragraph 10 to an individual for a taxation year shall not exceed the individual's deduction limit under the law of Canada for the year for contributions to registered retirement savings plans remaining after taking into account the amount of contributions to registered retirement savings plans deducted by the individual under the law of Canada for the year. The amount deducted by an individual under paragraph 10 for a taxation year shall be taken into account in computing the individual's deduction limit under the law of Canada for subsequent taxation years for contributions to registered retirement savings plans.

12. For the purposes of United States taxation, the benefits granted under paragraph 10 shall not exceed the benefits that would be allowed by the United States to its residents for contributions to, or benefits otherwise accrued under, a generally corresponding pension or retirement plan established in and recognized for tax purposes by the United States. For purposes of determining an individual's eligibility to participate in and receive tax benefits with respect to a pension or retirement plan or other retirement arrangement established in and recognized for tax purposes by the United States, contributions made to, or benefits accrued under, a qualifying retirement plan in Canada by or on behalf of the individual shall be treated as contributions or benefits under a generally corresponding pension or retirement plan established in and recognized for tax purposes by the United States.

13. Contributions made to, or benefits accrued under, a qualifying retirement plan in Canada by or on behalf of a citizen of the United States who is a resident of Canada shall be deductible or excludible in computing the citizen's taxable income in the United States, where :

(a) the citizen performs services as an employee in Canada the remuneration from which is taxable in Canada and is borne by an employer who is a resident of Canada or by a permanent establishment which the employer has in Canada; and

(b) the contributions and benefits are attributable to those services and are made or accrued during the period in which the citizen performs those services.

This paragraph shall apply only to the extent that the contributions or benefits qualify for tax relief in Canada.

14. The benefits granted under paragraph 13 shall not exceed the benefits that would be allowed by the United States to its residents for contributions to, or benefits otherwise accrued under, a generally corresponding pension or retirement plan established in and recognized for tax purposes by the United States. For purposes of determining an individual's eligibility to participate in and receive tax benefits with respect to a pension or retirement plan or other retirement arrangement established in and recognized for tax purposes by the United States, contributions made to, or benefits accrued under, a qualifying retirement plan in Canada by or on behalf of the individual shall be treated as contributions or benefits under a generally corresponding pension or retirement plan established in and recognized for tax purposes by the United States.

15. For purposes of paragraphs 8 to 14, a qualifying retirement plan in a Contracting State means a trust, company, organization or other arrangement :

(a) that is a resident of that State, generally exempt from income taxation in that State and operated primarily to provide pension or retirement benefits;

(b) that is not an individual arrangement in respect of which the individual's employer has no involvement; and

(c) which the competent authority of the other Contracting State agrees generally corresponds to a pension or retirement plan established in and recognized for tax purposes by that other State.

16. For purposes of this Article, a distribution from a pension or retirement plan that is reasonably attributable to a contribution or benefit for which a benefit was allowed pursuant to paragraph 8, 10 or 13 shall be deemed to arise in the Contracting State in which the plan is established.

17. Paragraphs 8 to 16 apply, with such modifications as the circumstances require, as though the relationship between a partnership that carries on a business, and an individual who is a member of the partnership, were that of employer and employee.

## Article XIX – Government Service

Remuneration, other than a pension, paid by a Contracting State or a political subdivision or local authority thereof to a citizen of that State in respect of services rendered in the discharge of functions of a governmental nature shall be taxable only in that State. However, the provisions of Article VII (Business Profits), XV (Income from Employment) or XVI (Artistes and Athletes), as the case may be, shall apply, and the preceding sentence shall not apply, to remuneration paid in respect of services rendered in connection with a trade or business carried on by a Contracting State or a political subdivision or local authority thereof.

## Article XX – Students

Payments received by an individual who is a student, apprentice or business trainee and 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 for the purpose of the individual's full-time education or full-time training, shall not be taxed in that State, provided that such payments arise outside that State, and are for the purpose of the maintenance, education or training of the individual. The provisions of this Article shall apply to an apprentice or business trainee only for a period of time not exceeding one year from the date the individual first arrives in the first-mentioned State for the purpose of the individual's training.

## Article XXI – Exempt Organizations

1. Subject to the provisions of paragraph 4, income derived by a religious, scientific, literary, educational or charitable organization shall be exempt from tax in a Contracting State if it is resident in the other Contracting State, but only to the extent that such income is exempt from tax in that other State.

2. Subject to the provisions of paragraph 4, income referred to in Articles X (Dividends) and XI (Interest) derived by a trust, company, organization or other arrangement that is a resident of a Contracting State, generally exempt from income taxation in a taxable year in that State and operated exclusively to administer or provide pension, retirement or employee benefits shall be exempt from income taxation in that taxable year in the other Contracting State.

3. Subject to the provisions of paragraph 4, income referred to in Articles X (Dividends) and XI (Interest) derived by a trust, company, organization or other arrangement that is a resident of a Contracting State, generally exempt from income taxation in a taxable year in that State and operated exclusively to earn income for the benefit of one or more of the following:

(a) an organization referred to in paragraph 1; or

(b) a trust, company, organization or other arrangement referred to in paragraph 2;

shall be exempt from income taxation in that taxable year in the other Contracting State.

4. The provisions of paragraphs 1, 2 and 3 shall not apply with respect to the income of a trust, company, organization or other arrangement from carrying on a trade or business or from a related person other than a person referred to in paragraph 1, 2 or 3.

5. A religious, scientific, literary, educational or charitable organization which is resident in Canada and which has received substantially all of its support from persons other than citizens or residents of the United States shall be exempt in the United States from the United States excise taxes imposed with respect to private foundations.

6. For the purposes of United States taxation, contributions by a citizen or resident of the United States to an organization which is resident in Canada, which is generally exempt from Canadian tax and which could qualify in the United States to receive deductible contributions if it were resident in the United States shall be treated as charitable contributions; however, such contributions (other than such contributions to a college or university at which the citizen or resident or a member of his family is or was enrolled) shall not be deductible in any taxable year to the extent that they exceed an amount determined by applying the percentage limitations of the laws of the United States in respect of the deductibility of charitable contributions to the income of such citizen or resident arising in Canada. The preceding sentence shall not be interpreted to allow in any taxable year deductions for charitable contributions in excess of the amount allowed under the percentage limitations of the laws of the United States in respect of the deductibility of charitable contributions. For the purposes of this paragraph, a company that is a resident of Canada and that is taxable in the United States as if it were a resident of the United States shall be deemed to be a resident of the United States.

7. For the purposes of Canadian taxation, gifts by a resident of Canada to an organization that is a resident of the United States, that is generally exempt from United States tax and that could qualify in Canada as a registered charity if it were a resident of Canada and created or established in Canada, shall be treated as gifts to a registered charity; however, no relief from taxation shall be available in any taxation year with respect to such gifts (other than such gifts to a college or university at which the resident or a member of the resident's family is or was enrolled) to the extent that such relief would exceed the amount of relief that would be available under the *Income Tax Act* if the only income of the resident for that year were the resident's income arising in the United States. The preceding sentence shall not be interpreted to allow in any taxation year relief from taxation for gifts to registered charities in excess of the amount of relief allowed under the percentage limitations of the laws of Canada in respect of relief for gifts to registered charities.



## Article XXII – Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State, except that if such income arises in the other Contracting State it may also be taxed in that other State.
2. To the extent that income distributed by an estate or trust is subject to the provisions of paragraph 1, then, notwithstanding such provisions, income distributed by an estate or trust which is a resident of a Contracting State to a resident of the other Contracting State who is a beneficiary of the estate or trust may be taxed in the first-mentioned State and according to the laws of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the income; provided, however, that such income shall be exempt from tax in the first-mentioned State to the extent of any amount distributed out of income arising outside that State.
3. Losses incurred by a resident of a Contracting State with respect to wagering transactions the gains on which may be taxed in the other Contracting State shall, for the purpose of taxation in that other State, be deductible to the same extent that such losses would be deductible if they were incurred by a resident of that other State.
4. Notwithstanding the provisions of paragraph 1, compensation derived by a resident of a Contracting State in respect of the provision of a guarantee of indebtedness shall be taxable only in that State, unless such compensation is business profits attributable to a permanent establishment situated in the other Contracting State, in which case the provisions of Article VII (Business Profits) shall apply.

