

No. 23199

**FEDERAL REPUBLIC OF GERMANY
and
CANADA**

**Agreement for the avoidance of double taxation with
respect to taxes on income and certain other taxes (with
protocol). Signed at Ottawa on 17 July 1981**

Authentic texts: German, English and French.

Registered by the Federal Republic of Germany on 28 December 1984.

**RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
CANADA**

**Accord en vue d'éviter les doubles impositions en matière
d'impôts sur le revenu et de certains autres impôts (avec
protocole). Signé à Ottawa le 17 juillet 1981**

Textes authentiques : allemand, anglais et français.

Enregistré par la République fédérale d'Allemagne le 28 décembre 1984.

AGREEMENT¹ BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND CANADA FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND CERTAIN OTHER TAXES

The Federal Republic of Germany and Canada,

Desiring to conclude an Agreement for the avoidance of double taxation with respect to taxes on income and certain other taxes,

Have agreed as follows:

Article 1. PERSONAL SCOPE

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

Article 2. TAXES COVERED

(1) This Agreement shall apply to taxes on income and on capital imposed by 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 Agreement shall apply are:

- (a) In the case of Canada: the income taxes imposed by the Government of Canada (hereinafter referred to as “Canadian tax”);
- (b) In the case of the Federal Republic of Germany:
 - The income tax (*Einkommensteuer*),
 - The corporation tax (*Körperschaftsteuer*),
 - The capital tax (*Vermögensteuer*),
 - And the trade tax (*Gewerbsteuer*),(hereinafter referred to as “German tax”).

(4) The provisions of the Agreement in respect of taxation of income or capital shall likewise apply to the German trade tax computed on a basis other than income or capital.

(5) The Agreement shall apply also to any identical or substantially similar taxes on income and to taxes on capital which are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The Contracting States shall notify each other of changes which have been made to their respective taxation laws.

¹ Came into force on 23 September 1983 by the exchange of the instruments of ratification, which took place at Bonn, in accordance with article 30 (2).

Article 3. GENERAL DEFINITIONS

(1) In this Agreement, 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, in accordance with international law and the laws of Canada, is an area within which the rights of Canada with respect to the sea-bed and sub-soil and their natural resources may be exercised;

(ii) The term "Federal Republic of Germany" used in a geographical sense, means the territory in which the Basic Law for the Federal Republic of Germany is in force, and any area beyond the territorial waters of the Federal Republic of Germany, within which, in accordance with international law and the laws of the Federal Republic of Germany, the rights of the Federal Republic of Germany with respect to the sea-bed and sub-soil and their natural resources may be exercised;

(b) The terms "a Contracting State" and "the other Contracting State" mean, as the context requires, Canada or the Federal Republic of Germany;

(c) The term "person" includes an individual, a company and any other body of persons;

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

(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 "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting States;

(g) 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 the Federal Republic of Germany, the Federal Minister of Finance.

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

Article 4. RESIDENT

(1) For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

(2) Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, his status shall be determined as follows:

(a) He shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both

States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

- (b) If the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) If he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) If he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

(3) Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to settle its status by mutual agreement.

Article 5. PERMANENT ESTABLISHMENT

(1) For the purposes of this Agreement, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

(2) The term “permanent establishment” includes especially:

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

(3) A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

(4) Notwithstanding the preceding provisions of this article, the term “permanent establishment” shall be deemed not to include:

- (a) The use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or for collecting information, for the enterprise;
- (e) The maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) The maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e) provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

(5) Notwithstanding the provisions of paragraphs 1 and 2 where a person — other than an agent of an independent status to whom paragraph 6 applies — is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting

State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

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

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

Article 6. INCOME FROM IMMOVABLE PROPERTY

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

(2) The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The terms 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 independent personal services.

Article 7. BUSINESS PROFITS

(1) The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on or has carried 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 or has carried on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

(3) In determining the profits of a permanent establishment, there shall be allowed 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 contained in this article.

