

No. 4153

**NETHERLANDS
and
CANADA**

Convention (with Protocol) for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income. Signed at Ottawa, on 2 April 1957

Official texts: English and Dutch.

Registered by the Netherlands on 17 January 1958.

**PAYS-BAS
et
CANADA**

Accord (avec Protocole) pour éviter les doubles impositions et empêcher la fraude fiscale en matière d'impôt sur le revenu. Signé à Ottawa, le 2 avril 1957

Textes officiels anglais et néerlandais.

Enregistré par les Pays-Bas le 17 janvier 1958.

No. 4153. CONVENTION¹ BETWEEN THE KINGDOM OF THE NETHERLANDS AND CANADA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME. SIGNED AT OTTAWA, ON 2 APRIL 1957

The Government of the Kingdom of the Netherlands and the Government of Canada, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, agree as follows:

Article I

1. The taxes which are subject to this Convention are :

(a) In the Netherlands :

The income tax,
The wages tax,
The company tax,
The dividends tax, and
The tax on fees of directors ;

(b) In Canada :

Income taxes, including surtaxes, which are imposed by the Government of Canada.

2. This Convention shall also apply to any other taxes of a substantially similar character, imposed by either Contracting Party subsequent to the signing of this Convention.

3. In case there should be any substantial amendment of the taxation laws in one of the States, notice of the amendment shall be given by the competent authority of this State to the competent authority of the other State, in order to bring about such alterations in or such interpretation of this Convention which may be deemed necessary.

Article II

1. In this Convention, unless the context otherwise requires :

¹ Came into force on 19 December 1957, the date of the exchange of the instruments of ratification at The Hague, in accordance with article XXVI.

(a) The terms “one of the States” and “the other State” mean the Netherlands or Canada, as the context requires.

(b) The term “Netherlands” means the Part of the Kingdom of the Netherlands, that is situated in Europe.

(c) The term “tax” means Netherlands tax or Canadian tax, as the context requires.

(d) The term “person” includes any company as well as any body of persons, corporate or not corporate.

(e) The term “company” includes any body corporate and any partnership the capital of which is wholly or partly represented by shares.

(f) The terms “resident of the Netherlands” and “resident of Canada” mean respectively any person who is resident in the Netherlands for the purposes of Netherlands tax and not resident in Canada for the purposes of Canadian tax and any person who is resident in Canada for the purposes of Canadian tax, and not resident in the Netherlands for the purposes of Netherlands tax ; a company shall be regarded as resident in the Netherlands if its business is managed and controlled in the Netherlands and as resident in Canada if its business is managed and controlled in Canada.

(g) The terms “resident of one of the States” and “resident of the other State” mean a person who is a resident of the Netherlands or a person who is a resident of Canada, as the context requires.

(h) The terms “Netherlands enterprise” and “Canadian enterprise” mean respectively an enterprise carried on by a resident of the Netherlands and an enterprise carried on by a resident of Canada, and the terms “enterprise of one of the States” and “enterprise of the other State” mean a Netherlands enterprise or a Canadian enterprise, as the context requires.

(i) The term “permanent establishment” when used with respect to an enterprise of one of the States, means a branch, office, factory, or other fixed place of business, a mine, quarry or any other place of natural resources subject to exploitation, but does not include a casual and temporary use of merely storage facilities. Nor does it include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of the enterprise or has a stock of merchandise from which he regularly fills orders on its behalf. In this connection :

(i) An enterprise of one of the States shall not be deemed to have a permanent establishment in the other State merely because it carries on business dealings

in that other State through a *bona fide* broker or general commission agent acting in the ordinary course of his business as such ;

- (ii) The fact that an enterprise of one of the States maintains in the other State a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise ;
- (iii) The fact that a company which is a resident of one of the States has a subsidiary company which is a resident of the other State or which carries on a trade or business in that other State (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company.

(j) The term “liberal profession” means independent activity for the purpose of profit (not being exercised in an enterprise) such as independent activity in the field of science, arts, literature, instruction or education, medicine, law, architecture, engineering and accountancy.

(k) The term “competent authority” means in the case of the Netherlands the Minister of Finance or his authorised representative and in the case of Canada, the Minister of National Revenue or his authorised representative.

2. In the application of the provisions of this Convention by either of the States, any term which is not defined in this Convention shall, unless the context otherwise requires, have the meaning which that term has under the laws of that State.

