

No. 17709

**CANADA
and
SWITZERLAND**

**Convention for the avoidance of double taxation with
respect to taxes on income and on capital. Signed at
Berne on 20 August 1976**

Authentic texts: English and French.

Registered by Canada on 11 April 1979.

**CANADA
et
SUISSE**

**Convention tendant à éviter les doubles impositions en
matière d'impôts sur le revenu et sur la fortune. Signée à
Berne le 20 août 1976**

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Enregistrée par le Canada le 11 avril 1979.

CONVENTION¹ BETWEEN CANADA AND SWITZERLAND FOR THE
AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO
TAXES ON INCOME AND ON CAPITAL

The Government of Canada and the Swiss Federal Council,
Desiring to conclude a Convention for the avoidance of double taxation with
respect to taxes on income and on capital,
Have agreed as follows:

Article 1. PERSONAL SCOPE

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

Article 2. 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. There shall be regarded as taxes on income and on capital all taxes imposed
on total income, on total capital, or on elements of income or of capital, including
taxes on gains from the alienation of movable or immovable property, taxes on the
total amounts of wages or salaries paid by enterprises, as well as taxes on capital
appreciation.
3. The existing taxes to which the Convention shall apply are, in particular:
 - (a) In the case of Canada:
 - The income taxes imposed by the Government of Canada (hereinafter refer-
red to as “Canadian tax”);
 - (b) In the case of Switzerland:
 - The federal, cantonal and communal taxes:
 - (i) On income (total income, earned income, income from capital, indus-
trial and commercial profits, capital gains, and other items of income);
and
 - (ii) On capital (total property, movable and immovable property, business
assets, paid-up capital and reserves, and other items of capital);
(hereinafter referred to as “Swiss tax”).
4. The Convention shall apply also to any identical or substantially similar
taxes and to taxes on capital which are imposed after the date of signature of this
Convention in addition to, or in place of, the existing taxes. The Contracting States
shall notify each other of changes which have been made in their respective taxation
laws.
5. The Convention shall not apply to Federal anticipatory tax withheld at the
source in Switzerland on prizes in a lottery.

¹ Came into force on 19 August 1977 by the exchange of the instruments of ratification, which took place at Ottawa, in accordance with article 28 (2).

Article 3. GENERAL DEFINITIONS

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

(a) (i) The term “Canada” used in a geographical sense, means the territory of Canada, including any area beyond the territorial waters of Canada which, under the laws of Canada, is an area within which Canada may exercise rights with respect to the seabed and sub-soil and their natural resources.

(ii) The term “Switzerland” means the Swiss Confederation.

(b) The terms “a Contracting State” and “the other Contracting State” mean, as the context requires, Canada or Switzerland.

(c) The term “person” includes an individual, an estate, a trust, a company, a partnership and any other body of persons.

(d) The term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes; in French, the term “*société*” also means a “corporation” within the meaning of Canadian law.

(e) The terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State.

(f) The term “competent authority” means:

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

(ii) In the case of Switzerland, the Director of the Federal Tax Administration or his authorized representative.

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

(h) The term “national” means:

(i) Any individual possessing the nationality of a Contracting State;

(ii) Any legal person, partnership and association deriving its status as such from the law in force in a Contracting State.

2. As regards the application of the Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of the Convention.

Article 4. FISCAL DOMICILE

1. For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and in the case of Switzerland it includes a partnership created or organized under Swiss law.

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 Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (hereinafter referred to as his “centre of vital interests”);

(b) If the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, 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 Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national.

(d) If he is a national of both Contracting 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 its status shall be determined as follows:

(a) It shall be deemed to be a resident of the Contracting State of which it is a national;

(b) If it is a national of neither of the Contracting States, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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

Article 5. PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term “permanent establishment” means a fixed place of business in which the business of the enterprise 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;

(f) A mine, oil or gas well, quarry or other place of extraction of natural resources;

(g) A building site or construction or installation project which exists for more than 12 months.

3. The term “permanent establishment” shall be deemed not to include:

(a) The use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(b) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;

(e) The maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character for the enterprise.