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

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

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

Article 8. SHIPPING AND AIR TRANSPORT

(1) Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

(2) If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

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

Article 9. ASSOCIATED ENTERPRISES

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.

Article 10. DIVIDENDS

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

(2) However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that State, but if the 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 in respect of the profits out of which the dividends are paid.

(3) The term "dividends" as used in this article means

- (a) Dividends on shares including income from shares, *jouissance* shares or *jouissance* rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, and
- (b) Other income which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident, and for the purpose of taxation in the Federal Republic of Germany, income derived by a sleeping partner from his participation as such and distributions on certificates of an investment trust.

(4) The provisions of paragraph 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment of fixed base. In such case the provisions of article 7 or article 14, as the case may be, shall apply.

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

(6) Notwithstanding any provision in this Agreement, Canada may impose on the earnings of a company attributable to permanent establishments 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 the percentage limitation provided for under paragraph 2 of the amount of such earnings which have not been subjected to such additional tax in previous taxation years. For the purpose of this provision, the term "earnings" means the profits attributable to such permanent establishments in Canada (including gains from the alienation of property forming part of the business property, referred to in paragraph 2 of article 13, of such permanent establishments) in accordance with article 7 in a year and previous years after deducting therefrom:

- (a) Business losses attributable to such permanent establishments (including losses from the alienation of property forming part of the business property of such permanent establishments) in such year and previous years,
- (b) All taxes chargeable in Canada on such profits, other than the additional tax referred to herein,

- (c) 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, and
- (d) Five hundred thousand Canadian dollars (\$500,000) or its equivalent in the currency of the Federal Republic of Germany, less any amount deducted
 - (i) By the company, or
 - (ii) By a person related thereto from the same or a similar business as that carried on by the companyunder this sub-paragraph (d).

Article 11. INTEREST

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

(2) However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the 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 paid in connection with the sale on credit of any equipment or merchandise by the purchasing enterprise to the selling enterprise, except where the sale is made between associated enterprises;
- (b) Is paid in respect of a bond, debenture of similar obligation of the government of a Contracting State or of a *Land*, or political subdivision or local authority thereof;
- (c) Is paid to the Canadian Export Development Corporation or to the German Kreditanstalt für Wiederaufbau or the Deutsche Gesellschaft für wirtschaftliche Zusammenarbeit; or
- (d) Is paid to the government of a Contracting State or of a *Land*, or political subdivision thereof, or to the central bank of a Contracting State.

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

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

(6) Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a *Land*, 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 such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

(7) Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12. ROYALTIES

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

(2) However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the 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 concerning 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 to 3 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of article 7 or article 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 *Land*, 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 a fixed base in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then

such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

(7) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13. GAINS FROM THE ALIENATION OF PROPERTY

(1) Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in article 6 and situated in the other Contracting State may be taxed in that other State.

(2) Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State 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 independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base may be taxed in that other State.

(3) Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

(4) Gains derived by a resident of a Contracting State from the alienation of:

- (a) Shares forming part of a substantial interest in the capital stock of a company which is a resident of the other Contracting State the value of which shares is derived principally from immovable property situated in that other State; or
- (b) An interest in a partnership, trust or estate the value of which is derived principally from immovable property situated in that other Contracting State

may be taxed in that other State. For the purposes of this paragraph, the term "immovable property" includes the shares of a company the value of which shares is derived principally from immovable property or an interest in a partnership, trust or estate referred to in sub-paragraph (b), but does not include property (other than rental property) in which the business of the company, partnership, trust or estate was carried on, and a substantial interest exists when the resident and persons related thereto own 10 per cent or more of the shares of any class of the capital stock of a company.

(5) Gains from the alienation of any property, other than that mentioned in paragraphs 1 to 4 shall be taxable only in the Contracting State of which the alienator is a resident.