Article III

1. Income from immovable property, interest (other than debenture interest) from any mortgage of such property and royalties in respect of the operation of a mine or quarry or of any other extraction of a natural resource, shall be subject to tax in the State in which such immovable property, mine, quarry or natural resource is situated.

2. A resident of one of the States, deriving income from immovable property situated in the other State, may elect for any taxation year to be subject to the tax of such other State, on a net basis, as if such resident was engaged in trade or business within such other State through a permanent establishment therein during such taxation year, provided that he is not entitled to any personal deduction from income to determine taxable income.

Article IV

1. The profits of an enterprise of one of the States shall not be subject to tax in the other State unless the enterprise is engaged in trade or business in that other State through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by the last-mentioned State but only on so much of them as is attributable to that permanent establishment.

2. Where an enterprise of one of the States is engaged in trade or business in the other State through a permanent establishment situated therein, there shall be attributed to such permanent establishment the profits which it might be expected to derive in that other State if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

3. No portion of any profits arising to an enterprise of one of the States shall be attributed to a permanent establishment situated in the other State by reason of the mere purchase of goods or merchandise within that other State by the enterprise.

4. In determining profits of a permanent establishment there shall be allowed as a deduction all expenses reasonably applicable to the permanent establishment including executive and general administrative expenses so applicable.

5. Where a company which is a resident of one of the States derives profits or income from sources within the other State, that other State shall not impose any form of taxation on dividends paid by the company to persons not resident in that other State, or any tax in the nature of an undistributed profits tax on undistributed profits of the company, by reason of the fact that those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

6. The competent authorities of the two States may lay down rules by agreement for the apportionment of profits.

Article V

Where

- (a) an enterprise of one of the States participates directly or indirectly in the management, control or capital of an enterprise of the other State, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the States and an enterprise of the other State, and

in either case conditions are made or imposed between the two enterprises, in their commercial or financial relations, which differ from those which would be made between independent enterprises, then any profits which but for those conditions would have accrued to one of the enterprises but by reason of those conditions have not so accrued may be included in the profits of that enterprise and taxed accordingly.

Article VI

Notwithstanding the provisions of article IV of this Convention profits which a resident of one of the States derives from operating ships or aircraft shall be exempt from tax in the other State.

Article VII

1. Dividends paid by a company which is a resident of one of the States to a resident of the other State shall be subject to tax only in the latter State.

2. Where one of the States by way of deduction at the source levies a tax on dividends the right to levy such tax on dividends paid by a company which is a resident of that State to a resident of the other State, is not affected by the first paragraph of this article, but the rate of tax shall in that case not exceed 15 %. In case either of the States introduces into its law for the tax mentioned a rate exceeding 15 %, such State may terminate the limitation of the rate of tax to 15 % by giving written notice of termination to the other State through diplomatic channels on or before the thirtieth day of June in any year after the year in which this Convention comes into force. In such event, this limitation shall cease to be effective on and after the first day of January in the year next following that in which such notice is given.

3. Notwithstanding the second paragraph of this article none of the States shall levy a tax by way of deduction at the source on dividends paid by a company which is a resident of that State to a company which is a resident of the other State, provided that the latter company owns at least 50 % of the shares of the former company, which have under all circumstances full voting rights.

Article VIII

1. Any interest derived from one of the States by a resident of the other State shall be subject to tax only in the latter State.

2. Where one of the States by way of deduction at the source levies a tax on interest the right to levy such tax on interest derived from sources within that

State by a resident of the other State, is not affected by the first paragraph of this article, but the rate of tax shall in that case not exceed 15 %. In case either of the States introduces into its law for the tax mentioned a rate exceeding 15 %, such State may terminate the limitation of the rate of tax to 15 % by giving written notice of termination to the other State through diplomatic channels on or before the thirtieth day of June in any year after the year in which this Convention comes into force. In such event this limitation shall cease to be effective on and after the first day of January in the year next following that in which such notice is given.

3. In this article the term "interest" includes interest on bonds, securities, notes, debentures or on any other form of indebtedness, but does not include interest to which article III of this Convention applies.

Article IX

1. Royalties—other than royalties to which article III of this Convention applies—derived from one of the States by a resident of the other State shall be subject to tax only in the latter State.

2. Where one of the States by way of deduction at the source levies a tax on royalties the right to levy such tax on royalties derived from sources within that State by a resident of the other State, is not affected by the first paragraph of this article, but the rate of tax shall in that case not exceed 15 %.

