

No. 24863

**CANADA
and
JAMAICA**

**Agreement for the avoidance of double taxation and the
prevention of fiscal evasion with respect to taxes on
income. Signed at Kingston on 30 March 1978**

Authentic texts: English and French.

Registered by Canada on 16 July 1987.

**CANADA
et
JAMAÏQUE**

**Accord tendant à éviter les doubles impositions et à prévenir
l'évasion fiscale en matière d'impôts sur le revenu.
Signé à Kingston le 30 mars 1978**

Textes authentiques : anglais et français.

Enregistrée par le Canada le 16 juillet 1987.

AGREEMENT¹ BETWEEN CANADA AND JAMAICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVEN- TION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of Canada and the Government of Jamaica,

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows:

Article I. PERSONAL SCOPE

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

Article II. TAXES COVERED

1. This Agreement shall apply to taxes on income 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 all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of property, and taxes on the total amounts of wages or salaries paid by enterprises.

3. The existing taxes to which the Agreement shall apply are, in particular:

(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 Jamaica:

the income tax, the company profits tax, the additional company profits tax, the investment company profits tax and the transfer tax imposed by the Government of Jamaica

(hereinafter referred to as "Jamaican tax").

4. The agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement 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.

Article III. 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 outside the territorial waters of Canada which under 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;

¹ Came into force on 2 April 1981, the date of the last of the notifications by which the Contracting Parties informed each other of the completion of the necessary measures, in accordance with article XXIX (1).

(ii) the term “Jamaica” means the island of Jamaica, the Morant Cays, the Pedro Cays and their Dependencies; and when used in a geographical sense the term “Jamaica” includes the territorial waters thereof including any area outside such territorial waters which in accordance with the laws of Jamaica is an area within which the rights of Jamaica 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 Canada or Jamaica, as the context requires;

(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 other 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 Jamaica, the Minister responsible for Finance or his authorized representative;

(g) the term “tax” means Canadian tax or Jamaican 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 or association deriving its status as such from the law in force in a Contracting State;

(i) the term “international traffic” includes traffic between places in one country in the course of a voyage which extends over more than one country;

(j) the term “member country of the Caribbean Common Market” means Antigua, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts-Nevis-Anguilla, St. Lucia, St. Vincent and Trinidad and Tobago and such other countries as may be admitted to membership of the Common Market and as are specified and agreed in letters exchanged between the Contracting States.

2. As regards the application of this Agreement 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 this Agreement.

Article IV. FISCAL DOMICILE

1. For the purposes of this Agreement, 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.

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 in accordance with the following rules:

(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 person other than an individual 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 this Agreement to such person.

Article V. PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, 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) premises used as a sales outlet;

(g) a warehouse, in relation to a person providing storage facilities for others;

(h) a mine, quarry or other place of extraction of natural resources;

(i) a building site or construction or assembly project which exists for more than three months.

3. The term "permanent establishment" shall not be deemed 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. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it maintains a dredge or other construction equipment within that other State for a period or periods aggregating in the whole more than three months in any twelve month period.

5. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State — other than an agent of an independent status to whom paragraph 7 applies — shall be deemed to be a permanent establishment of the enterprise:

- (a) 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; or
- (b) if he maintains in that first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he habitually fills orders or makes deliveries on behalf of the enterprise.

6. An insurance enterprise of a Contracting State may, except in regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in that other State or insures risks situated therein through an employee or agent but not including any such agent as is mentioned in paragraph 7.

7. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting 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 and their activities are not devoted exclusively or almost exclusively to the business of that enterprise.

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

Article VI. 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 Agreement, 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 VII. BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on a trade or business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on or has carried on a trade or 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 a trade or business in the other Contracting State through a permanent establishment situated therein, there shall 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 situated in a Contracting State, there shall be allowed as deductions all expenses which would be deductible under the law of that State if the permanent establishment were an independent enterprise insofar as such expenses are reasonably allocable to the permanent establishment including executive and general administrative expenses so deductible and allocable, whether incurred in the State in which the permanent establishment is situated or elsewhere.

4. 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.

5. 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.

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

Article VIII. 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 or Article VII, profits derived from the operation of ships or aircraft 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 IX. 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 first-mentioned State shall make an appropriate adjustment to the amount of tax charged on those profits in the first-mentioned State. In determining such an adjustment due regard shall be had to the other provisions of this Agreement in relation to the nature of the income.