## Article XXIII – Capital

1. Capital represented by real property, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.
2. Capital represented by personal property forming part of the business property of a permanent establishment which a resident of a Contracting State has in the other Contracting State may be taxed in that other State.
3. Capital represented by ships and aircraft operated by a resident of a Contracting State in international traffic, and by personal property pertaining to the operation of such ships and aircraft, shall be taxable only in that State.
4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

## Article XXIV – Elimination of Double Taxation

1. In the case of the United States, subject to the provisions of paragraphs 4, 5 and 6, double taxation shall be avoided as follows: In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a citizen or resident of the United States, or to a company electing to be treated as a domestic corporation, as a credit against the United States tax on income the appropriate amount of income tax paid or accrued to Canada; and, in the case of a company which is a resident of the United States owning at least 10 per cent of the voting stock of a company which is a resident of Canada from which it receives dividends in any taxable year, the United States shall allow as a credit against the United States tax on income the appropriate amount of income tax paid or accrued to Canada by that company with respect to the profits out of which such dividends are paid.
2. In the case of Canada, subject to the provisions of paragraphs 4, 5 and 6, double taxation shall be avoided as follows:

(a) subject to the provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada and to any subsequent modification of those provisions (which shall not affect the general principle hereof)

(i) income tax paid or accrued to the United States on profits, income or gains arising in the United States, and

(ii) in the case of an individual, any social security taxes paid to the United States (other than taxes relating to unemployment insurance benefits) by the individual on such profits, income or gains

shall be deducted from any Canadian tax payable in respect of such profits, income or gains;

(b) In the case of a company which is a resident of Canada owning at least 10 percent of the voting stock of a company which is a resident of the United States from which it receives dividends in any taxable year, Canada shall allow as a credit against the Canadian tax on income the appropriate amount of income tax paid or accrued to the United States by the second company with respect to the profits out of which the dividends are paid.

(c) notwithstanding the provisions of subparagraph (a), where Canada imposes a tax on gains from the alienation of property that, but for the provisions of paragraph 5 of Article XIII (Gains), would not be taxable in Canada, income tax paid or accrued to the United States on such gains shall be deducted from any Canadian tax payable in respect of such gains.

3. For the purposes of this Article:

(a) profits, income or gains (other than gains to which paragraph 5 of Article XIII (Gains) applies) of a resident of a Contracting State which may be taxed in the other Contracting State in accordance with the Convention (without regard to paragraph 2 of Article XXIX (Miscellaneous Rules)) shall be deemed to arise in that other State; and

(b) profits, income or gains of a resident of a Contracting State which may not be taxed in the other Contracting State in accordance with the Convention (without regard to paragraph 2 of Article XXIX (Miscellaneous Rules)) or to which paragraph 5 of Article XIII (Gains) applies shall be deemed to arise in the first-mentioned State.

4. Where a United States citizen is a resident of Canada, the following rules shall apply:

(a) Canada shall allow a deduction from the Canadian tax in respect of income tax paid or accrued to the United States in respect of profits, income or gains which arise (within the meaning of paragraph 3) in the United States, except that such deduction need not exceed the amount of the tax that would be paid to the United States if the resident were not a United States citizen; and

(b) for the purposes of computing the United States tax, the United States shall allow as a credit against United States tax the income tax paid or accrued to Canada after the deduction referred to in subparagraph (a). The credit so allowed shall not reduce that portion of the United States tax that is deductible from Canadian tax in accordance with subparagraph (a).

5. Notwithstanding the provisions of paragraph 4, where a United States citizen is a resident of Canada, the following rules shall apply in respect of the items of income referred to in Article X (Dividends), XI (Interest) or XII (Royalties) that arise (within the meaning of paragraph 3) in the United States and that would be subject to United States tax if the resident of Canada were not a citizen of the United States, as long as the law in force in Canada allows a deduction in computing income for the portion of any foreign tax paid in respect of such items which exceeds 15 per cent of the amount thereof:

(a) the deduction so allowed in Canada shall not be reduced by any credit or deduction for income tax paid or accrued to Canada allowed in computing the United States tax on such items;



(b) Canada shall allow a deduction from Canadian tax on such items in respect of income tax paid or accrued to the United States on such items, except that such deduction need not exceed the amount of the tax that would be paid on such items to the United States if the resident of Canada were not a United States citizen; and

(c) for the purposes of computing the United States tax on such items, the United States shall allow as a credit against United States tax the income tax paid or accrued to Canada after the deduction referred to in subparagraph (b). The credit so allowed shall reduce only that portion of the United States tax on such items which exceeds the amount of tax that would be paid to the United States on such items if the resident of Canada were not a United States citizen.

6. Where a United States citizen is a resident of Canada, items of income referred to in paragraph 4 or 5 shall, notwithstanding the provisions of paragraph 3, be deemed to arise in Canada to the extent necessary to avoid the double taxation of such income under paragraph 4(b) or paragraph 5(c).

7. For the purposes of this Article, any reference to "income tax paid or accrued" to a Contracting State shall include Canadian tax and United States tax, as the case may be, and taxes of general application which are paid or accrued to a political subdivision or local authority of that State, which are not imposed by that political subdivision or local authority in a manner inconsistent with the provisions of the Convention and which are substantially similar to the Canadian tax or United States tax, as the case may be.

8. Where a resident of a Contracting State owns capital which, in accordance with the provisions of the Convention, may be taxed in the other Contracting State, the first-mentioned State shall allow as a deduction from the tax on the capital of that resident an amount equal to the capital tax paid in that other State. The deduction shall not, however, exceed that part of the capital tax, as computed before the deduction is given, which is attributable to the capital which may be taxed in that other State.

9. The provisions of this Article relating to the source of profits, income or gains shall not apply for the purpose of determining a credit against United States tax for any foreign taxes other than income taxes paid or accrued to Canada.

10. Where in accordance with any provision of the Convention income derived or capital owned by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on other income or capital, take into account the exempted income or capital.

## Article XXV – 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, particularly with respect to taxation on worldwide income, are or may be subjected. This provision shall also apply to individuals who are not residents of one or both of the Contracting States.

2. In determining the taxable income or tax payable of an individual who is a resident of a Contracting State, there shall be allowed as a deduction in respect of any other person who is a resident of the other Contracting State and who is dependent on the individual for support the amount that would be so allowed if that other person were a resident of the first-mentioned State.

3. Where a married individual who is a resident of Canada and not a citizen of the United States has income that is taxable in the United States pursuant to Article XV (Income from Employment), the United States tax with respect to such income shall not exceed such proportion of the total United States tax that would be payable for the taxable year if both the individual and his spouse were United States citizens as the individual's taxable income determined without regard to this paragraph bears to the amount that would be the total taxable income of the individual and his spouse. For the purposes of this paragraph,

- (a) the "total United States tax" shall be determined as if all the income of the individual and his spouse arose in the United States; and
  - (b) a deficit of the spouse shall not be taken into account in determining taxable income.
- 4. Any company which is a resident 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, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State, are or may be subjected.
- 5. Notwithstanding the provisions of Article XXIV (Elimination of Double Taxation), the taxation on a permanent establishment which a resident of a Contracting State has in the other Contracting State shall not be less favourably levied in the other State than the taxation levied on residents of the other State carrying on the same activities. This paragraph shall not be construed as obliging a Contracting State:
  - (a) to grant to a resident of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents; or
  - (b) to grant to a company which is a resident of the other Contracting State the same tax relief that it provides to a company which is a resident of the first-mentioned State with respect to dividends received by it from a company.
- 6. Except where the provisions of paragraph 1 of Article IX (Related Persons), paragraph 7 of Article XI (Interest) or paragraph 7 of Article XII (Royalties) apply, interest, royalties and other disbursements paid by a resident of a Contracting State to a resident of the other Contracting State shall, for the purposes of determining the taxable profits of the first-mentioned resident, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of a resident of a Contracting State to a resident of the other Contracting State shall, for the purposes of determining the taxable capital of the first-mentioned resident, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.
- 7. The provisions of paragraph 7 shall not affect the operation of any provision of the taxation laws of a Contracting State:
  - (a) relating to the deductibility of interest and which is in force on the date of signature of this Convention (including any subsequent modification of such provisions that does not change the general nature thereof); or
  - (b) adopted after such date by a Contracting State and which is designed to ensure that a person who is not a resident of that State does not enjoy, under the laws of that State, a tax treatment that is more favorable than that enjoyed by residents of that State.
- 8. Expenses incurred by a citizen or resident of a Contracting State with respect to any convention (including any seminar, meeting, congress or other function of a similar nature) held in the other Contracting State shall, for the purposes of taxation in the first-mentioned State, be deductible to the same extent that such expenses would be deductible if the convention were held in the first-mentioned State.
- 9. Notwithstanding the provisions of Article II (Taxes Covered), this Article shall apply to all taxes imposed by a Contracting State.

## Article XXVI – 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 Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case in writing to the competent authority of the Contracting State of which he is a resident or, if he is a resident of neither Contracting State, of which he is a national.

2. The competent authority of the Contracting State to which the case has been presented shall endeavor, 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 Convention. Except where the provisions of Article IX (Related Persons) apply, any agreement reached shall be implemented notwithstanding any time or other procedural limitations in the domestic law of the Contracting States, provided that the competent authority of the other Contracting State has received notification that such a case exists within six years from the end of the taxable year to which the case relates.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. In particular, the competent authorities of the Contracting States may agree:

(a) to the same attribution of profits to a resident of a Contracting State and its permanent establishment situated in the other Contracting State;

(b) to the same allocation of income, deductions, credits or allowances between persons;

(c) to the same determination of the source, and the same characterization, of particular items of income;

(d) to a common meaning of any term used in the Convention;

(e) to the elimination of double taxation with respect to income distributed by an estate or trust;

(f) to the elimination of double taxation with respect to a partnership;

(g) to provide relief from double taxation resulting from the application of the estate tax imposed by the United States or the Canadian tax as a result of a distribution or disposition of property by a trust that is a qualified domestic trust within the meaning of section 2056A of the *Internal Revenue Code*, or is described in subsection 70(6) of the *Income Tax Act* or is treated as such under paragraph 5 of Article XXIX B (Taxes Imposed by Reason of Death), in cases where no relief is otherwise available; or

(h) to increases in any dollar amounts referred to in the Convention to reflect monetary or economic developments.

