

**No. 4589**

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**CANADA  
and  
FEDERAL REPUBLIC OF GERMANY**

**Convention for the avoidance of double taxation and the  
prevention of fiscal evasion with respect to taxes on  
income. Signed at Ottawa, on 4 June 1956**

*Official texts: English and German.*

*Registered by Canada on 5 December 1958.*

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**CANADA  
et  
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE**

**Convention pour éviter les doubles impositions et prévenir  
la fraude fiscale en matière d'impôts sur le revenu.  
Signée à Ottawa, le 4 juin 1956**

*Textes officiels anglais et allemand.*

*Enregistrée par le Canada le 5 décembre 1958.*

No. 4589. CONVENTION<sup>1</sup> BETWEEN CANADA AND THE  
FEDERAL REPUBLIC OF GERMANY FOR THE AVOID-  
ANCE OF DOUBLE TAXATION AND THE PREVENTION  
OF FISCAL EVASION WITH RESPECT TO TAXES ON  
INCOME. SIGNED AT OTTAWA, ON 4 JUNE 1956

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Canada and the Federal Republic of Germany, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows :

*Article I*

(1) The taxes which are the subject of this Convention are :

(a) in Canada :

income taxes, including surtaxes and the old age security tax on income which are imposed by the Government of Canada (hereinafter referred to as "Canadian tax") ;

(b) in the Federal Republic :

the *Einkommensteuer* (income tax),  
the *Körperschaftsteuer* (corporation tax),  
the *Notopfer Berlin* (Berlin emergency aid tax),  
(hereinafter referred to as "Federal Republic tax") ;

(2) The present Convention shall also apply to any other taxes of a substantially similar character imposed in the Federal Republic or Canada subsequently to the date of signature of this Convention.

*Article II*

(1) In this Convention, unless the context otherwise requires :

(a) The terms "one of the territories" and "the other territory" mean the Federal Republic of Germany or Canada, as the context requires ; the territory of the Federal Republic of Germany means the territory in which the Basic Law for the Federal Republic of Germany is in force ;

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<sup>1</sup> Came into force on 5 August 1957, in accordance with article XXII (2), the instruments of ratification having been exchanged at Bonn on 5 July 1957.

(b) The term "tax" means Federal Republic tax or Canadian tax, as the context requires ;

(c) The term "person" includes natural persons and companies ;

(d) The term "company" means any body corporate and any entity which is treated as a body corporate for tax purposes ;

(e) The terms "resident of the Federal Republic" and "resident of Canada" mean respectively any person who is resident in the Federal Republic for the purposes of Federal Republic tax and not resident in Canada for the purposes of Canadian tax and any person who is resident in Canada for purposes of Canadian tax, and not resident in the Federal Republic for the purposes of Federal Republic tax ; a company shall be regarded as resident in the Federal Republic if

(i) its business is managed and controlled in the Federal Republic, or

(ii) it is incorporated in the Federal Republic and not managed and controlled in Canada.

A company shall be regarded as resident in Canada if its business is managed and controlled in Canada.

(f) The terms "Federal Republic enterprise" and "Canadian enterprise" mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of the Federal Republic and an industrial or commercial enterprise or undertaking carried on by a resident of Canada ; and the terms "enterprise of one of the territories" and "enterprise of the other territory" mean a Federal Republic enterprise or a Canadian enterprise, as the context requires ;

(g) (aa) The term "permanent establishment" when used with respect to an enterprise of one of the territories means a branch, office, factory, workshop, warehouse, mine, stone quarry or other place of exploitation of the ground or soil, permanent sales exhibition or other fixed place of business ;

(bb) An enterprise of one of the territories shall be deemed to have a permanent establishment in the other territory if it carries on in that other territory a construction or assembly project or the like, the duration of which exceeds or will likely exceed twelve months, notwithstanding the fact that it has no fixed place of business in such other territory within the meaning of subparagraph (aa).

(cc) Except as provided in subparagraph (dd) a permanent establishment is not constituted by the use of mere storage facilities, or

the maintenance of a stock of merchandise—whether in a warehouse or not—merely for convenience of delivery and not for purposes of display ;

- (dd) An enterprise of one of the territories shall be deemed to have a permanent establishment in the other territory if in that other territory ;
- (i) it has an agent or employee who has and habitually exercises general authority to negotiate and conclude contracts on behalf of the enterprise ; or
  - (ii) it has an agent or employee who has a stock of merchandise from which he regularly fills orders on behalf of the enterprise.

An enterprise of one of the territories shall not be deemed to have a permanent establishment merely because it carries on business dealings in the other territory through a *bona fide* broker, general commission agent or other independent agent acting in the ordinary course of his business as such ;

- (ee) The fact that an enterprise of one of the territories maintains in the other territory 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 ;
- (ff) The fact that a company which is a resident of one of the territories has a subsidiary company which is a resident of the other territory or which carries on a trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company.