3. Paragraph 2 of this article does not apply to copyright royalties and other like payments made in respect of the production or reproduction of any literary, dramatic, musical or artistic work.

Article X

Remuneration for services in the exercise of a liberal profession by a resident of one of the States shall not be subject to tax in the other State unless the profession is exercised from a fixed centre situated in that State. If the profession is exercised as aforesaid, tax may be imposed by the last-mentioned State on the remuneration but only on so much of it as is attributable to the activities from such a fixed centre.

Article XI

Remuneration for labour or for services—not being remuneration from the exercise of a liberal profession—performed in one of the States by a resident of

the other State is taxable in the first-mentioned State unless otherwise provided in the articles XII up to and including XV of this Convention.

Article XII

A resident of one of the States shall be exempt from tax in the other State in respect of remuneration for labour or for services—not being remuneration from the exercise of a liberal profession—performed in the other State, if

- (a) he is present in the latter State for a period or periods not exceeding in the aggregate 183 days during the taxation year, and
- (b) the labour or the services are performed for or on behalf of a person not being a resident of the latter State, and
- (c) such remuneration shall not have been charged as such against the profits of a permanent establishment, taxable in the latter State.

Article XIII

1. A resident of one of the States shall be exempt from tax in the other State in respect of remuneration for services performed on ships or aircraft in international traffic.

2. Individuals living on board of ships or aircraft without any real domicile in either of the States shall be deemed to be residents of the State in which the ship or the aircraft has its home port.

Article XIV

1. Remuneration (other than pensions) paid by, or out of funds created by one of the States or a political subdivision thereof to a resident of the other State not being a national of that State shall be subject to tax in the first-mentioned State.

2. The term "remuneration" in the first paragraph of this article includes periodical payments made in consideration of special merits.

3. The provisions of the paragraphs 1 and 2 of this article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the States or of a political subdivision thereof for purposes of profit.

Article XV

A professor or teacher from one of the States who receives remuneration for teaching, during a period of temporary residence not exceeding two years, at a

university or other establishment for further education in the other State, shall be exempt from tax in that other State in respect of that remuneration.

Article XVI

A student or apprentice from one of the States who is receiving full-time education or training in the other State shall be exempt from tax in that other State on payments received by him from abroad for the purposes of this maintenance, education or training.

Article XVII

The items of income not mentioned in the foregoing articles of this Convention shall be subject to tax only in that State, of which the taxpayer is considered to be a resident.

Article XVIII

1. Each of the States, when imposing tax on its residents may include in the basis upon which such taxes are imposed the items of income, which according to the provisions of the present Convention may be taxed by the other State.

2. Without prejudice to the application of the provisions concerning the compensation of losses in the unilateral regulations for the avoiding of double taxation the Netherlands shall allow a deduction from the amount of tax computed in conformity with the first paragraph of this article equal to such part of that tax which bears the same proportion to the aforesaid tax as the amount of the income which is taxable in Canada according to the articles III, IV, V, X, XI and XIV of this Convention bears to the amount of income, which forms the basis meant in the first paragraph of this article.

3. As far as may be in accordance with the provisions of the Income Tax Act Canada agrees to allow as a deduction from Canadian tax on any income derived from sources within the Netherlands the appropriate amount of Netherlands tax paid thereon.

Article XIX

1. The competent authorities of the States will upon request exchange information of a fiscal nature which is available to them under their own legislation and which would be useful to assure the regular assessment and collection of the taxes referred to in this Convention, as well as the application with respect to these taxes of the legal provisions relative to the prevention of fiscal fraud. The information so exchanged shall retain its secret nature and shall not be disclosed to

persons other than those charged with assessment and collection of the taxes referred to in this Convention.

2. The provisions of this article shall not in any case be considered as requiring one of the States to disclose to the other State information the furnishing of which would involve the disclosure of industrial, commercial or professional secrets or trade processes.

Article XX

1. In no case shall the provisions of article XIX of this Convention be construed so as to impose upon either of the States the obligation :

- (a) to carry out administrative measures at variance with the regulations and practice of either State or
- (b) to supply particulars which are not procurable under its own legislation or that of the State making the application.

2. The State to which application is made for information shall comply as soon as possible with the request addressed to it. Nevertheless such State may refuse to comply with the request for reasons of public policy. In such case it shall inform, as soon as possible, the State making the application.