(6) In the case of an individual who has been a resident of a Contracting State and who has become a resident of the other Contracting State:

- (a) The provisions of paragraph 5 shall not affect the right of either of the Contracting States to levy, according to its law, a tax on gains from the alienation of

any property derived by such individual at any time during the ten years following the date on which he has ceased to be a resident of the first-mentioned State;

- (b) The other Contracting State shall calculate the gains from the alienation of shares or other rights in a company forming part of a substantial interest on the basis of the value or cost base of such shares or rights on the date on which the individual has ceased to be a resident of the first-mentioned State provided that the gain accrued up to this date is taxable in that first-mentioned State.

Article 14. INDEPENDENT PERSONAL SERVICES

(1) Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent 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 State but only so much of it as is attributable to that fixed base.

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

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

Article 16. DIRECTORS' FEES

Directors' fees and other similar payments derived by a resident of a Contracting State in this 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 a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

(2) Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete 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 or the athlete nor persons related thereto, participate directly or indirectly in the profits of the person referred to in that paragraph.

Article 18. PENSIONS, ANNUITIES AND SIMILAR PAYMENTS

(1) Periodic or non-periodic pensions and other similar allowances derived by a resident of a Contracting State shall be taxable only in that State. However, such pensions and allowances may also be taxed in the other Contracting State if:

- (a) They are derived from sources in that other Contracting State;
- (b) Contributions to the pension fund or plan were deductible for the State or if the pension was funded by that other State, a *Land*, a political subdivision, a local authority or a governmental instrumentality thereof; and
- (c) They are not paid in respect of services rendered or activities exercised outside that other State by a person when he was not a resident of that other State.

(2) Annuities derived by a resident of a Contracting State shall be taxable only in that State unless they are derived from sources within the other Contracting State. If they are so derived, such annuities may be taxed in that other State. The term "annuities" means stated sums 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 but does not include any annuity the cost of which was deductible for the purposes of taxation in the Contracting State in which it was acquired.

(3) Notwithstanding any provision in this Agreement:

- (a) Pensions and allowances received from Canada under the Pension Act, the Civilian War Pensions and Allowances Act or the War Veterans Allowances Act shall be taxable only in Canada;
- (b) Periodic or non-periodic payments received from the Federal Republic of Germany, or a *Land* or a governmental instrumentality thereof as compensation for an injury or damage sustained as a result of hostilities or past political persecution shall be taxable only in the Federal Republic of Germany;
- (c) Benefits under the social security legislation in a Contracting State paid to a resident of the other Contracting State shall be taxable only in the first-mentioned State;
- (d) Alimony or similar allowances arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.

Article 19. GOVERNMENT SERVICE

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

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the recipient is a resident of that State who is not a national of the State referred to in subparagraph (a).

(2) The provisions of paragraph 1 shall not apply to remuneration in respect of services rendered in connection with a business carried on by a Contracting State, a *Land*, a political subdivision, a local authority or an instrumentality thereof.

(3) In this article the term “instrumentality” means any agent or entity created or organized by the Government of either Contracting State or a *Land* or political subdivision or local authority thereof in order to carry out functions of a governmental nature which is specified and agreed to in letters exchanged between the competent Contracting States.

Article 20. STUDENTS

Payments which a student, apprentice or business trainee (including a *Volontæer* or a *Praktikant*) who is, or was, immediately before visiting a Contracting State, a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

Article 21. OTHER INCOME

(1) Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State except that if such income is derived from sources within the other Contracting State, it may also be taxed in that other State.

(2) The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of article 7 or article 14, as the case may be, shall apply.

Article 22. CAPITAL

(1) Capital represented by immovable property referred to in article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

(2) Capital represented by 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 by 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 independent personal services, may be taxed in that other State.