4. A person — other than an agent of an independent status to whom paragraph 5 applies — acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

6. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6. INCOME FROM IMMOVABLE PROPERTY

1. Income from immovable property including income from agriculture or forestry may be taxed in the Contracting State in which such property is situated.

2. For the purposes of this Convention, the term “immovable property” shall be defined in accordance with the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

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

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

Article 7. BUSINESS PROFITS

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

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In the determination of the profits of a permanent establishment, there shall be allowed those deductible expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses, whether incurred in the State in which the permanent establishment is situated or elsewhere.

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles embodied in this article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

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

7. Where profits include items of income which are dealt with separately in other articles of this Convention, then, the provisions of those articles shall not be affected by the provisions of this article.

Article 8. SHIPPING AND AIR TRANSPORT

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1 and article 7, profits derived from the operation of ships used principally to transport passengers or goods exclusively between places in a Contracting State may be taxed in that State.

3. The provisions of paragraphs 1 and 2 shall also apply to profits referred to in those paragraphs derived by an enterprise of a Contracting State from its participation in a pool, a joint business or an international operating agency.

Article 9. ASSOCIATED ENTERPRISES

1. Where

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

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

2. Where profits on which an enterprise of a Contracting State has been charged to tax in that State are also included in the profits of an enterprise of the other Contracting State and taxed accordingly, and the profits so included are profits which

would have accrued to that enterprise of the other State, if the conditions made between the enterprises had been those which would have been made between independent enterprises, then the competent authorities of the Contracting States may consult together with a view to reach an agreement on the adjustments of profits in both Contracting States.

3. A Contracting State shall not change the profits of an enterprise in the circumstances referred to in paragraph 1 after the expiry of the time-limits provided in its national laws and, in any case, after five years from the end of the year in which the profits which would be subject to such change would have accrued to an enterprise of that State. This paragraph shall not apply in the case of fraud or wilful default.

Article 10. DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of that State; but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed 15 per cent of the gross amount of the dividends. The provisions of this paragraph shall not affect the taxation of the company on the profits out of which the dividends are paid.

3. The term "dividends" as used in this article means income from shares, *jouissance* shares or *jouissance* rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the holding by virtue of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of article 7 or article 14, as the case may be, 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 or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

6. Notwithstanding any provision in this Convention, Canada may impose on the earnings of a company attributable to a permanent establishment in Canada, tax in addition to the tax which would be chargeable on the earnings of a company incorporated in Canada, provided that the rate of such additional tax so imposed shall not exceed 15 per cent. For the purpose of this provision, the term "earnings" means the profits attributable to such permanent establishment in Canada in accordance with article 7 in a year and previous years after deducting therefrom:

- (a) All taxes chargeable in Canada on such profits, other than the additional tax referred to herein; and
- (b) The profits reinvested in Canada, provided that the amount of such deduction 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.

However, the term “earnings” does not include profits attributable to a permanent establishment in Canada of a company which is a resident of Switzerland earned in a year during which the business of the company was not carried on principally in Canada.

7. The provisions of paragraphs 1, 2 and 4 shall also apply to income derived by a resident of Switzerland from an estate or a trust which is a resident of Canada. For the purposes of paragraph 2(b) of article 22, the term “dividend” shall include such income.

Article 11. INTEREST

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

2. However, such interest may be taxed in the Contracting State in which it arises, and according to the law of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to a resident of the other Contracting State who is the beneficial owner thereof shall be taxable only in that other State to the extent that such interest:

- (a) Is a penalty charge for late payment; or
- (b) Is paid by the purchasing enterprise to the selling enterprise in connection with the sale on credit of any equipment or merchandise, except where the sale is made between associated enterprises within the meaning of article 9, paragraph 1(a) or (b).