3. A Contracting State shall not make a change to the amount of 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 concerned would have accrued to an enterprise of that State.

4. The provisions of paragraph 3 shall not apply in the case of fraud, wilful default or neglect.

Article X. DIVIDENDS

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

2. However, such dividends may 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 where the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

3. Notwithstanding the provisions of paragraph 2, the rate of Jamaican tax imposed on dividends paid by a company which is a resident of Jamaica shall not

exceed 22½ per cent of the gross amount of the dividends if the beneficial owner thereof is:

- (a) a company which is a resident of Canada which controls directly or indirectly at least 10 per cent of the voting power of the company paying the dividends; or
- (b) a company which is a resident of Canada provided that the company paying the dividends qualifies under the tax law of Canada as a foreign affiliate thereof.

4. The provisions of paragraphs 2 and 3 shall not affect the taxation of the company on the profits out of which the dividends are paid.

5. In this Article, the term “dividends” in the case of Canada includes any income which under the tax law of Canada is treated as a dividend and in the case of Jamaica includes any income which under the tax law of Jamaica is treated as a distribution.

6. The provisions of paragraphs 2 and 3 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on in the other Contracting State of which the company paying the dividends is a resident, a trade or business through a permanent establishment situated therein, and the holding by virtue of which the dividends are paid is effectively connected with that permanent establishment. In such a case, the provisions of Article VII shall apply.

7. Where a company is a resident of only one Contracting State, the other Contracting State may not impose any tax on the dividends paid by the company to persons who are not residents of that other State, or subject the company 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.

8. The provisions of paragraph 7 shall not prevent a Contracting State from taxing dividends beneficially owned by a person who is not a resident of that State if such dividends relate to a holding which is effectively connected with a permanent establishment of that person in that State.

9. Nothing in this Agreement shall be construed so as to prevent a Contracting State from imposing on the earnings of a company attributable to a permanent establishment in that State, tax in addition to the tax which would be chargeable on the earnings of a company which is a resident or a national of that State, provided that any additional tax so imposed shall not exceed:

- (a) in the case of Canada, 15 per cent; and
- (b) in the case of Jamaica, 22½ per cent

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 a permanent establishment in a Contracting State in a year and previous years after deducting therefrom all taxes, other than the additional tax referred to herein, imposed on such profits in that State; provided that any such additional tax shall not be levied less favourably by Jamaica on a resident of Canada than on a resident of any other country which is not a member country of the Caribbean Common Market.

Article XI. 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 the tax so charged shall, provided that the interest is taxable in the other Contracting State, not exceed 15 per cent of the gross amount of the interest.

3. 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 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 X.

4. The provisions of paragraph 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on in the other Contracting State in which the interest arises a trade or business through a permanent establishment situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such a case, the provisions of Article VII shall apply.

5. 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 in connection with which the indebtedness on which the interest is paid was incurred, and that interest is borne by that permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where owing to a special relationship between the payer and the beneficial owner of the interest or between both of them and some other person, the amount of the interest paid, having regard to the debt-claim in respect of 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 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 Agreement.

7. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by the Government of the other Contracting State or of a political subdivision or local authority thereof or by an instrumentality which is not subject to tax in that other State on its income. In this paragraph, the term "instrumentality" means any agent or entity created or organized by the Government of either Contracting State or political subdivision or local authority of either State in order to carry out functions of a governmental nature.

Article XII. ROYALTIES

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

2. However, such royalties may be taxed in the Contracting State in which they arise, and according to the law of that State; but the tax so charged shall, provided that the royalties are taxable in the other Contracting State, not exceed 10 per cent of the gross amount of the royalties.

3. 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, information concerning industrial, commercial or scientific experience; it also includes payments of any kind in respect of motion picture films and works on film or tape for use in connection with radio or television broadcasting.

4. The provisions of paragraph 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on in the other Contracting State in which the royalties arise a trade or business through a permanent establishment situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such a case, the provisions of Article VII shall apply.

5. 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, and those royalties are borne by that permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, owing to a special relationship between the payer and the beneficial owner of the royalty 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 beneficial owner 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 Agreement.