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

4. Each of the Contracting States will endeavor to collect on behalf of the other Contracting State such amounts as may be necessary to ensure that relief granted by the Convention from taxation imposed by that other State does not enure to the benefit of persons not entitled thereto. However, nothing in this paragraph shall be construed as imposing on either of the Contracting States the obligation to carry out administrative measures of a different nature from those used in the collection of its own tax or which would be contrary to its public policy (ordre public).

5. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

6 Where, pursuant to a mutual agreement procedure under this Article, the competent authorities have endeavored but are unable to reach a complete agreement in a case, the case shall be resolved through arbitration conducted in the manner prescribed by, and subject to, the requirements of paragraph 7 and any rules or procedures agreed upon by the Contracting States by notes to be exchanged through diplomatic channels, if :

(a) tax returns have been filed with at least one of the Contracting States with respect to the taxable years at issue in the case;

(b) the case :

(i) is a case that :

(A) involves the application of one or more Articles that the competent authorities have agreed in an exchange of notes shall be the subject of arbitration, and

(B) is not a particular case that the competent authorities agree, before the date on which arbitration proceedings would otherwise have begun, is not suitable for determination by arbitration ; or

(ii) is a particular case that the competent authorities agree is suitable for determination by arbitration; and

(c) all concerned persons agree according to the provision of subparagraph 7(d).

7. For the purposes of paragraph 6 and this paragraph, the following rules and definitions shall apply:

(a) The term “concerned person” means the presenter of a case to a competent authority for consideration under this Article and all other persons, if any, whose tax liability to either Contracting State may be directly affected by a mutual agreement arising from that consideration;

(b) The “commencement date” for a case is the earliest date on which the information necessary to undertake substantive consideration for a mutual agreement has been received by both competent authorities;

(c) Arbitration proceedings in a case shall begin on the later of

(i) Two years after the commencement date of that case, unless both competent authorities have previously agreed to a different date, and

(ii) The earliest date upon which the agreement required by subparagraph (d) has been received by both competent authorities;

(d) The concerned person(s), and their authorized representatives or agents, must agree prior to the beginning of arbitration proceedings not to disclose to any other person any information received during the course of the arbitration proceeding from either Contracting State or the arbitration board, other than the determination of such board;

(e) Unless a concerned person does not accept the determination of an arbitration board, the determination shall constitute a resolution by mutual agreement under this Article and shall be binding on both Contracting States with respect to that case; and

(f) For purposes of an arbitration proceeding under paragraph 6 and this paragraph, the members of the arbitration board and their staffs shall be considered "persons or authorities" to whom information may be disclosed under Article XXVII (Exchange of Information) of the Convention.

## Article XXVI A – Assistance in Collection

1. The Contracting States undertake to lend assistance to each other in the collection of taxes referred to in paragraph 9, together with interest, costs, additions to such taxes and civil penalties, referred to in this Article as a "revenue claim".

2. An application for assistance in the collection of a revenue claim shall include a certification by the competent authority of the applicant State that, under the laws of that State, the revenue claim has been finally determined. For the purposes of this Article, a revenue claim is finally determined when the applicant State has the right under its internal law to collect the revenue claim and all administrative and judicial rights of the taxpayer to restrain collection in the applicant State have lapsed or been exhausted.

3. A revenue claim of the applicant State that has been finally determined may be accepted for collection by the competent authority of the requested State and, subject to the provisions of paragraph 7, if accepted shall be collected by the requested State as though such revenue claim were the requested State's own revenue claim finally determined in accordance with the laws applicable to the collection of the requested State's own taxes.

4. Where an application for collection of a revenue claim in respect of a taxpayer is accepted

(a) by the United States, the revenue claim shall be treated by the United States as an assessment under United States laws against the taxpayer as of the time the application is received; and

(b) by Canada, the revenue claim shall be treated by Canada as an amount payable under the *Income Tax Act*, the collection of which is not subject to any restriction.

5. Nothing in this Article shall be construed as creating or providing any rights of administrative or judicial review of the applicant State's finally determined revenue claim by the requested State, based on any such rights that may be available under the laws of either Contracting State. If, at any time pending execution of a request for assistance under this Article, the applicant State loses the right under its internal law to collect the revenue claim, the competent authority of the applicant State shall promptly withdraw the request for assistance in collection.

6. Subject to this paragraph, amounts collected by the requested State pursuant to this Article shall be forwarded to the competent authority of the applicant State. Unless the competent authorities of the Contracting States otherwise agree, the ordinary costs incurred in providing collection assistance shall be borne by the requested State and any extraordinary costs so incurred shall be borne by the applicant State.

7. A revenue claim of an applicant State accepted for collection shall not have in the requested State any priority accorded to the revenue claims of the requested State.

8. No assistance shall be provided under this Article for a revenue claim in respect of a taxpayer to the extent that the taxpayer can demonstrate that

(a) where the taxpayer is an individual, the revenue claim relates either to a taxable period in which the taxpayer was a citizen of the requested State or, if the taxpayer became a citizen of

the requested State at any time before November 9, 1995 and is such a citizen at the time the requesting State applies for collection of the claim, to a taxable period that ended before November 9, 1995, and

(b) where the taxpayer is an entity that is a company, estate or trust, the revenue claim relates to a taxable period in which the taxpayer derived its status as such an entity from the laws in force in the requested State.

9. Notwithstanding the provisions of Article II (Taxes Covered), the provisions of this Article shall apply to all categories of taxes collected, and to contributions to social security and employment insurance premiums levied, by or on behalf of the Government of a Contracting State.

10. Nothing in this Article shall be construed as:

(a) limiting the assistance provided for in paragraph 4 of Article XXVI (Mutual Agreement Procedure); or

(b) imposing on either Contracting State the obligation to carry out administrative measures of a different nature from those used in the collection of its own taxes or that would be contrary to its public policy (ordre public).

11. The competent authorities of the Contracting States shall agree upon the mode of application of this Article, including agreement to ensure comparable levels of assistance to each of the Contracting States.

## Article XXVII – Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as may be relevant for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes to which the Convention applies insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article I (Personal Scope). Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the taxation laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the administration and enforcement in respect of, or the determination of appeals in relation to the taxes to which the Convention applies or, notwithstanding paragraph 4, in relation to taxes imposed by a political subdivision or local authority of a Contracting State that are substantially similar to the taxes covered by the Convention under Article II (Taxes Covered). 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. The competent authorities may release to an arbitration board established pursuant to paragraph 6 of Article XXVI (Mutual Agreement Procedure) such information as is necessary for carrying out the arbitration procedure; the members of the arbitration board shall be subject to the limitations on disclosure described in this Article.

2. 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 because it has no domestic interest in such information.

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 State 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 State or of the other Contracting State; or

(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 (ordre public).

4. For the purposes of this Article, the Convention shall apply, notwithstanding the provisions of Article II (Taxes Covered):

(a) to all taxes imposed by a Contracting State; and

(b) to other taxes to which any other provision of the Convention applies, but only to the extent that the information may be relevant for the purposes of the application of that provision.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information 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.

6. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts, and writings).

7. The requested State shall allow representatives of the requesting State to enter the requested State to interview individuals and examine books and records with the consent of the persons subject to examination.

## Article XXVIII – Diplomatic Agents and Consular Officers

Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

## Article XXIX – Miscellaneous Rules

1. The provisions of this Convention shall not restrict in any manner any exclusion, exemption, deduction, credit or other allowance now or hereafter accorded by the laws of a Contracting State in the determination of the tax imposed by that State.

2. (a) Except to the extent provided in paragraph 3, this Convention shall not affect the taxation by a Contracting State of its residents (as determined under Article IV (Residence)) and, in the case of the United States, its citizens and companies electing to be treated as domestic corporations.

(b) Notwithstanding the other provisions of this Convention, a former citizen or former long-term resident of the United States, may, for the period of ten years following the loss of such status, be taxed in accordance with the laws of the United States with respect to income from sources within the United States (including income deemed under the domestic law of the United States to arise from such sources).