Article XXI

The agreement between the Kingdom of the Netherlands and Canada constituted by exchange of notes, dated 23rd September, 1929,¹ for reciprocal exemption from income tax of income arising from the operation of ships shall not have effect for any year or period for which this Convention has effect.

Article XXII

1. The nationals of one of the States shall not be subjected in the other State to any taxation or any requirement connected therewith which is other, higher or more burdensome than the taxation and connected requirements to which the nationals of the latter State under similar circumstances are or may be subjected.

2. The enterprises of one of the States shall not be subjected in the other State, in respect of profits attributable to their permanent establishment in that other State, to any taxation which is other, higher or more burdensome than the taxation to which the enterprises of that other State are or may be subjected in respect of the like profits.

¹ League of Nations, *Treaty Series*, Vol. XCVI, p. 151.

3. In this article the term “nationals” means :

(a) in relation to the Netherlands :

- (i) all Netherlands nationals ;
- (ii) all Netherlands subjects residing in the Netherlands ;
- (iii) all legal persons, partnerships and associations deriving their status as such from the law in force in any territory of the Kingdom of the Netherlands to which the present Convention applies ;

(b) in relation to Canada :

- (i) all Canadian nationals ;
- (ii) all legal persons, partnerships and associations deriving their status as such from the law in force in Canada.

4. In this article the term “taxation ” means taxes of every kind and description levied by either State.

Article XXIII

The competent authority of each of the States may prescribe regulations necessary to carry out the provisions of this Convention.

Article XXIV

Should any difficulty or doubt arise as to the interpretation or the application of this Convention the competent authorities of the States shall endeavour to settle the question by mutual agreement.

Article XXV

This Convention may be made applicable either in its entirety, or with modifications, in respect to any Part of the Kingdom of the Netherlands outside Europe, which imposes taxes of a substantially similar character to the taxes specified in article I of this Convention, if such Part of the Kingdom so desires and Canada agrees to it. For this purpose the Government of the Kingdom of the Netherlands and the Government of Canada will communicate by an exchange of notes ; in these notes they will lay down the date the applicability becomes effective, the modifications and the conditions (including those relating to the termination), under which the Convention will be applicable.

Article XXVI

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

2. This Convention shall come into force on the date on which the instruments of ratification are exchanged and shall thereupon have effect :

- (a) as respects income and company taxes for any taxation year beginning after 31st December, 1953, and
- (b) as respects taxes on income withheld at the source during the calendar year 1954 and subsequent years.

Article XXVII

This Convention shall continue in effect indefinitely but either of the States may, on or before 30th June in any calendar year not earlier than the year 1959, give to the other State, through diplomatic channels, written notice of termination and, in such event, this Convention shall cease to be effective —

- (a) as respects income and company taxes for any taxation year beginning after the end of the calendar year in which the notice is given, and
- (b) as respects any other taxes for any calendar year following that in which the notice is given.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Convention and have affixed thereto their seals.

DONE in duplicate, this second day of April nineteen hundred and fifty-seven at Ottawa, in the Netherlands and English languages, both texts being equally authentic.

For the Government of Canada :

(Signed) W. E. HARRIS

PROTOCOL

At the moment of signing the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,¹ this day concluded between the Government of the Kingdom of the Netherlands and the Government of Canada, the undersigned plenipotentiaries have agreed that the following provisions shall form an integral part of the Convention :

Article I

The notification meant in paragraph 3 of article I is not conditional for the application of paragraph 2 of that article.

Article IV

The provision of paragraph 1 of article IV does not prejudice the right of each of the States to levy a tax by way of deduction at the source in accordance with the articles VII, VIII and IX.

Article XIV

The provisions of the present Convention shall not be construed to restrict in any manner the advantages accorded by international law or the law of either of the States to diplomatic and consular representatives of the other State and to the officials attached to such representatives.

Article XVII

The provisions of article XVII do not affect the right of either of the States to tax alimonies as well as income from estates and trusts derived from sources within that State.

Article XIX

The Government of the Kingdom of the Netherlands informed the Canadian Government that in the present circumstances it is not able to give to the Canadian authorities information concerning third parties obtained from banks or insurance companies, which it might have available.

The Canadian Government accepts this limitation.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Protocol and have affixed thereto their seals.

DONE in duplicate, this second day of April nineteen hundred and fifty-seven at Ottawa, in the Netherlands and English languages, both texts being equally authentic.

For the Government of Canada :

(Signed) W. E. HARRIS

¹ See p. 195 of this volume.