Article XIII. MANAGEMENT FEES AND RENTAL PAYMENTS

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

2. Management fees may also be taxed in the Contracting State in which they arise and according to the law of that Contracting State; but the tax so charged shall, provided that the management fees are taxable in the other Contracting State, not exceed 12½ per cent of the gross amount thereof.

3. The term "management fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, for, or in respect of, the provision of industrial or commercial advice, or management or technical services, or similar services or facilities, but it does not include payments for professional services mentioned in Article XV. The term also includes payments of any kind for the use of, or the right to use, movable property.

4. The provisions of paragraph 2 shall not apply if the beneficial owner of the management fees, being a resident of a Contracting State, has in the other Contracting State in which the management fees arise a permanent establishment with which the obligation to pay the management fee is effectively connected. In such a case, the provisions of Article VII shall apply.

5. Management fees 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 Contracting State. Where, however, the person paying the management fees, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the management fees was incurred, and the management fees are borne by that permanent establishment then the management fees shall be deemed to arise in that Contracting State.

6. Where, owing to a special relationship between the payer and the beneficial owner of the management fees or between both of them and some other person, the amount of the management fees paid, having regard to the advice, services or use 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 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 Agreement.

7. If a resident of a Contracting State who receives management fees which arise in the other Contracting State and who is subject to tax in respect thereof in the first-mentioned State so elects for any year of assessment or taxation year, the tax chargeable in respect of those management fees in the Contracting State in which they arise shall be calculated as if he had a permanent establishment in that State and as if those management fees were taxable in accordance with Article VII.

Article XIV. CAPITAL GAINS

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, including such gains from the alienation of such a permanent establishment alone or together with the whole enterprise, may be taxed in the other State. However, gains derived by a resident of one of the Contracting States from the alienation of ships and aircraft operated in international traffic and of movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

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 a Contracting State to levy, according to its domestic law, a tax on gains from the alienation of any property derived by an individual who is a resident of the other Contracting State and who:

- (a) possesses the nationality of the first-mentioned State or was resident therein for ten years or more prior to the alienation of the property; and
- (b) was resident in the first-mentioned State at any time during the five years immediately preceding the alienation of the property.

Article XV. PROFESSIONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character may be subject to tax in the other Contracting State but only to the extent that the income is attributable to his services in that other State. In determining the income attributable to such services, there shall be allowed as a deduction expenses incurred in the performance of those services including reasonable administrative and general expenses so incurred, whether in the Contracting State in which the services are performed or elsewhere.

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 XVI. DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles XVII, XIX and XX, 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:

(a) if the remuneration earned in the other Contracting State in the calendar year concerned does not exceed five thousand Canadian dollars (\$5,000) or its equivalent in Jamaican currency or such other amount as may be specified and agreed in letters exchanged between the competent authorities of the Contracting States; or

(b) if

- (i) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned, and
- (ii) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (iii) such remuneration is not borne by a permanent establishment 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 XVII. 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 XVIII. ARTISTES AND ATHLETES

1. Notwithstanding the provisions of Articles VII, XV and XVI, 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 of an entertainer or athlete as such accrues not to that entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles VII, XV and XVI, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

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

- (a) to income derived from activities performed in a Contracting State by entertainers or athletes if the visit to that Contracting State is substantially supported by public funds of the other Contracting State, including any political subdivision, local authority or statutory body thereof;
- (b) to a non-profit organization no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof; or
- (c) to an entertainer or athlete in respect of services provided to an organization referred to in subparagraph (b).

Article XIX. PENSIONS AND ANNUITIES

1. Any pension or annuity arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. Any pension arising in a Contracting State and paid to a resident of the other Contracting State may also be taxed in the State in which it arises, and according to the law of that State. However, in the case of a periodic pension payment, the tax so charged shall not exceed the rate determined by reference to the amount of tax that the recipient of such payment would otherwise be required to pay for the year on the total amount of such payments received by him in the year, if he were resident of the Contracting State in which the payment arises.

3. Any annuity arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the State in which it arises, and according to the law of that State; but the tax so charged shall not exceed 15 per cent of the gross amount of the taxable portion of the annuity. 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.