(h) The term “competent authorities” means in the case of Canada, the Minister of National Revenue or his authorised representative, in the case of the Federal Republic the Federal Minister of Finance.

(2) In the application of the provisions of this Convention by one of the contracting States any term not otherwise defined in this Convention shall, unless the context otherwise requires, have the meaning which it has under the laws in force in the territory of that State relating to the taxes which are the subject of this Convention.

### Article III

(1) The industrial or commercial profits of an enterprise of one of the territories shall not be subject to tax in the other territory unless the enterprise carries

on a trade or business in the other territory through a permanent establishment situated therein. If it carries on a trade or business in that other territory through a permanent establishment situated therein, tax may be imposed on those profits in the other territory but only on so much of them as is attributable to that permanent establishment.

(2) The share of the industrial or commercial profits of an undertaking accruing to a partner therein who is a resident of one of the territories shall likewise not be subject to tax in the other territory unless the undertaking carries on a trade or business in that other territory through a permanent establishment situated therein. If it carries on a trade or business in that other territory through a permanent establishment situated therein tax may be imposed in the other territory on the share of the profits accruing to that partner, but only on so much as represents his share of the profits attributable to the permanent establishment.

(3) Where an enterprise of one of the territories carries on a trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive in that other territory 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.

(4) In determining industrial or commercial profits of a permanent establishment there shall be allowed as deductions all expenses reasonably allocable to the permanent establishment, including executive and general administrative expenses so allocable.

(5) Paragraphs (1) and (2) shall not be construed as preventing one of the contracting States from imposing pursuant to this Convention a tax on income (e.g. dividends interest, rents or royalties) derived from sources within its territory by a resident of the other territory if such income is not attributable to a permanent establishment in the first-mentioned territory.

(6) The competent authorities of the two contracting States may lay down rules by agreement for the apportionment of industrial or commercial profits.

#### *Article IV*

Where

- (a) the person carrying on an enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory, or
- (b) the same person participates directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory,

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

#### Article V

(1) Profits accruing to a resident of one of the territories from an enterprise which is managed and controlled in that territory and derives such profits from operating ships or aircraft, whether owned or chartered by the enterprise, shall be exempt from tax in the other territory.

(2) Paragraph (1) shall likewise apply in respect of participations in pools of any kind by enterprises engaged in air-transport.

#### Article VI

(1) The rate of tax on dividends paid to a company which is a resident of one of the territories by a company resident in the other territory more than 25 % of the voting shares of which are owned by the former company shall not exceed 15 % in the other territory.

(2) Where a company which is a resident of one of the territories derives profits or income from sources within the other territory there shall not be imposed in that other territory :

- (i) any form of taxation on dividends paid by the company to a person not residing in that other territory unless such dividend is attributable to a permanent establishment maintained in that other territory by a person not resident in that territory or
- (ii) any tax in the nature of an undistributed profits tax on undistributed profits of the company.

(3) In this Agreement the term "dividends" includes profits distributed to persons participating in a *Gesellschaft mit beschränkter Haftung*.

(4) Paragraph (1) shall not apply where a resident of one of the territories has a permanent establishment in the other territory and such dividends are attributable to that permanent establishment ; in such event Article III of this Convention shall be applicable.

#### Article VII

(1) The rate of tax on interest on bonds, securities, notes, debentures or on any other form of indebtedness (exclusive of interest on debts secured by mortgages

on real estate and interest on convertible bonds and income bonds) derived from sources within one of the territories by a resident of the other territory shall not exceed 15 % in the first mentioned territory.

(2) Paragraph (1) shall not apply where a resident of one of the territories has a permanent establishment in the other territory and such interest is attributable to that permanent establishment ; in such event Article III of this Convention shall be applicable.

### *Article VIII*

(1) Copyright royalties and other like payments made in respect of the production or reproduction of any literary, dramatic, musical or artistic work (excluding royalties and like payments in respect of motion picture films and films for use in connection with television) and derived from sources within one of the territories by a resident of the other territory shall be exempt from tax in that first-mentioned territory.

(2) The rate of tax on royalties and other payments derived as consideration for the right to use patents, designs, plans, secret processes and formulae, trade marks and other like property and rights derived from sources within one of the territories by a resident of the other territory shall not exceed 15 % in the first mentioned territory.

(3) The rate of tax on royalties and like payments in respect of motion picture films and films for use in connection with television derived from sources within one of the territories by a resident of the other territory shall not exceed 10 % in the first mentioned territory.