4. Notwithstanding the provisions of paragraph 2,

- (a) Interest arising in a Contracting State and paid to a resident of the other Contracting State who is the beneficial owner thereof shall be taxable only in that other State if it is paid in respect of a bond, debenture or other similar obligation of the government of that Contracting State or of a political subdivision or local authority thereof;
- (b) Interest arising in Switzerland and paid to a resident of Canada shall be taxable only in Canada if it is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by the Export Development Corporation or any institution specified and agreed in letters exchanged between the competent authorities of the Contracting States; or
- (c) Interest arising in Canada and paid to a resident of Switzerland shall be taxable only in Switzerland if it is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured under the Swiss provisions regulating the *garantie contre les risques à l'exportation* or by any institution specified and

agreed in letters exchanged between the competent authorities of the Contracting States.

5. The term "interest" as used in this article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as income assimilated to income from money lent by the taxation law of the State in which the income arises. However, the term "interest" does not include income dealt with in article 10.

6. The provisions of paragraphs 1, 2, 3 and 4 shall not apply if the recipient of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of article 7 or article 14, as the case may be, shall apply.

7. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and that interest is borne by that permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

8. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, 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 recipient in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

Article 12. ROYALTIES

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

2. However, such royalties may be taxed in the Contracting State in which they arise, and according to the law of that State, but if the recipient is the beneficial owner of the 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, copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or artistic work (but not including royalties in respect of motion picture films and works on film or videotape for use in connection with television) arising in a Contracting State and paid to a resident of the other Contracting State who is the beneficial owner thereof 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, patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information con-

cerning industrial, commercial or scientific experience, and includes payments of any kind in respect of motion picture films and works on film or videotape for use in connection with television.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the recipient of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of article 7 or article 14, as the case may be, shall apply.

6. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or 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 Contracting State a permanent establishment or fixed base in connection with which the obligation to pay the royalties was incurred, and those royalties are borne by that permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

7. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, 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 recipient in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13. GAINS FROM THE ALIENATION OF PROPERTY

1. Gains from the alienation of immovable property may be taxed in the Contracting State in which such property is situated.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base may be taxed in the other State. However, gains from the alienation of ships or aircraft operated in international traffic and movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which such property is taxable according to paragraph 3 of article 21.

3. Gains from the alienation of shares of a company, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State.

Gains from the alienation of an interest in a partnership or a trust, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State.

4. Gains from the alienation of any property, other than those mentioned 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 Canada to tax according to its law gains derived by an individual who is a resident of Switzerland from the alienation of any property, if the alienator:

- (a) Possesses Canadian nationality or was a resident of Canada for fifteen years or more prior to the alienation of the property; and
- (b) Was a resident of Canada at any time during the five years immediately preceding such alienation.

Article 14. INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.

2. The term "professional services" includes independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15. DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived 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) The recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned; and
- (b) The remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) The remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State, shall be taxable only in that State.

Article 16. DIRECTORS' FEES

Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17. ARTISTES AND ATHLETES

1. Notwithstanding the provisions of articles 7, 14 and 15, income derived by entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

2. Where income in respect of personal activities as such of an entertainer or athlete accrues not to that entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. The provisions of paragraph 2 shall not apply if it is established that neither the entertainer nor persons related thereto, participate directly or indirectly in the profits of the person referred to in that paragraph.

Article 18. 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 the State in which they arise, and according to the law of that State. However, in the case of periodic pension or annuity payments (except payments under an income-averaging annuity contract), the tax so charged shall not exceed 15 per cent of the gross amount of the payment.

2. Notwithstanding anything in this Convention:

- (a) Pensions paid by, or out of funds created by, Switzerland or a political subdivision or a local authority thereof to any individual in respect of services rendered to Switzerland or a subdivision or local authority thereof in the discharge of functions of a governmental nature shall be taxable only in Switzerland;
- (b) Pensions and allowances received from Canada under the Pension Act, the Civilian War Pensions and Allowances Act or the War Veterans Allowances Act and compensation received under regulations made under section 7 of the Aeronautics Act shall be excluded from the bases used for the computation of Swiss tax, so long as they are exempt from Canadian tax;
- (c) Pensions and allowances received from Switzerland under the legislation concerning Military Insurance shall be exempt from Canadian tax so long as they are exempt from Swiss tax;
- (d) Alimony and other similar payments arising in a Contracting State and paid to a resident of the other Contracting State who is subject to tax therein in respect thereof, shall be taxable only in that other State.