3. The provisions of paragraph 2 shall not affect the obligations undertaken by a Contracting State:

(a) Under paragraphs 3 and 4 of Article IX (Related Persons), paragraphs 6 and 7 of Article XIII (Gains), paragraphs 1, 3, 4, 5, 6(b), 7, 8, 10 and 13 of Article XVIII (Pensions and Annuities), paragraph 5 of Article XXIX (Miscellaneous Rules), paragraphs 1, 5 and 6 of



Article XXIX B (Taxes Imposed by Reason of Death), paragraphs 2, 3, 4 and 7 of Article XXIX B (Taxes Imposed by Reason of Death) as applied to the estates of persons other than former citizens referred to in paragraph 2 of this Article, paragraphs 3 and 5 of Article XXX (Entry into Force), and Articles XIX (Government Service), XXI (Exempt Organizations), XXIV (Elimination of Double Taxation), XXV (Non-Discrimination) and XXVI (Mutual Agreement Procedure);

(b) under Article XX (Students), toward individuals who are neither citizens of, nor have immigrant status in, that State.

4. With respect to taxable years not barred by the statute of limitations ending on or before December 31 of the year before the year in which the Social Security Agreement between Canada and the United States (signed in Ottawa on March 11, 1981) enters into force, income from personal services not subject to tax by the United States under this Convention or the 1942 Convention shall not be considered wages or net earnings from self-employment for purposes of social security taxes imposed under the *Internal Revenue Code*.

5. Where a person who is a resident of Canada and a shareholder of a United States S corporation requests the competent authority of Canada to do so, the competent authority may agree, subject to terms and conditions satisfactory to such competent authority, to apply the following rules for the purposes of taxation in Canada with respect to the period during which the agreement is effective:

(a) the corporation shall be deemed to be a controlled foreign affiliate of the person;

(b) all the income of the corporation shall be deemed to be foreign accrual property income;

(c) for the purposes of subsection 20(11) of the *Income Tax Act*, the amount of the corporation's income that is included in the person's income shall be deemed not to be income from a property; and

(d) each dividend paid to the person on a share of the capital stock of the corporation shall be excluded from the person's income and shall be deducted in computing the adjusted cost base to the person of the share.

6. For purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that:

(a) a measure falls within the scope of the Convention only if:

(i) the measure relates to a tax to which Article XXV (Non-Discrimination) of the Convention applies; or

(ii) the measure relates to a tax to which Article XXV (Non-Discrimination) of the Convention does not apply and to which any other provision of the Convention applies, but only to the extent that the measure relates to a matter dealt with in that other provision of the Convention; and

(b) notwithstanding paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, any doubt as to the interpretation of subparagraph (a) will be resolved under paragraph 3 of Article XXVI (Mutual Agreement Procedure) of the Convention or any other procedure agreed to by both Contracting States.

7. The appropriate authority of a Contracting State may request consultations with the appropriate authority of the other Contracting State to determine whether change to the Convention is appropriate to respond to changes in the law or policy of that other State. Where domestic legislation enacted by a Contracting State unilaterally removes or significantly limits any material benefit otherwise provided by the Convention, the appropriate authorities shall promptly consult for the purpose of considering an appropriate change to the Convention.



## Article XXIX A – Limitation on Benefits

1. For the purposes of the application of this Convention by a Contracting State,
  - (a) a qualifying person shall be entitled to all of the benefits of this Convention, and
  - (b) except as provided in paragraphs 3, 4 and 6, a person that is not a qualifying person shall not be entitled to any benefits of the Convention.
2. For the purposes of this Article, a qualifying person is a resident of a Contracting State that is:
  - (a) a natural person;
  - (b) a Contracting State or a political subdivision or local authority thereof, or any agency or instrumentality of any such State, subdivision or authority;
  - (c) a company or trust in whose principal class of shares or units (and any disproportionate class of shares or units) is primarily and regularly trading on one or more recognized stock exchanges;
  - (d) a company, if five or fewer persons each of which is a company or trust referred to in subparagraph (c) own directly or indirectly more than 50 per cent of the aggregate vote and value of the shares and more than 50 per cent of the vote and value of each disproportionate class of shares (in neither case including debt substitute shares), provided that each company or trust in the chain of ownership is a qualifying person;
  - (e)
    - (i) a company 50 per cent or more of the aggregate vote and value of the shares of which and 50 per cent or more of the vote and value of each disproportionate class of shares (in neither case including debt substitute shares) of which is not owned, directly or indirectly, by persons other than qualifying persons, or
    - (ii) a trust, 50 per cent or more of the beneficial interest in which and 50 per cent or more of each disproportionate interest in which, is not owned, directly or indirectly, by persons other than qualifying persons,where the amount of the expenses deductible from gross income (as determined in the State of residence of the company or trust) that are paid or payable by the company or trust, as the case may be, for its preceding fiscal period (or, in the case of its first fiscal period, that period) directly or indirectly, to persons that are not qualifying persons is less than 50 per cent of its gross income for that period;
  - (f) an estate;
  - (g) a not-for-profit organization, provided that more than half of the beneficiaries, members or participants of the organization are qualifying persons; or
  - (h) a trust, company, organization or other arrangement described in paragraph 2 of Article XXI (Exempt Organizations) and established for the purpose of providing benefits primarily to individuals who are qualifying persons, persons who were qualifying persons within the five preceding years; or

(i) a trust, company, organization or other arrangement described in paragraph 3 of Article XXI (Exempt Organizations) provided that the beneficiaries of the trust, company, organization or other arrangement are described in subparagraph (g) or (h).

3. Where a person that is a resident of a Contracting State and is not a qualifying person, and that person, or a person related thereto, is engaged in the active conduct of a trade or business in that State (other than the business of making or managing investments, unless those activities are carried on with customers in the ordinary course of business by a bank, an insurance company, a registered securities dealer or a deposit-taking financial institution), the benefits of the Convention shall apply to that resident person with respect to income derived from the other Contracting State in connection with or incidental to that trade or business (including any such income derived directly or indirectly by that resident person through one or more other persons that are residents of that other State), but only if that trade or business is substantial in relation to the activity carried on in that other State giving rise to the income in respect of which benefits provided under the Convention by that other State are claimed.

4. A company that is a resident of a Contracting State shall also be entitled to the benefits of Articles X (Dividends), XI (Interest) and XII (Royalties) if

(a) its shares that represent more than 90 per cent of the aggregate vote and value represented of all of its shares and at least 50 per cent of the vote and value of any disproportionate class of shares (in neither case including debt substitute shares) are owned, directly or indirectly, by persons each of whom is a qualifying person or a person who :

(i) is a resident of a country with which the other Contracting State has a comprehensive income tax convention and is entitled to all of the benefits provided by that other State under that convention;

(ii) would qualify for benefits under paragraphs 2 or 3 if that person were a resident of the first-mentioned State (and, for the purposes of paragraph 3, if the business it carried on in the country of which it is a resident were carried on by it in the first-mentioned State); and

(iii) would be entitled to a rate of tax in the other Contracting State under the convention between that person's country of residence and that other State, in respect of the particular class of income for which benefits are being claimed under this Convention, that is at least as low as the rate applicable under this Convention; and

(b) the amount of the expenses deductible from gross income (as determined in the company's State of residence) that are paid or payable by the company for its preceding fiscal period (or, in the case of its first fiscal period, that period) directly or indirectly to persons that are not qualifying persons is less than 50 per cent of the gross income of the company for that period.

5. For the purposes of this Article,

(a) the term "debt substitute share" means:

(i) a share described in paragraph (e) of the definition "term preferred share" in the *Income Tax Act*, as it may be amended from time to time without changing the general principle thereof; and

(ii) such other type of share as may be agreed upon by the competent authorities of the Contracting States.

(b) the term "disproportionate class of shares" means any class of shares of a company resident in one of the Contracting States that entitles the shareholder to disproportionately higher participation, through dividends, redemption payments or otherwise, in the earnings generated in the other State by particular assets or activities of the company;

(c) the term "disproportionate interest in a trust" means any interest in a trust resident in one of the Contracting States that entitles the interest holder to disproportionately higher participation in, or claim to, the earnings generated in the other State by particular assets or activities of the trust;

(d) the term "not-for-profit organization" of a Contracting State means an entity created or established in that State and that is, by reason of its not-for-profit status, generally exempt from income taxation in that State, and includes a private foundation, charity, trade union, trade association or similar organization;

(e) the term "principal class of shares" of a company means the ordinary or common shares of the company, provided that such class of shares represents the majority of the voting power and value of the company. If no single class of ordinary or common shares represents the majority of the aggregate voting power and value of the company, the "principal class of shares" are those classes that in the aggregate represent a majority of the aggregate voting power and value of the company; and

(f) the term "recognized stock exchange" means:

(i) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the Securities and Exchange Commission as a national securities exchange for purposes of the Securities Exchange Act of 1934;

(ii) Canadian stock exchanges that are "prescribed stock exchanges" or "designated stock exchanges" under the *Income Tax Act*; and

(iii) any other stock exchange agreed upon by the Contracting States in an exchange of notes or by the competent authorities of the Contracting States;

6. Where a person that is a resident of a Contracting State is not entitled under the preceding provisions of this Article to the benefits provided under the Convention by the other Contracting State, the competent authority of that other State shall, upon that person's request, determine on the basis of all factors including the history, structure, ownership and operations of that person whether :

(a) its creation and existence did not have as a principal purpose the obtaining of benefits under the Convention that would not otherwise be available; or

(b) it would not be appropriate, having regard to the purpose of this Article, to deny the benefits of the Convention to that person.