(3) Capital represented by ships and aircraft operated in international traffic and by movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

(4) All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Article 23. RELIEF FROM DOUBLE TAXATION

(1) In the case of a resident 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, German tax (other than capital tax and that portion of the trade tax computed on a basis other than income) payable in accordance with this Agreement on profits, income or gains arising in the Federal Republic of Germany shall be deducted from any Canadian tax payable in respect of such profits, income or gains.
- (b) 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 the Federal Republic of Germany.

(2) Where a resident of the Federal Republic of Germany derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in Canada, double taxation shall be avoided as follows:

- (a) Subject to the provisions of sub-paragraph (b), there shall be excluded from the basis upon which German tax is imposed, any item of income from sources within Canada and any item of capital situated within Canada, which according to the foregoing articles of this Agreement may be taxed, or shall be taxable only, in Canada; in the determination of its rate of tax applicable to any item of income or capital not so excluded, the Federal Republic of Germany will, however, take into account the items of income and capital, which according to the foregoing articles may be taxed in Canada. The foregoing provisions of this paragraph shall also apply to dividends on shares which are paid to a company which is a resident of the Federal Republic of Germany by a company which is a resident of Canada if at least 25 per cent of the capital of the Canadian company is held directly by the German company. There shall also be excluded from the basis upon which German tax is imposed any participation the dividends of which are excluded or, if paid, would be excluded, according to the immediately foregoing sentence from the basis upon which German tax is imposed.
- (b) There shall be allowed as a credit against German tax on income, subject to the provisions of German tax law regarding credit for foreign tax, the Canadian tax (including taxes on income paid to any political subdivision or local authority in Canada) paid in accordance with the provisions of this Agreement referred to below on the following items of income.
 - (i) Dividends within the meaning of article 10 which are not dealt with in sub-paragraph (a) above;
 - (ii) Interest within the meaning of article 11 and royalties within the meaning of article 12;

- (iii) Gains from the alienation of property taxable in Canada by reason only of article 13, paragraphs 4 and 6 (a);
- (iv) Income within the meaning of article 15, paragraph 3 and articles 16 and 17;
- (v) Pensions and annuities within the meaning of article 18, paragraphs 1 and 2;
- (vi) Income taxable in Canada by reason only of article 21, paragraph 1.

(3) For the purposes of this article, profits, income or gains of a resident of a Contracting State shall be deemed to arise from sources in the other Contracting State if they are taxed in that other Contracting State in accordance with this Agreement.

Article 24. 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. This provision shall, notwithstanding the provisions of article 1, also apply to individuals who are not residents of one or both of the Contracting States.

(2) The term “nationals” means:

- (a) In respect of Canada, any individual possessing the nationality of Canada and any legal person, partnership or association deriving its status as such from the law in force in Canada;
- (b) In respect of the Federal Republic of Germany, any German within the meaning of article 116, paragraph 1, of the Basic Law for the Federal Republic of Germany and any legal person, partnership and association deriving its status as such from the law in force in the Federal Republic of Germany.

(3) The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes 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 Agreement.

Article 25. MUTUAL AGREEMENT PROCEDURE

(1) Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Con-

tracting State of which he is a resident or, if his case comes under paragraph 1 of article 24, to that of the Contracting State of which he is a national.

(2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at 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 Agreement.

(3) The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

(4) In particular, the competent authorities of the Contracting States may consult together to endeavour to agree:

- (a) To the same attribution of profits to an enterprise of a Contracting State and to its permanent establishment situated in the other Contracting State;
- (b) To the same allocation of profits between associated enterprises as provided for in article 9;
- (c) To the method of avoiding double taxation in the case of an estate or trust.

(5) The competent authorities of the Contracting States may communicate with each other directly for the purpose of applying the provisions of this Agreement.

Article 26. EXCHANGE OF INFORMATION

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes. Such information may be disclosed in public hearings or in judgments only if the competent authority of the Contracting State supplying the information raises no objection.