Article 19. GOVERNMENT SERVICE

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the Contracting State of which the recipient is a resident if the services are rendered in that State and if the recipient is a national of that State or did not become a resident of that State solely for the purpose of performing the services.

2. The provisions of paragraph 1 shall not apply to remuneration in respect of services rendered in connection with any business carried on by one of the Contracting States or a political subdivision or a local authority thereof.

Article 20. STUDENTS

Payments which a student, apprentice or business trainee who is, or was immediately before visiting one of the Contracting States, a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance,

education or training shall not be taxed in that first-mentioned State, provided that such payments are made to him from sources outside that State.

Article 21. CAPITAL

1. Capital represented by immovable property may be taxed in the Contracting State in which such property is situated.

2. Capital represented by movable property forming part of the business property of a permanent establishment of an enterprise, or by movable property pertaining to a fixed base used for the performance of professional services, may be taxed in the Contracting State in which the permanent establishment or fixed base is situated.

3. Ships and aircraft operated by an enterprise of a Contracting State in international traffic and movable 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 22. ELIMINATION OF DOUBLE TAXATION

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

(a) Subject to the existing 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—and unless a greater deduction or relief is provided under the laws of Canada, tax payable in Switzerland on profits, income or gains arising in Switzerland shall be deducted from any tax payable in respect of such profits, income or gains.

(b) Where a resident of Switzerland derives a gain, referred to in paragraph 5 of article 13, which may be taxed in Canada, Canada shall, subject to the existing 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—allow as a deduction from any tax payable by that person in respect of such gain, an amount equal to the tax paid in Switzerland on that gain.

(c) Subject to the existing provisions of the law of Canada regarding the determination of the exempt surplus of a foreign affiliate and to any subsequent modification of those provisions—which shall not affect the general principle hereof—for the purpose of computing Canadian tax, a company resident in Canada shall be allowed to deduct in computing its taxable income any dividend received by it out of the exempt surplus of a foreign affiliate resident in Switzerland.

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

(a) Where a resident of Switzerland derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Canada, Switzerland shall, subject to the provisions of subparagraphs (b), (c) and (d), exempt such income or capital from tax but may, in calculating tax on the remaining income or capital of that resident, apply the rate of tax which would have been applicable if the exempted income or capital had not been so exempted; provided, however, that such exemption shall apply to gains referred to in paragraph 3 of article 13 only if actual taxation of such gains in Canada is demonstrated.

(b) Where a resident of Switzerland derives dividends, interest or royalties which, in accordance with the provisions of articles 10, 11 and 12, may be taxed in Canada, Switzerland shall allow, upon request, a relief to such resident. The relief may consist of:

- (i) A deduction from the Swiss tax on the income of that resident of an amount equal to the tax levied in Canada in accordance with the provisions of articles 10, 11 and 12; such deduction shall not, however, exceed that part of the Swiss tax, as computed before the deduction is given, which is appropriate to the income which may be taxed in Canada; or
- (ii) A lump-sum reduction of the Swiss tax; or
- (iii) A partial exemption of such dividends, interest or royalties from Swiss tax, in any case consisting at least of the deduction of the tax levied in Canada from the gross amount of the dividends, interest or royalties.

Switzerland shall determine the applicable relief and regulate the procedure in accordance with the Swiss provisions relating to the carrying out of international conventions of the Swiss Confederation for the avoidance of double taxation.

(c) The provisions of subparagraph (a) shall not restrict the right of Switzerland to tax the gains referred to in paragraph 5 of article 13.

(d) Where a resident of Switzerland derives pensions or annuities which, in accordance with the provisions of paragraph 1 of article 18, may be taxed in Canada, Switzerland shall allow, upon request, a relief consisting of the deduction of one-third of the net amount of such pensions or annuities.

3. For the purposes of paragraph 1(a), profits, income or gains of a resident of Canada which are taxed in Switzerland in accordance with the Convention shall be deemed to arise in Switzerland.