The person shall be granted the benefits of the Convention by that other State where the competent authority determines that subparagraph (a) or (b) applies.

7. It is understood that this Article shall not be construed as restricting in any manner the right of a Contracting State to deny benefits under the Convention where it can reasonably be concluded that to do otherwise would result in an abuse of the provisions of the Convention.

## Article XXIX B – Taxes Imposed by Reason of Death

1. Where the property of an individual who is a resident of a Contracting State passes by reason of the individual's death to an organization referred to in paragraph 1 of Article XXI (Exempt Organizations) and that is a resident of the other Contracting State,

(a) if the individual is a resident of the United States and the organization is a resident of Canada, the tax consequences in the United States arising out of the passing of the property shall apply as if the organization were a resident of the United States; and

(b) ) if the individual is a resident of Canada and the organization is a resident of the United States, the tax consequences in Canada arising out of the passing of the property shall apply as if the individual had disposed of the property for proceeds equal to an amount elected on behalf of the individual for this purpose (in a manner specified by the competent authority of Canada), which amount shall be no less than the individual's cost of the property as determined for purposes of Canadian tax and no greater than the fair market value of the property.

2. In determining the estate tax imposed by the United States, the estate of an individual (other than a citizen of the United States) who was a resident of Canada at the time of the individual's death shall be allowed a unified credit equal to the greater of

(a) the amount that bears the same ratio to the credit allowed under the law of the United States to the estate of a citizen of the United States as the value of the part of the individual's gross estate that at the time of the individual's death is situated in the United States bears to the value of the individual's entire gross estate wherever situated; and

(b) the unified credit allowed to the estate of a nonresident not a citizen of the United States under the law of the United States.

The amount of any unified credit otherwise allowable under this paragraph shall be reduced by the amount of any credit previously allowed with respect to any gift made by the individual. The credit otherwise allowable under subparagraph (a) shall be allowed only if all information necessary for the verification and computation of the credit is provided.

3. In determining the estate tax imposed by the United States on an individual's estate with respect to property that passes to the surviving spouse of the individual (within the meaning of the law of the United States) and that would qualify for the estate tax marital deduction under the law of the United States if the surviving spouse were a citizen of the United States and all applicable elections were properly made (in this paragraph and in paragraph 4 referred to as "qualifying property"), a non-refundable credit computed in accordance with the provisions of paragraph 4 shall be allowed in addition to the unified credit allowed to the estate under paragraph 2 or under the law of the United States, provided that

(a) the individual was at the time of death a citizen of the United States or a resident of either Contracting State;

(b) the surviving spouse was at the time of the individual's death a resident of either Contracting State;

(c) if both the individual and the surviving spouse were residents of the United States at the time of the individual's death, one or both was a citizen of Canada; and

(d) the executor of the decedent's estate elects the benefits of this paragraph and waives irrevocably the benefits of any estate tax marital deduction that would be allowed under the law of the United States on a United States Federal estate tax return filed for the individual's estate by the date on which a qualified domestic trust election could be made under the law of the United States.

4. The amount of the credit allowed under paragraph 3 shall equal the lesser of

(a) the unified credit allowed under paragraph 2 or under the law of the United States (determined without regard to any credit allowed previously with respect to any gift made by the individual), and

(b) the amount of estate tax that would otherwise be imposed by the United States on the transfer of qualifying property.

The amount of estate tax that would otherwise be imposed by the United States on the transfer of qualifying property shall equal the amount by which the estate tax (before allowable credits) that would be imposed by the United States if the qualifying property were included in computing the taxable estate exceeds the estate tax (before allowable credits) that would be so imposed if the qualifying property were not so included. Solely for purposes of determining other credits allowed under the law of the United States, the credit provided under paragraph 3 shall be allowed after such other credits.

5. Where an individual was a resident of the United States immediately before the individual's death, for the purposes of subsections 70 (5.2) and (6) of the *Income Tax Act*, both the individual and the individual's spouse shall be deemed to have been resident in Canada immediately before the individual's death. Where a trust that would be a trust described in subsection 70(6) of that Act, if its trustees that were residents or citizens of the United States or domestic corporations under the law of the United States were residents of Canada, requests the competent authority of Canada to do so, the competent authority may agree, subject to terms and conditions satisfactory to such competent authority, to treat the trust for the purposes of that Act as being resident in Canada for such time and with respect to such property as may be stipulated in the agreement.

6. In determining the amount of Canadian tax payable by an individual who immediately before death was a resident of Canada, or by a trust described in subsection 70(6) of the *Income Tax Act* (or a trust which is treated as being resident in Canada under the provisions of paragraph 5), the amount of any Federal or state estate or inheritance taxes payable in the United States (not exceeding, where the individual was a citizen of the United States or a former citizen referred to in paragraph 2 of Article XXIX (Miscellaneous Rules), the amount of estate and inheritance taxes that would have been payable if the individual were not a citizen or former citizen of the United States) in respect of property situated within the United States shall,

(a) to the extent that such estate or inheritance taxes are imposed upon the individual's death, be allowed as a deduction from the amount of any Canadian tax otherwise payable by the individual for the taxation year in which the individual died on the total of

(i) any income, profits or gains of the individual arising (within the meaning of paragraph 3 of Article XXIV (Elimination of Double Taxation)) in the United States in that year, and

(ii) where the value at the time of the individual's death of the individual's entire gross estate wherever situated (determined under the law of the United States) exceeded 1.2 million U.S. dollars or its equivalent in Canadian dollars, any income, profits or gains of the individual for that year from property situated in the United States at that time, and

(b) to the extent that such estate or inheritance taxes are imposed upon the death of the individual's surviving spouse, be allowed as a deduction from the amount of any Canadian tax otherwise payable by the trust for its taxation year in which that spouse dies on any income, profits or gains of the trust for that year arising (within the meaning of paragraph 3 of Article XXIV (Elimination of Double Taxation)) in the United States or from property situated in the United States at the time of death of the spouse.

For purposes of this paragraph, property shall be treated as situated within the United States if it is so treated for estate tax purposes under the law of the United States as in effect on March 17, 1995, subject to any subsequent changes thereof that the competent authorities of the Contracting States have agreed to apply for the purposes of this paragraph. The deduction allowed under this paragraph shall take into account the deduction for any income tax paid or accrued to the United States that is provided under paragraph 2(a), 4(a) or 5(b) of Article XXIV (Elimination of Double Taxation).

7. In determining the amount of estate tax imposed by the United States on the estate of an individual who was a resident or citizen of the United States at the time of death, or upon the death of a surviving spouse with respect to a qualified domestic trust created by such an individual or the individual's executor or surviving spouse, a credit shall be allowed against such tax imposed in respect of property situated outside the United States, for the federal and provincial income taxes payable in Canada in

respect of such property by reason of the death of the individual or, in the case of a qualified domestic trust, the individual's surviving spouse. Such credit shall be computed in accordance with the following rules:

(a) a credit otherwise allowable under this paragraph shall be allowed regardless of whether the identity of the taxpayer under the law of Canada corresponds to that under the law of the United States;

(b) the amount of a credit allowed under this paragraph shall be computed in accordance with the provisions and subject to the limitations of the law of the United States regarding credit for foreign death taxes (as it may be amended from time to time without changing the general principle hereof), as though the income tax imposed by Canada were a creditable tax under that law;

(c) a credit may be claimed under this paragraph for an amount of federal or provincial income tax payable in Canada only to the extent that no credit or deduction is claimed for such amount in determining any other tax imposed by the United States, other than the estate tax imposed on property in a qualified domestic trust upon the death of the surviving spouse.

8. Provided that the value, at the time of death, of the entire gross estate wherever situated of an individual who was a resident of Canada (other than a citizen of the United States) at the time of death does not exceed 1.2 million U.S dollars or its equivalent in Canadian dollars, the United States may impose its estate tax upon property forming part of the estate of the individual only if any gain derived by the individual from the alienation of such property would have been subject to income taxation by the United States in accordance with Article XIII (Gains).

## Article XXX – Entry Into Force

1. This Convention shall be subject to ratification in accordance with the applicable procedures of each Contracting State and instruments of ratification shall be exchanged at Ottawa as soon as possible.

2. The Convention shall enter into force upon the exchange of instruments of ratification and, subject to the provisions of paragraph 3, its provisions shall have effect:

(a) for tax withheld at the source on income referred to in Articles X (Dividends), XI (Interest), XII (Royalties) and XVIII (Pensions and Annuities), with respect to amounts paid or credited on or after the first day of the second month next following the date on which the Convention enters into force;

(b) for other taxes, with respect to taxable years beginning on or after the first day of January next following the date on which the Convention enters into force; and

(c) notwithstanding the provisions of subparagraph (b), for the taxes covered by paragraph 4 of Article XXIX (Miscellaneous Rules) with respect to all taxable years referred to in that paragraph.