(4) Where any royalty exceeds a fair and reasonable consideration in respect of the rights for which it is paid, the exemption provided by this Article shall apply only to so much of the royalties as represents such fair and reasonable consideration.

(5) Paragraphs (1), (2) and (3) shall not apply where a resident of one of the territories has a permanent establishment in the other territory and such items of income as are dealt with in these paragraphs are attributable to that permanent establishment ; in such event Article III of this Convention shall be applicable.

### *Article IX*

(1) Except as provided in Article XIII a resident of one of the territories shall be exempt in the other territory from any tax on gains from the sale, transfer or exchange of capital assets.

(2) Paragraph (1) shall not apply where a resident of one of the territories has a permanent establishment in the other territory and such gains are attributable to that permanent establishment ; in such event Article III of this Convention shall be applicable.

(3) Paragraph (1) shall not apply to the profits from the sale of shares in a company of the Federal Republic in which the vendor had a substantial interest.

#### Article X

(1) Remuneration (other than pensions) paid out of public funds, of one of the contracting states or political sub-divisions thereof to any individual for services to that State or political sub-division thereof shall be exempt from tax in the territory of the other State if the individual is a citizen of the first-mentioned State.

(2) The provisions of this Article shall not apply to payments in respect of services in connection with any trade or business carried on by either of the contracting states or political sub-divisions thereof for purposes of profit.

#### Article XI

(1) Profits or remuneration from a profession (including services as a director) or employment earned by an individual who is a resident of one of the territories may also be taxed in the other territory but only if the activities are performed in the latter territory.

(2) An individual resident of the Federal Republic shall be exempt from Canadian tax upon the profits or remuneration referred to in paragraph (1) if he is temporarily present in Canada for a period or periods not exceeding a total of 183 days during the taxable year and either of the following conditions is met :

- (a) his compensation is received for activities performed for or on behalf of a resident of the Federal Republic and such compensation is borne by such resident, or
- (b) his compensation received for such activities does not exceed \$3,000 gross.

(3) The provisions of paragraph (2) of this Article shall apply, *mutatis mutandis*, to an individual resident of Canada with respect to compensation for activities performed in the Federal Republic.

(4) The provisions of paragraphs (2) and (3) shall not apply to compensate of public entertainers such as theatre, motion picture, radio or variety artists, musicians or athletes.

*Article XII*

(1) Any pension (other than pension paid out of public funds of one of the states or political subdivision thereof) and any annuity, derived from sources within one of the territories by an individual who is a resident of the other territory shall be exempt from tax in the first-mentioned territory.

(2) The term "pension", as used in this Article, means periodic payments made in consideration for services rendered or by way of compensation for injuries received.

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

*Article XIII*

(1) Income from immovable property (including gains derived from the sale or exchange of such property) may be subjected to tax in the territory in which the property is situated. Interest on debts secured by mortgages on real estate and royalties or other amounts paid in respect of the operation of a mine, stone quarry or any other extraction of natural resources shall be regarded as income derived from immovable property.

(2) Paragraph (1) shall not apply where a resident of one of the territories has a permanent establishment in the other territory and such income is attributable to that permanent establishment ; in such event Article III of this Convention shall be applicable.

*Article XIV*

A professor or teacher from one of the territories, who receives remuneration for teaching, during a period of temporary residence not exceeding two years, at a university, college, school or other educational institution in the other territory, shall be exempt from tax in that other territory in respect of that remuneration.

*Article XV*

A student or business apprentice (including, in the Federal Republic, a *Volontär* or a *Praktikant*) from one of the territories, who is receiving full-time education or training in the other territory, shall be exempt from tax in that other territory on payments made to him by persons in the first-mentioned territory for the purposes of his maintenance, education or training.

*Article XVI*

(1) Except in the case of a Non-resident-owned Investment Corporation Canada agrees to allow as a deduction from Canadian tax on any income derived from sources within the Federal Republic that is subject to tax in Canada the amount of Federal Republic tax payable in respect of that income. The amount of the deduction shall not exceed the proportion of the Canadian tax that the income from sources within the Federal Republic that is subject to Federal Republic tax bears to the total income subject to Canadian tax.

(2) In determining its taxes specified in Article I of this Convention the Federal Republic, when dealing with the question of residents of the Federal Republic, shall exclude from the basis upon which its taxes are imposed all income from sources within Canada which, according to Canadian law, and according to this Convention, are not exempt from Canadian tax. The Federal Republic, however, reserves the right to take into account in the determination of its rate of taxation the income excluded in accordance with the provisions of this paragraph. Sentences 1 and 2 shall not apply to income from dividends with the exception of dividends specified in Article VI, Para. (1) and also not for incomes within the meaning of Article VII, Para. (1) and Article VIII, Paras. (2) and (3); the Canadian tax collected on this income shall, however, on application, be allowed as a credit against the Federal Republic tax payable in respect of these incomes computed on the basis of an average rate of taxation.