Article 23. NON-DISCRIMINATION

1. The 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 are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

3. Nothing in this article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises 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. In this article, the term "taxation" means taxes which are the subject of this Convention.

Article 24. MUTUAL AGREEMENT PROCEDURE

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, without prejudice to the remedies provided by the national laws of those States, address to the competent authority of the Contracting State of which he is a resident an application in writing stating the grounds for claiming the revision of such taxation. To be admissible, the said application must be submitted within two years from the first notification of the action which gives rise to taxation not in accordance with the Convention.

2. The competent authority referred to in paragraph 1 shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate 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 not in accordance with the Convention.

3. A Contracting State shall not, after the expiry of the time-limits provided in its national laws and, in any case, after five years from the end of the taxable period in which the income concerned has accrued, increase the tax base of a resident of either of the Contracting States by including therein items of income which have also been charged to tax in the other Contracting State. This paragraph shall not apply in the case of fraud or wilful default.

4. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. In particular, the competent authorities of the Contracting States may consult together to endeavour to 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 between a resident of a Contracting State and any associated person provided for in article 9.

5. The competent authorities of the Contracting States may consult together for the elimination of double taxation in cases not provided for in the Convention.

Article 25. EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of the present Convention in relation to the taxes which are the subject of the 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 the Convention. No information as aforesaid shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.

2. In no case shall the provisions of this article be construed as imposing 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 26. DIPLOMATIC AND CONSULAR OFFICIALS

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

2. Notwithstanding article 4 of the Convention, an individual who is a member of a diplomatic, consular or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed for the purposes of the Convention to be a resident of the sending State if he is liable in the sending State to the same obligations in relation to tax on his total world income as are residents of that sending State.

3. The Convention shall not apply to international organizations, to organs or officials thereof and to persons who are members of a diplomatic, consular or permanent mission of a third State, being present in a Contracting State and who are not liable in either Contracting State to the same obligations in relation to tax on their total world income as are residents thereof.

Article 27. MISCELLANEOUS RULES

1. The provisions of this Convention shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded:

- (a) By the laws of one of the Contracting States in the determination of the tax imposed by that Contracting State; or
- (b) By any other agreement entered into by a Contracting State.

2. Nothing in the Convention shall be construed as preventing Canada from imposing a tax on amounts included in the income of a resident of Canada according to section 91 of the Canadian Income Tax Act.

3. The competent authorities of the Contracting States may communicate with each other directly for the purpose of applying the Convention.

Article 28. ENTRY INTO FORCE

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Ottawa.

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

- (a) In respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January 1976; and
- (b) In respect of other taxes for taxation years beginning on or after the first day of January 1976.

3. The Exchange of Notes dated 22nd September 1959 between the Government of Canada and the Swiss Federal Council concerning the taxation of enterprises operating ships or aircraft¹ shall be terminated upon entry into force of this Convention.

Article 29. TERMINATION

This Convention shall continue in effect indefinitely but either Contracting State may, on or before June 30 in any calendar year after the year of the exchange of in-

¹ United Nations, *Treaty Series*, vol. 470, p. 101.

struments of ratification, give to the other Contracting State a notice of termination in writing through diplomatic channels; in such event, the Convention shall cease to have effect:

- (a) In respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January in the calendar year next following that in which the notice is given; and
- (b) In respect of other taxes for taxation years beginning on or after the first day of January in the calendar year next following that in which the notice is given.

IN WITNESS WHEREOF the undersigned duly authorized to that effect, have signed this Convention.

DONE in duplicate at Berne, this 20th day of August 1976, in the English and French languages, each version being equally authentic.

EN FOI DE QUOI les soussignés, dûment autorisés à cet effet, ont signé la présente Convention.

FAIT en double exemplaire à Berne le 20 août 1976, en langues française et anglaise, chaque version faisant également foi.

J. CÔTÉ

For the Government of Canada
Pour le Gouvernement du Canada

GRABER

For the Swiss Federal Council
Pour le Conseil fédéral suisse