3. For the purposes of applying the United States foreign tax credit in relation to taxes paid or accrued to Canada:

(a) notwithstanding the provisions of paragraph 2(a) of Article II (Taxes Covered), the tax on 1971 undistributed income on hand imposed by Part IX of the *Income Tax Act* of Canada shall be considered to be an income tax for distributions made on or after the first day of January 1972 and before the first day of January 1979 and shall be considered to be imposed upon the recipient of a distribution, in the proportion that the distribution out of undistributed income with respect to which the tax has been paid bears to 85 per cent of such undistributed income;

(b) the principles of paragraph 6 of Article XXIV (Elimination of Double Taxation) shall have effect for taxable years beginning on or after the first day of January 1976; and



(c) the provisions of paragraph 1 of Article XXIV shall have effect for taxable years beginning on or after the first day of January 1981.

Any claim for refund based on the provisions of this paragraph may be filed on or before June 30 of the calendar year following that in which the Convention enters into force, notwithstanding any rule of domestic law to the contrary.

4. Subject to the provisions of paragraph 5, the 1942 Convention shall cease to have effect for taxes for which this Convention has effect in accordance with the provisions of paragraph 2.

5. Where any greater relief from tax would have been afforded by any provision of the 1942 Convention than under this Convention, any such provision shall continue to have effect for the first taxable year with respect to which the provisions of this Convention have effect under paragraph 2(b).

6. The 1942 Convention shall terminate on the last date on which it has effect in accordance with the preceding provisions of this Article.

7. The Exchange of Notes between the United States and Canada dated August 2 and September 17, 1928, providing for relief from double income taxation on shipping profits, is terminated. Its provisions shall cease to have effect with respect to taxable years beginning on or after the first day of January next following the date on which this Convention enters into force.

8. The provisions of the Convention between the Government of Canada and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on the Estates of Deceased Persons signed at Washington on February 17, 1961 shall continue to have effect with respect to estates of persons deceased prior to the first day of January next following the date on which this Convention enters into force but shall cease to have effect with respect to estates of persons deceased on or after that date. Such Convention shall terminate on the last date on which it has effect in accordance with the preceding sentence.

## Article XXXI – Termination

1. This Convention shall remain in force until terminated by a Contracting State.

2. Either Contracting State may terminate the Convention at any time after 5 years from the date on which the Convention enters into force provided that at least 6 months' prior notice of termination has been given through diplomatic channels.

3. Where a Contracting State considers that a significant change introduced in the taxation laws of the other Contracting State should be accommodated by a modification of the Convention, the Contracting States shall consult together with a view to resolving the matter; if the matter cannot be satisfactorily resolved, the first-mentioned State may terminate the Convention in accordance with the procedures set forth in paragraph 2, but without regard to the 5 year limitation provided therein.

4. In the event the Convention is terminated, the Convention shall cease to have effect:

(a) for tax withheld at the source on income referred to in Articles X (Dividends), XI (Interest), XII (Royalties), XVIII (Pensions and Annuities) and paragraph 2 of Article XXII (Other Income), with respect to amounts paid or credited on or after the first day of January next following the expiration of the 6 months' period referred to in paragraph 2; and

(b) for other taxes, with respect to taxable years beginning on or after the first day of January next following the expiration of the 6 months' period referred to in paragraph 2.

## Entry into Force Provision of the 5<sup>th</sup> Protocol

### Article 26

1. This Protocol shall be subject to ratification in accordance with the applicable procedures in the United States and Canada. The Contracting States shall notify each other, through diplomatic channels, when their respective applicable procedures have been satisfied.

2. This Protocol shall enter into force on the later of these notifications referred to in paragraph 1, or January 1, 2008, whichever is later. The Provisions of this Protocol shall have effect:

(a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of the second month that begins after the date on which this Protocol enters into force ;

(b) in respect of other taxes, for taxable years that begin after (or, if the later of the notifications referred to in paragraph 1 is dated in 2007, taxable years that begin in or after) the calendar year in which this Protocol enters into force.

3. Notwithstanding paragraph 2,

(a) Paragraph 1 of Article 2 of this Protocol shall have effect with respect to corporate continuations effected after September 17, 2000;

(b) New paragraph 7 of Article IV (Residence) of the Convention as added by Article 2 of this Protocol shall have effect as of the first day of the third calendar year that ends after this Protocol enters into force;

(c) Article 3 of this Protocol shall have effect as of the third taxable year that ends after this Protocol enters into force, but in no event shall it apply to include, in the determination of whether an enterprise has a permanent establishment under paragraph 9 of Article V (Permanent Establishment) of the Convention, any days of presence, services rendered, or gross active business revenues that occur or arise prior to January 1, 2010;

(d) In applying Article 6 of this Protocol to interest paid or credited during the first two calendar years that end after entry into force of this Protocol, paragraph 1 of Article XI (Interest) of the Convention shall be read as follows:

1. Interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State may be taxed in that other State. However, if the interest is not exempt under paragraph 3 of Article XI (Interest) as it read on January 1, 2007, and the payer of the interest and the beneficial owner of the interest are related, or would be deemed to be related if the provisions of paragraph 2 of Article IX (Related Persons) applied for this purpose, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but the tax so charged shall not exceed the following percentage of the gross amount of the interest:

(a) if the interest is paid or credited during the first calendar year that ends after the entry into force of this paragraph, 7 percent; and

(b) if the interest is paid or credited during the second calendar year that ends after entry into force of this paragraph, 4 percent;



(e) Paragraphs 2 and 3 of Article 8 of this Protocol shall have effect with respect to alienations of property that occur (including, for greater certainty, those that are deemed under the law of a Contracting State to occur) after September 17, 2000;

(f) Article 21 of this Protocol shall have effect with respect to

(i) cases that are under consideration by the competent authorities as of the date on which this Protocol enters into force ; and

(ii) cases that come under such consideration after that time,

and the commencement date for a case described in subparagraph (f)(i) shall be the date on which the Protocol enters into force; and

(g) Article 22 of this Protocol shall have effect for revenue claims finally determined by an applicant State after November 9, 1985.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Protocol.

DONE in duplicate at Chelsea this twenty-first day of September, 2007 in the English and French languages, each text being equally authentic.

Henry M. Paulson, Jr.

Jim Flaherty

FOR THE GOVERNMENT OF  
THE UNITED STATES OF AMERICA

FOR THE GOVERNMENT OF  
CANADA

## DIPLOMATIC NOTE: ANNEX A TO THE CONVENTION

Note no. JLAB-0111

Excellency,

I have the honor to refer to the Protocol (the "Protocol") done today between Canada and the United States of America amending the Convention with Respect to Taxes on Income and on Capital done at Washington on 26 September 1980, as amended by the Protocols done on 14 June 1983, 28 March 1984, 17 March 1995, and 29 July 1997 (the "Convention"), and to propose on behalf of the Government of Canada the following:

In respect of any case where the competent authorities have endeavored but are unable to reach a complete agreement under Article XXVI (Mutual Agreement Procedure) of the Convention regarding the application of one or more of the following Articles of the Convention: IV (Residence) (but only insofar as it relates to the residence of a natural person), V (Permanent Establishment), VII (Business Profits), IX (Related Persons), and XII (Royalties) (but only (i) insofar as Article XII might apply in transactions involving related persons to whom Article IX might apply, or (ii) to an allocation of amounts between royalties that are taxable under paragraph 2 thereof and royalties that are exempt under paragraph 3 thereof), binding arbitration shall be used to determine such application, unless the competent authorities agree that the particular case is not suitable for determination by arbitration. In addition, the competent authorities may, on an ad hoc basis, agree that binding arbitration shall be used in respect of any other matter to which Article XXVI applies. If an arbitration proceeding (the "Proceeding") under paragraph 6 of Article XXVI commences, the following rules and procedures shall apply:

1. The Proceeding shall be conducted in the manner prescribed by, and subject to the requirements of, paragraphs 6 and 7 of Article XXVI and these rules and procedures, as modified or supplemented by any other rules and procedures agreed upon by the competent authorities pursuant to paragraph 17 below.
2. The determination reached by an arbitration board in the Proceeding shall be limited to a determination regarding the amount of income, expense or tax reportable to the Contracting States.
3. Notwithstanding the initiation of the Proceeding, the competent authorities may reach a mutual agreement to resolve a case and terminate the Proceeding. Correspondingly, a concerned person may withdraw a request for the competent authorities to engage in the Mutual Agreement Procedure (and thereby terminate the Proceeding) at any time.
4. The requirements of subparagraph 7(d) of Article XXVI shall be met when the competent authorities have each received from each concerned person a notarized statement agreeing that the concerned person and each person acting on the concerned person's behalf, shall not disclose to any other person any information received during the course of the Proceeding from either Contracting State or the arbitration board, other than the determination of the Proceeding. A concerned person that has the legal authority to bind any other concerned person(s) on this matter may do so in a comprehensive notarized statement.
5. Each Contracting State shall have 60 days from the date on which the Proceeding begins to send a written communication to the other Contracting State appointing one member of the arbitration board. Within 60 days of the date on which the second such communication is sent, the two members appointed by the Contracting States shall appoint a third member, who shall serve as chair of the board. If either Contracting State fails to appoint a member, or if the members appointed by the Contracting States fail to agree upon the third member in the manner prescribed by this paragraph, the remaining member(s) shall be appointed by the highest ranking member of the Secretariat at the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development (OECD) who is not a citizen of either Contracting State, by written notice to both Contracting States within 60 days of the