4. Notwithstanding anything 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 and compensation received under regulations made under section 7 of the Aeronautics Act shall not be taxable in Jamaica so long as they are not subject to Canadian tax;

(b) pensions and allowances received from Jamaica under

- (i) any enactment providing for the payment from the Consolidated Fund of a pension, retiring allowance or other similar award;
- (ii) the Pensions (Parochial Officers) Act;
- (iii) any other enactment or statutory instruments declared by the Minister by order to be a pensions law for the purposes of section 26 of the Income Tax Act,

shall not be taxable in Canada so long as they are not subject to Jamaican tax.

5. In this Article, the term “annuity” means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make payments in return for adequate and full consideration in money or money’s worth.

6. Any alimony, separation or similar allowance arising in a Contracting State and paid to a resident of the other Contracting State who is subject to tax in that other State in respect thereof shall be taxable only in that other State.

Article XX. 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, subdivision or authority 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 the recipient did not become a resident of that State solely for the purpose of performing the services.

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

Article XXI. 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 XXII. INCOME NOT EXPRESSLY MENTIONED

1. Subject to the provisions of paragraph 2, items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Agreement shall be taxable only in that State.

2. However, if such income is derived by a resident of a Contracting State from sources in the other Contracting State, such income may also be taxed in the State in which it arises, and according to the law of that State. However, where income from an estate or trust is derived from sources within Canada by a resident of Jamaica who is subject to Jamaican tax in respect thereof, the tax charged in Canada shall not exceed 15 per cent of the gross amount of the income.

Article XXIII. 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 — tax payable in Jamaica on profits, income or gains arising in Jamaica 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 which is resident in Jamaica.

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

(a) subject to the existing provisions of the law of Jamaica regarding the allowance as a credit against Jamaican tax of tax paid in a territory outside Jamaica and to any subsequent modification of those provisions — which shall not affect the general principle hereof — tax payable in Canada on profits, income or gains arising in Canada shall be deducted from any Jamaican tax payable in respect of such profits, income or gains;

(b) subject to the existing provisions of the law of Jamaica regarding the allowance as a credit against Jamaican tax of tax payable in a territory outside Jamaica and to any subsequent modification of those provisions — which shall not affect the general principle hereof — where a company which is a resident of Canada pays a dividend to a company resident in Jamaica which controls directly or indirectly at least 10 per cent of the voting power in the first-mentioned company, the credit shall take into account the tax payable in Canada by that first-mentioned company in respect of the profits out of which such dividend is paid.

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

4. For the purposes of paragraph 1(a), tax payable in Jamaica by a resident of Canada on profits attributable to a trade or business carried on by it in Jamaica or on dividends, interest or royalties received from a company which is a resident of Jamaica shall include any amount which would have been payable as Jamaican tax for any year but for an exemption from, or a reduction of, tax granted for that year or any part thereof under:

(a) any of the following provisions, that is to say:

— section 10(4) of the Motion Picture Industry (Encouragement) Act;

- Parts II and VI of the Industrial Incentives Act;
- sections 10 and 11 of the Export Industry Encouragement Act;
- the Industrial Incentives (Regional Harmonization) Act, 1974;
- section 10(1)(a) of the Petroleum Refining Industry (Encouragement) Act;
- Part V of the First Schedule to the Income Tax Act;
- sections 9 and 10 of the Hotels (Incentives) Act;
- sections 7 and 8 of the Resort Cottages (Incentives) Act;
- sections 7 and 8 of the Agricultural Incentives Act;

so far as they were in force on, and have not been modified since, the date of signature of this Agreement, or have been modified only in minor respects so as not to affect their general character; and except to the extent that any of the said provisions (other than section 7(5) of the Hotels (Incentives) Act) has the effect of exempting or relieving a source of income for a period in excess of 10 years;

(b) any other provision granting exemption or reduction of tax which is agreed by the competent authorities of the Contracting States to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.

5. For the purposes of paragraph 4, where a reduction of, or exemption from, tax is accorded by the Export Industry Encouragement Act, it shall be taken into account for the purposes of that paragraph only insofar as it is effected by Part II of the Industrial Incentives Act and if, and only if, the company qualifying for the relief could have been declared to be a company which was an approved enterprise under the provisions of section 4 of the Industrial Incentives Act.