(2) In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

- (a) To carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;
- (b) To supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) To supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

Article 27. DIPLOMATIC AGENTS AND CONSULAR OFFICERS

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

(2) Notwithstanding the provisions of article 4 an individual who is a member of a diplomatic mission, consular post 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 Agreement to be a resident of the sending State if:

- (a) In accordance with international law he is not liable to tax in the receiving State in respect of income from sources outside that State or on capital situated outside that State, and
- (b) He is liable in the sending State to the same obligations in relation to tax on his total income or on capital as are residents of that State.

(3) The Agreement shall not apply to International Organizations, to organs or officials thereof and to persons who are members of a diplomatic mission, consular post or permanent mission of a third State, being present in a Contracting State and not liable in either Contracting State to the same obligations in respect of taxes on income or on capital as are residents.

Article 28. LAND BERLIN

This Agreement shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of Canada within three months of the date of entry into force of this Agreement.

Article 29. MISCELLANEOUS RULES

(1) With respect to income taxable in a Contracting State, the provisions of this Agreement shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit, or other allowance accorded

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

(2) It is understood that nothing in the Agreement shall be construed as preventing

- (a) Canada from imposing its tax on amounts included in the income of a resident of Canada according to section 91 of the Canadian Income Tax Act;
- (b) The Federal Republic of Germany from imposing its taxes on amounts included in the income of a resident of the Federal Republic of Germany according to part 4 of the German "*Außensteuergesetz*".

Where such imposition of tax gives rise to a double taxation, the competent authorities shall consult for the elimination of such double taxation according to paragraph 3 of article 25.

(3) Articles 6 to 23 of this Agreement shall not apply to non-resident-owned investment corporations as defined under section 133 of the Canadian Income Tax Act, or under any similar provision enacted by Canada after the signature of this Agreement, or to any income derived from such companies by any shareholder thereof.

Article 30. ENTRY INTO FORCE

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

(2) The Agreement shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

(a) In Canada:

(i) 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 in which the exchange of instruments of ratification takes place;

(ii) In respect of other Canadian tax for taxation years beginning on or after the first day of January in the calendar year in which the exchange of instruments of ratification takes place;

(b) In the Federal Republic of Germany:

(i) In respect of German tax withheld at the source, for the tax on amounts paid on or after the first day of January in the calendar year in which the exchange of instruments of ratification takes place;

(ii) In respect of the German capital tax

— In participations in companies which are residents of the Federal Republic of Germany, for the tax which is levied for the calendar year 1974 and for subsequent years;

— On immovable property situated in Canada — not forming part of an agriculture or forestry enterprise — and a permanent establishment situated in Canada, for the tax which is levied for the calendar year 1977 and for subsequent years;

— On other elements of capital, for the tax which is levied for the calendar year in which the exchange of instruments of ratification takes place and for subsequent calendar years;

(iii) In respect of other German taxes, for taxes which are levied for the calendar year in which the exchange of instruments of ratification takes place and for subsequent years;

(c) In respect of payments to which article 11, paragraph 3 applies, for 1976 and subsequent years; and

(d) In respect of payments to which article 18, paragraph 3 applies, for 1978 and subsequent years.

(3) The Agreement between the Federal Republic of Germany and Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at Ottawa on June 4, 1956¹ shall cease to have effect as respects taxes to which this Agreement applies in accordance with the provisions of paragraph 2 and shall terminate on the last date on which it has effect in accordance with the foregoing provisions.

Article 31. TERMINATION

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar

¹ United Nations, *Treaty Series*, vol. 316, p. 231.

year after the year in which the instruments of ratification are exchanged. In such event, the Agreement shall cease to have effect:

(a) In Canada:

- (i) 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
- (ii) In respect of other Canadian tax 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;

(b) In the Federal Republic of Germany:

- (i) In respect of German tax withheld at the source, for the tax on amounts paid on or after the first day of January in the calendar year next following that in which the notice is given; and
- (ii) In respect of other German taxes, for taxes which are levied for the calendar year next following that in which the notice is given.