- date of such failure. The competent authorities shall develop a non-exclusive list of individuals with familiarity in international tax matters who may potentially serve as the chair of the board.
6. The arbitration board may adopt any procedures necessary for the conduct of its business, provided that the procedures are not inconsistent with any provision of Article XXVI or this note.
  7. Each of the Contracting States shall be permitted to submit, within 60 days of the appointment of the chair of the arbitration board, a proposed resolution describing the proposed disposition of the specific monetary amounts of income, expense or taxation at issue in the case, and a supporting position paper, for consideration by the arbitration board. Copies of the proposed resolution and supporting position paper shall be provided by the board to the other Contracting State on the date on which the later of the submissions is submitted to the board. In the event that only one Contracting State submits a proposed resolution within the allotted time, then that proposed resolution shall be deemed to be the determination of the board in that case and the Proceeding shall be terminated. Each of the Contracting States may, if it so desires, submit a reply submission to the board within 120 days of the appointment of its chair, to address any points raised by the proposed resolution or position paper submitted by the other Contracting State. Additional information may be submitted to the arbitration board only at its request, and copies of the board's request and the Contracting State's response shall be provided to the other Contracting State on the date on which the request or the response is submitted. Except for logistical matters such as those identified in paragraphs 12, 14 and 15 below, all communications from the Contracting States to the arbitration board, and vice versa, shall take place only through written communications between the designated competent authorities and the chair of the board.
  8. The arbitration board shall deliver a determination in writing to the Contracting States within six months of the appointment of its chair. The board shall adopt as its determination one of the proposed resolutions submitted by the Contracting States.
  9. In making its determination, the arbitration board shall apply, as necessary: (1) the provisions of the tax treaty, (2) any agreed commentaries or explanations of the Contracting States concerning the tax treaty, (3) the laws of the Contracting States to the extent they are not inconsistent with each other, and (4) any OECD Commentary, Guidelines or Reports regarding relevant analogous portions of the OECD Model Tax Convention.
  10. The determination of the arbitration board in a particular case shall be binding on the Contracting States. The determination of the board shall not state a rationale. It shall have no precedential value.
  11. As provided in subparagraph 7(e) of Article XXVI, the determination of an arbitration board shall constitute a resolution by mutual agreement under this Article. Each concerned person must, within 30 days of receiving the determination of the board from the competent authority to which the case was first presented, advise that competent authority whether that concerned person accepts the determination of the board. If any concerned person fails to so advise the relevant competent authority within this time frame, the determination of the board shall be considered not to have been accepted in that case. Where the determination of the board is not accepted, the case may not subsequently be the subject of a Proceeding.
  12. Any meeting(s) of the arbitration board shall be in facilities provided by the Contracting State whose competent authority initiated the mutual agreement proceedings in the case.
  13. The treatment of any associated interest or penalties shall be determined by applicable domestic law of the Contracting State(s) concerned.
  14. No information relating to the Proceeding (including the board's determination) may be disclosed by the members of the arbitration board or their staffs or by either competent authority, except as permitted by the Convention and the domestic laws of the Contracting States. In addition, all material prepared in the course of, or relating to, the Proceeding shall be considered to be information exchanged between the Contracting States. All members of the arbitration board and their staffs must agree in notarized statements sent to each of the Contracting States, prior to their acting in the arbitration proceeding, to abide by and be

subject to the confidentiality and nondisclosure provisions of Articles XXVI and XXVII of the Convention and the applicable domestic laws of the Contracting States. In the event those provisions conflict, the most restrictive condition shall apply.

15. The fees and expenses of members of the arbitration board shall be set in accordance with the International Centre for Settlement of Investment Disputes (ICSID) Schedule of Fees for arbitrators, as in effect on the date on which the arbitration proceedings begin, and shall be borne equally by the Contracting States. Any fees for language translation shall also be borne equally by the Contracting States. Meeting facilities, related resources, financial management, other logistical support, and general administrative coordination of the Proceeding shall be provided, at its own cost, by the Contracting State whose competent authority initiated the mutual agreement proceedings in the case. Any other costs shall be borne by the Contracting State that incurs them.
16. For purposes of paragraphs 6 and 7 of Article XXVI and this note, each competent authority shall confirm in writing to the other competent authority and to the concerned person(s) the date of its receipt of the information necessary to undertake substantive consideration for a mutual agreement. Such information shall be:
  - (i) in the United States, the information required to be submitted to the U.S. competent authority under Revenue Procedure 2006-54, section 4.05 (or any applicable analogous provisions) and, for cases initially submitted as a request for an Advance Pricing Agreement, the information required to be submitted to the Internal Revenue Service under Revenue Procedure 2006-9, section 4 (or any applicable analogous provisions), and
  - (ii) in Canada, the information required to be submitted to Canadian competent authority under Information Circular 71-17 (or any applicable successor publication).

However, this information shall not be considered received until both competent authorities have received copies of all materials submitted to either Contracting State by the concerned person(s) in connection with the mutual agreement procedure.

17. The competent authorities of the Contracting States may modify or supplement the above rules and procedures as necessary to more effectively implement the intent of paragraph 6 of Article XXVI to eliminate double taxation.

If the above proposal is acceptable to your Government, I further propose that this Note, which is authentic in English and in French, and your reply Note reflecting such acceptance shall constitute an agreement between our two Governments which shall enter into force on the date of entry into force of the Protocol and shall be annexed to the Convention as Annex A thereto and shall therefore be an integral part of the Convention.

Please accept, Excellency, the assurance of my highest consideration.

Maxime Bernier

Minister of Foreign Affairs

Excellency,

I have the honour to acknowledge receipt of your Note No. JLAB-0111 dated September 21, 2007, which states in its entirety as follows:

Excellency,

I have the honor to refer to the Protocol (the "Protocol") done today between Canada and the United States of America amending the Convention with Respect to Taxes on Income and on Capital done at Washington on 26 September 1980, as amended by the Protocols done on 14 June 1983, 28 March 1984, 17 March 1995, and 29 July 1997 (the "Convention"), and to propose on behalf of the Government of Canada the following:

In respect of any case where the ...

I am pleased to inform you that the Government of the United States of America accepts the proposal set forth in your Note. The Government of the United States of America further agrees that your Note, which is authentic in English and in French, together with this reply, shall constitute an Agreement between the United States of America and Canada, which shall enter into force on the date of entry into force of the Protocol amending the Convention between the United States of America and Canada with Respect to Taxes on Income and on Capital done at Washington on 26 September 1980, as amended by the Protocols done on 14 June 1983, 28 March 1984, 17 March 1995, and 29 July 1997 (the "Convention"), and shall be annexed to the Convention as Annex A thereto, and shall therefore be an integral part of the Convention.

Accept, Excellency, the renewed assurances of my highest consideration.

## DIPLOMATIC NOTE: ANNEX B TO THE CONVENTION

Note no. JLAB-0112

Excellency,

I have the honor to refer to the Protocol (the "Protocol") done today between Canada and the United States of America amending the Convention with Respect to Taxes on Income and on Capital done at Washington on 26 September 1980, as amended by the Protocols done on 14 June 1983, 28 March 1984, 17 March 1995, and 29 July 1997 (the "Convention").

In the course of the negotiations leading to the conclusion of the Protocol done today, the negotiators developed and agreed upon a common understanding and interpretation of certain provisions of the Convention. These understandings and interpretations are intended to give guidance both to the taxpayers and to the tax authorities of our two countries in interpreting various provisions contained in the Convention.

I, therefore, have the further honor to propose on behalf of the Government of Canada the following understandings and interpretations:

1. *Meaning of undefined terms*

For purposes of paragraph 2 of Article III (General Definitions), it is understood that, as regards the application at any time of the Convention, and any protocols thereto by a Contracting State, any term not defined therein shall, unless the context otherwise requires or the competent authorities otherwise agree to a common meaning pursuant to Article XXVI (Mutual Agreement Procedure), have the meaning which it has at that time under the law of that State for the purposes of the taxes to which the Convention, and any protocols thereto apply, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

2. *Meaning of connected projects*

For the purposes of applying subparagraph (b) of paragraph 9 of Article V (Permanent Establishment), it is understood that projects shall be considered to be connected if they constitute a coherent whole, commercially and geographically.

3. *Definition of the term "dividends"*

It is understood that distributions from Canadian income trusts and royalty trusts that are treated as dividends under the taxation laws of Canada shall be considered dividends for the purposes of Article X (Dividends) of the Convention.