Article XXIV. 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 Agreement shall be construed so as to:

- (a) oblige 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; or
- (b) prevent Jamaica from charging a higher rate of income tax under section 48(5) of the Income Tax Act of Jamaica on a life assurance company which is a resident of Canada than on a Jamaicanized life assurance company; or
- (c) prevent Jamaica from imposing a special tax in pursuance of its programme of economic development and which the Contracting States agree should be excluded from the provisions of this Article;

provided that any such tax as is mentioned in subparagraph (b) or (c) of this paragraph shall not be levied less favourably on a resident of Canada than on a resident of any other territory which is not a member country of the Caribbean Common Market.

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 XXV. 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 Agreement, 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 this Agreement.

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 this Agreement.

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 a taxable period in which the income concerned has accrued, increase the tax base of a resident of either Contracting State by including therein items of income which have also been charged to tax in the other Contracting State.

4. The provisions of paragraph 3 shall not apply in the case of fraud, wilful default or neglect.

5. 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 this Agreement. 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 IX.

Article XXVI. EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement and of the

domestic laws of the Contracting States concerning taxes covered by this Agreement insofar as the taxation thereunder is in accordance with this Agreement and for the prevention of fraud or tax evasion in relation to taxes covered by this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes which are the subject of this Agreement.

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 particulars which are 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 XXVII. DIPLOMATIC AND CONSULAR OFFICIALS

1. Nothing in this Agreement 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 IV, 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 this Agreement 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. This Agreement 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 that State to the same obligations in relation to tax on their total world income as are residents of that State.

Article XXVIII. MISCELLANEOUS RULES

1. The provisions of this Agreement shall not be construed so as 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 between the Contracting States.

2. Nothing in this Agreement shall be construed so as to prevent Canada from imposing 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 this Agreement.

4. In determining for the purpose of Jamaican tax whether a company is an open company, the term "recognized stock exchange" shall include the Alberta

Stock Exchange, the Montreal Stock Exchange, the Toronto Stock Exchange, the Vancouver Stock Exchange and the Winnipeg Stock Exchange. This provision shall not apply to any company which is a resident of Canada and which is controlled, directly or indirectly, by a person or persons resident in Jamaica.

5. This Agreement shall not apply to companies entitled to any special tax benefit under the International Finance Companies (Income Tax Relief) Act. This Agreement shall also not apply to companies entitled to any special tax benefit under any substantially similar Act subsequently enacted by Jamaica in addition to, or in place of, the Act mentioned above.

Article XXIX. ENTRY INTO FORCE

1. Each of the Contracting States shall take all measures necessary to give this Agreement the force of law within its jurisdiction and each shall notify the other of the completion of such measures. This Agreement shall enter into force on the date on which the later notification is made and shall thereupon 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 1st January, 1977; and
- (ii) in respect of other Canadian tax, for any taxation year beginning on or after 1st January, 1977;

(b) in Jamaica:

in respect of Jamaican tax, for any year of assessment beginning on or after 1st January, 1977.

2. The Agreement between the Government of Canada and the Government of Jamaica signed at Kingston on 4th January, 1971¹ shall terminate on the date on which this Agreement enters into force. It shall cease to have effect in respect of taxes to which this Agreement applies in accordance with paragraph 1.

Article XXX. TERMINATION

This Agreement shall continue in effect indefinitely but either Contracting State may, on or before 30th June in any calendar year after the year 1978 give notice of termination to the other Contracting State and, in such event, this 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 1st January in the calendar year next following that in which the notice is given; and
- (ii) in respect of other Canadian tax, for any taxation year beginning on or after 1st January in the calendar year next following that in which the notice is given;

(b) in Jamaica:

in respect of Jamaican tax, for any year of assessment beginning on or after 1st January in the calendar year next following that in which the notice is given.

[For the testimonium and signatures, see p. 170 of this volume.]

¹ United Nations, *Treaty Series*, vol. 977, p. 183.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Agreement.

DONE in duplicate at Kingston, this 30th day of March 1978, in the English and French languages, each version being equally authentic.

EN FOI DE QUOI les soussignés, dûment autorisés à cet effet, ont signé le présent Accord.

FAIT en double exemplaire à Kingston, ce 30^e jour de mars 1978, en langues française et anglaise, chaque version faisant également foi.

C. E. W. HOOPER
For the Government of Canada
Pour le Gouvernement du Canada

E. O. BELL
For the Government of Jamaica
Pour le Gouvernement de la Jamaïque