(3) For the purposes of this Article, profits or remuneration from a profession (including services as a director) or employment performed in one of the territories shall be deemed to be income from sources within that territory, and the services of an individual whose services are wholly or mainly performed in ships or aircraft operated by an enterprise managed and controlled in one of the territories shall be deemed to be performed in that territory.

*Article XVII*

(1) The competent authorities of the contracting States shall upon request exchange such information (being information available under the respective taxation laws of the contracting States) as is necessary for carrying out the provisions of this Convention or for the prevention of fraud or the like in relation to the taxes which are the subject of this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of this Convention. No information shall be exchanged which would disclose any trade, business, industrial or professional secret or any trade process.

(2) In no case shall the provisions of this Article be construed so as to impose upon either of the contracting States the obligation to carry out administrative measures at variance with the regulations and practice of either contracting State or which would be contrary to its sovereignty, security or public policy or to supply particulars which are not procurable under its own legislation or that of the State making application.

#### *Article XVIII*

(1) Where a resident of one of the territories shows proof that the action of the tax authorities of the contracting States has resulted or will result in double taxation contrary to the provisions of this Convention, he shall be entitled to present his case to the State of which he is a resident. Should this claim be deemed worthy of consideration, the competent authority of the State to which the claim is made shall endeavour to come to an agreement with the competent authority of the other State with a view to avoidance of double taxation.

(2) For the settlement of difficulties or doubts in the interpretation or application of this Convention or in respect of its relation to Conventions of the contracting States with third States the competent authorities of the contracting States shall reach a mutual agreement as quickly as possible.

#### *Article XIX*

(1) The provisions of this Convention shall not be construed to deny or affect in any manner the right of diplomatic and consular officers to other or additional exemptions now enjoyed or which may hereafter be granted to such officers.

(2) The provisions of this Convention shall not be construed to restrict in any manner any exemption, deduction, credit or other allowance now or hereafter accorded, by the laws of one of the contracting States in the determination of the tax imposed by such States, or by any other Convention between the contracting States.

(3) The citizens of one of the contracting States shall not, while residents in the other contracting State, be subject therein to other or more burdensome taxes than are the citizens of such other contracting State, which are residents in its territory. The term "citizens" includes all juridical persons, partnerships and associations created or organized under the laws in force in the respective contracting States.

#### *Article XX*

(1) The competent authorities of the two contracting States may prescribe regulations necessary to carry into effect this Convention within the respective States.

(2) The competent authorities of the two contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Convention.

#### *Article XXI*

(1) This Convention shall apply to *Land Berlin* provided that the Government of the Federal Republic of Germany has not delivered a contrary declaration to the Government of Canada within three months from the date of entry into force of the Convention.

(2) Upon the application of this Convention to *Land Berlin*, references in the Convention to the Federal Republic shall be deemed also to be references to *Land Berlin*.

#### *Article XXII*

(1) This Convention shall be ratified and the instruments of ratification shall be exchanged as soon as possible in Bonn.

(2) This Convention shall come into force after the expiration of a month following the date on which the instruments of ratification are exchanged and shall thereupon have effect—

- (a) in respect of Canadian tax, for the taxation years beginning on or after the 1st day of January 1954,
- (b) in respect of the Federal Republic tax, for taxes which are levied for the calendar year 1954 and for the subsequent calendar years.

#### *Article XXIII*

(1) This Convention shall continue in effect indefinitely but either of the contracting States may on or before the 30th day of June in any calendar year after 1958 give to the other contracting State notice of termination, and in such event this Convention shall cease to be effective—

- (a) in respect of Canadian tax, for the taxation years beginning on or after the 1st day of January in the calendar year next following that in which notice of termination is given ;
- (b) in respect of the Federal Republic tax, for taxes which are levied for the calendar years following the year in which the notice of termination is given.

(2) The limitation of the rate of taxation to 15% or 10% provided for by Article VI, Para. (1), Article VII, Para. (1) and Article VIII, Paras. (2) and (3) and the provisions of Article XVI, Para. (2), may be terminated by either of the contracting States by giving written notice of termination to the other State through diplomatic channels on or before the 30th day of June of any year after

this Convention has been in force for three years. In such an event this limitation and the provisions of Article XVI, Para. (2) concerning credits shall cease to be effective as of the 1st day of January of the year following that in which such notice is given.

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

DONE in duplicate at Ottawa on June 4th 1956 in the English and German languages, both texts being equally authoritative.

For Canada :

W. E. HARRIS

For the Federal Republic of Germany :

Werner DANKWORT