4. *Deletion of Article XIV (Independent Personal Services)*

It is understood that the deletion of Article XIV (Independent Personal Services) confirms the negotiators' shared understanding that no practical distinction can be made between a "fixed base" and a "permanent establishment", and that independent personal services of a resident of a Contracting State, to the extent that such resident is found to have a permanent establishment in the other Contracting State with respect to those services, shall be subject to the provisions of Article VII (Business Profits).

5. *Former permanent establishments and fixed bases*

It is understood that the modifications of paragraph 2 of Article VII (Business Profits), paragraph 4 of Article X (Dividends), paragraph 3 of Article XI (Interest) and paragraph 5 of Article XII (Royalties) to refer to business having formerly been carried on through a permanent establishment confirm the

negotiators' shared understanding of the meaning of the existing provisions, and thus are clarifying only.

6. *Stock options*

For purposes of applying Article XV (Income from Employment) and Article XXIV (Elimination of Double Taxation) to income of an individual in connection with the exercise or other disposal (including a deemed exercise or disposal) of an option that was granted to the individual as an employee of a corporation or mutual fund trust to acquire shares or units ("securities") of the employer (which is considered, for the purposes of this Understanding, to include any related entity) in respect of services rendered or to be rendered by such individual, or in connection with the disposal (including a deemed disposal) of a security acquired under such an option, the following principles shall apply:

- (a) Subject to subparagraph (b), the individual is deemed to have derived, in respect of employment exercised in a Contracting State, the same proportion of such income that the number of days in the period that begins on the day the option was granted, and that ends on the day the option was exercised or disposed of, on which the individual's principal place of employment for the employer was situated in that Contracting State is of the total number of days in the period on which the individual was employed by the employer; and
- (b) Notwithstanding subparagraph (a), if the competent authorities of both Contracting States agree that the terms of the option were such that the grant of the option is appropriately treated as transfer of ownership of the securities (e.g., because the options were in-the-money or not subject to a substantial vesting period), then they may agree to attribute income accordingly.

7. *Taxes imposed by reason of death*

It is understood that,

- (a) Where a share or option in respect of a share is property situated in the United States for the purposes of Article XXIX B (Taxes Imposed by Reason of Death), any employment income in respect of the share or option is, for the purpose of clause 6(a)(ii) of that Article, income from property situated in the United States;
- (b) Where property situated in the United States for the purposes of Article XXIX B (Taxes Imposed by Reason of Death) is held by an entity that is a resident of Canada and that is described in subparagraph 1(b) of Article IV (Residence), any income out of or under the entity in respect of the property is, for the purpose of clause 6(a)(ii) of Article XXIX B (Taxes Imposed by Reason of Death), income from property situated in the United States; and
- (c) where a tax is imposed in Canada by reason of death in respect of an entity that is a resident of Canada and that is described in subparagraph 1(b) of Article IV (Residence), that tax is, for the purpose of paragraph 7 of Article XXIX B (Taxes Imposed by Reason of Death), imposed in respect of property situated in Canada.

8. *Royalties – information in connection with franchise agreement*

It is understood that the reference in subparagraph 3(c) of Article XII (Royalties) of the Convention to information provided in connection with a franchise agreement generally refers only to information that governs or otherwise deals with the operation (whether by the payer or by another person) of the franchise, and not to other information concerning industrial, commercial or scientific experience that is held for resale or license.

9. *With reference to Article VII (Business Profits)*

It is understood that the business profits to be attributed to a permanent establishment shall include only the profits derived from the assets used, risks assumed and activities performed by the permanent establishment. The principles of the OECD Transfer Pricing Guidelines shall apply for purposes of determining the profits attributable to a permanent establishment, taking into account the different economic and legal circumstances of a single entity. Accordingly, any of the methods



described therein as acceptable methods for determining an arm's length result may be used to determine the income of a permanent establishment so long as those methods are applied in accordance with the Guidelines. In particular, in determining the amount of attributable profits, the permanent establishment shall be treated as having the same amount of capital that it would need to support its activities if it were a distinct and separate enterprise engaged in the same or similar activities. With respect to financial institutions other than insurance companies, a Contracting State may determine the amount of capital to be attributed to a permanent establishment by allocating the institution's total equity between its various offices on the basis of the proportion of the financial institution's risk-weighted assets attributable to each of them. In the case of an insurance company, there shall be attributed to a permanent establishment not only premiums earned through the permanent establishment, but that portion of the insurance company's overall investment income from reserves and surplus that supports the risks assumed by the permanent establishment.

10. *Qualifying retirement plans*

For purposes of paragraph 15 of Article XVIII (Pensions and Annuities), it is understood that

(a) In the case of Canada, the term "qualifying retirement plan" shall include the following and any identical or substantially similar plan that is established pursuant to legislation introduced after the date of signature of the 2007 Protocol: registered pension plans under section 147.1 of the Income Tax Act, registered retirement savings plans under section 146 that are part of a group arrangement described in subsection 204.2(1.32), deferred profit sharing plans under section 147, and any registered retirement savings plan under section 146 or registered retirement income fund under section 146.3 that is funded exclusively by rollover contributions from one or more of the preceding plans, and

(b) In the case of the United States, the term "qualifying retirement plan" shall include the following and any identical or substantially similar plan that is established pursuant to legislation introduced after the date of signature of the 2007 Protocol: qualified plans under section 401(a) of the Internal Revenue Code (including section 401(k) arrangements), individual retirement plans that are part of a simplified employee pension plan that satisfies section 408(k), section 408(p) simple retirement accounts, section 403(a) qualified annuity plans, section 403(b) plans, section 457(g) trusts providing benefits under section 457(b) plans, the Thrift Savings Fund (section 7701(j)), and any individual retirement account under section 408(a) that is funded exclusively by rollover contributions from one or more of the preceding plans.

11. *Former long-term residents*

The term "long-term resident" shall mean any individual who is a lawful permanent resident of the United States in eight or more taxable years during the preceding 15 taxable years. In determining whether the threshold in the preceding sentence is met, there shall not count any year in which the individual is treated as a resident of Canada under this Convention, or as a resident of any country other than the United States under the provisions of any other U.S. tax treaty, and, in either case, the individual does not waive the benefits of such treaty applicable to residents of the other country.

12. *Special source rules relating to former citizens and long-term residents*

For purposes of subparagraph 2 (b) of Article XXIX (Miscellaneous Rules), "income deemed under the domestic law of the United States to arise from such sources" consists of gains from the sale or exchange of stock of a U.S. company or debt obligations of a U.S. person, the United States, a State, or a political subdivision thereof, or the District of Columbia, gains from property (other than stock or debt obligations) located in the United States, and, in certain cases, income or gain derived from the sale of stock of a non-U.S. company or a disposition of property contributed to such non-U.S. company where such company would be a controlled foreign corporation with respect to the individual if such person had continued to be a U.S. person. In addition, an individual who exchanges property that gives rise or would give rise to U.S.-source income for property that gives rise to foreign-source income shall be treated as if he or she had sold the property that would give rise to U.S. source income for its fair market value, and any consequent gain shall be deemed to be income from sources within the United States.

13. *Exchange of Information*

It is understood that the standards and practices described in Article XXVII (Exchange of Information) of the Convention are to be in no respect less effective than those described in the Model Agreement on Exchange of Information on Tax Matters developed by the OECD Global Forum Working Group on Effective Exchange of Information.

14. *Limitation on Benefits*

The United States and Canada are part of the same regional free trade area and, as a result, the current Convention reflects the fact that publicly traded corporations resident in one country may be traded on a stock exchange of the other country. Nevertheless, the Contracting States agree that in making future amendments to the Convention, they shall consult on possible modifications to subparagraph 2(c) of Article XXIX A (Limitation on Benefits) (including, modifications necessary to discourage corporate inversion transactions).

If the above proposal is acceptable to your Government, I further propose that this Note, which is authentic in English and in French, and your reply Note reflecting such acceptance shall constitute an agreement between our two Governments which shall enter into force on the date of entry into force of the Protocol and shall be annexed to the Convention as Annex B thereto and shall therefore be an integral part of the Convention.

Please accept, Excellency, the assurance of my highest consideration.

Maxime Bernier

Minister of Foreign Affairs

Excellency,

I have the honour to acknowledge receipt of your Note No. JLAB-0112 dated September 21, 2007, which states in its entirety as follows:

Excellency,

I have the honor to refer to the Protocol (the "Protocol") done today between Canada and the United States of America ...

I am pleased to inform you that the Government of the United States of America accepts the proposal set forth in your Note. The Government of the United States of America further agrees that your Note, which is authentic in English and in French, together with this reply, shall constitute an Agreement between the United States of America and Canada, which shall enter into force on the date of entry into force of the Protocol amending the Convention between the United States of America and Canada with Respect to Taxes on Income and on Capital done at Washington on 26 September 1980, as amended by the Protocols done on 14 June 1983, 28 March 1984, 17 March 1995, and 29 July 1997 (the "Convention"), and shall be annexed to the Convention as Annex B thereto, and shall therefore be an integral part of the Convention.

Accept, Excellency, the renewed assurances of my highest consideration.