ZU URKUND DESSEN
haben die hierzu gehörig
befugten Unterzeichneten
dieses Abkommen unter-
schrieben.

GESCHEHEN zu Ottawa
am 17. Juli 1981 in zwei
Urschriften, jede in
deutscher, englischer und
französischer Sprache, wo-
bei jeder Wortlaut gleich-
ermaßen verbindlich ist.

IN WITNESS WHEREOF
the undersigned, duly au-
thorized to that effect,
have signed this Agree-
ment.

DONE in duplicate at
Ottawa, this 17th day of
July, 1981, in the English,
French and German lan-
guages, each version being
equally authentic.

EN FOI DE QUOI les sous-
signés, dûment autorisés à
cet effet, ont signé le pré-
sent Accord.

FAIT en double exem-
plaire à Ottawa, le 17^e jour
de juillet 1981 en langues
française, anglaise et alle-
mande, chaque version
faisant également foi.

Für die Bundesrepublik Deutschland:
For the Federal Republic of Germany:
Pour la République fédérale d'Allemagne :

STRAETLING

Für Kanada:
For Canada:
Pour le Canada :

ALLAN MACEachen

PROTOCOL

At the signing of the Agreement between the Federal Republic of Germany and Canada for the avoidance of double taxation with respect to taxes on income and certain other taxes, the undersigned have agreed on the following provisions which shall be an integral part of the Agreement:

(1) With references to article 3, paragraph 1 (*d*), in the French version of the Agreement, the term “*société*” includes a “*corporation*” within the meaning of Canadian law.

(2) With reference to article 3, paragraph 1 (*f*), and articles 5 and 8, ferry-boats, deep-sea ferry-boats or other vessels devoted principally to the transportation of passengers or goods exclusively between places in a Contracting State shall, when so operated, not be considered to be operated in international traffic; the landing site or sites situated in the Contracting State and used regularly in such operation by such boats or vessels shall constitute a permanent establishment in that State of the enterprise operating such boats or vessels.

(3) With reference to article 6, the term “immovable property” shall include an interest in mineral deposits, sources and other natural resources and an option in respect of immovable property.

(4) With reference to articles 6 to 23, nothing in the Agreement shall prevent a Contracting State from imposing its tax on items of income received from or through, and on items of capital owned through, an estate or trust which is a resident of the other Contracting State and which are included in the income or capital of a resident of the first-mentioned State in accordance with the laws of that State.

(5) With reference to article 10, paragraph 2, article 11, paragraphs 2 and 3, and article 12, paragraphs 2 and 3, the competent authorities of the Contracting States shall by mutual agreement settle the mode of application of the limitations and exemptions provided for by such provisions.

(6) With reference to article 10, paragraph 3, the term “dividends” shall, for German and Canadian tax purposes, include the German corporation tax (*Körperschaftsteuer*) refunded to a person resident in Canada in the circumstances set forth in paragraph 12 below.

(7) With reference to article 10, paragraphs 2, and article 11, paragraph 2, income derived from rights or debt-claims participating in profits (including in the Federal Republic of Germany income of a sleeping partner from his participation as such or from a *partiarisches Darlehen* and *Gewinnobligationen*) that is deductible in determining the profits of the debtor may be taxed in the Contracting State in which it arises according to the laws of that State.

(8) With reference to article 11, paragraph 3 (*a*), enterprises are considered associated where one of the enterprises is related to, or controlled or managed by the other enterprise. For the purpose of this provision, an enterprise is related to another enterprise if more than 50 per cent of the voting shares belongs to the other enterprise, to persons with whom the other enterprise is associated within the meaning of article 9, paragraph (*a*) or (*b*), or to the other enterprise and persons so associated with it.

(9) With reference to income taxable in accordance with article 18, paragraph 1,

(*a*) The rate of Canadian tax charged on periodic pension payments derived from sources within Canada shall not exceed the lesser of:

- (i) 15 per cent of the gross amount of the payment, and
- (ii) The rate determined by reference to the amount of tax that the recipient of the payment would otherwise be required to pay for the year on the total amount of the periodic pension payments received by him in the year, if he were resident in Canada.

(*b*) German tax shall be levied on pensions derived from sources within the Federal Republic of Germany only if they are paid by the Federal Republic of Germany a “Land”, a political subdivision or a local authority thereof.

(10) With reference to article 18, paragraph 2, the rate of tax charged by a Contracting State on annuities derived from sources within that State shall not exceed 15 per cent of the taxable portion of the payment. However, this limitation does not apply to lump-sum payments arising on the surrender, cancellation, redemption, sale or other alienation of an annuity, or to payments of any kind under an income-averaging annuity contract.

(11) With reference to sub-paragraph (d) of paragraph 3 of article 18, in determining the taxable income of an individual who is a resident of the Federal Republic of Germany there shall be allowed in respect of alimony or similar allowances paid to an individual who is a resident of Canada the amount that would be allowed if that last-mentioned individual were subject to tax in the Federal Republic of Germany.

(12) With reference to article 23, paragraph 2, where a company which is a resident of the Federal Republic of Germany distributes income derived from sources within Canada paragraph 2 shall not preclude the compensatory imposition of corporation tax on such distributions in accordance with the provisions of the tax law of the Federal Republic of Germany. A resident of Canada, not subject to unlimited tax liability under the tax law of the Federal Republic of Germany, in receipt of dividends paid by a company which is a resident of the Federal Republic of Germany shall be entitled to the refund of the amount of the compensatory imposition of the corporation tax in accordance with the procedure provided in the tax law of the Federal Republic of Germany.

(13) With reference to article 23, paragraph 2, and article 25, where a difference of qualification or attribution of income in Canada and the Federal Republic of Germany, not removed under a mutual agreement procedure according to article 25,

- (a) Would result in double taxation of such income, the Federal Republic of Germany shall eliminate such double taxation by the granting of a credit in accordance with the principles contained in article 23, paragraph 2 (b);
- (b) Would result in an exemption or a relief of such income from Canadian tax and an exemption from German tax, the Federal Republic of Germany shall not grant, with respect to such income, an exemption within the meaning of article 23, paragraph 2 (a) but shall grant a credit in accordance with the principles contained in article 23, paragraph 2 (b).

(14) With reference to article 29, in cases where the same income is subject to the special tax referred to in paragraph 2 (a) and the special tax referred to in paragraph 2 (b), the Contracting State of which the controlling shareholder is a resident shall give credit for the special tax of the other Contracting State.

(15) Nothing in this Agreement shall be construed as preventing Canada from taxing a person who is a member of a partnership on his profits attributable to a permanent establishment in Canada.

ZU URKUND DESSEN
haben die hierzu gehörig
befugten Unterzeichneten
dieses Protokoll unter-
schrieben.

GESCHEHEN zu Ottawa
am 17. Juli 1981 in zwei
Urschriften, jede in
deutscher, englischer und
französischer Sprache, wo-
bei jeder Wortlaut gleich-
ermaßen verbindlich ist.

IN WITNESS WHEREOF
the undersigned, duly au-
thorized to that effect,
have signed this protocol.

DONE in duplicate at
Ottawa, this 17th day of
July, 1981, in the English,
French and German lan-
guages, each version being
equally authentic.

EN FOI DE QUOI les sous-
signés, dûment autorisés à
cet effet, ont signé le pré-
sent protocole.

FAIT en double exem-
plaire à Ottawa, le 17^e jour
de juillet 1981 en langues
française, anglaise et
allemande, chaque version
faisant également foi.

Für die Bundesrepublik Deutschland:
For the Federal Republic of Germany:
Pour la République fédérale d'Allemagne :

STRAETLING

Für Kanada:
For Canada:
Pour le Canada :
ALLAN MACEachen