

**No. 24853**

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**CANADA  
and  
AUSTRIA**

**Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital. Signed at Vienna on 9 December 1976**

*Authentic texts: English, French and German.*

*Registered by Canada on 16 July 1987.*

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**CANADA  
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**Convention tendant à éviter les doubles impositions et à prévenir l'évasion fiscale en matière d'impôts sur le revenu et sur la fortune. Signé à Vienne le 9 décembre 1976**

*Textes authentiques : anglais, français et allemand.*

*Enregistrée par le Canada le 16 juillet 1987.*

CONVENTION<sup>1</sup> BETWEEN CANADA AND THE REPUBLIC OF  
AUSTRIA FOR THE AVOIDANCE OF DOUBLE TAXATION  
AND THE PREVENTION OF FISCAL EVASION WITH RE-  
SPECT TO TAXES ON INCOME AND ON CAPITAL

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

Article 1. PERSONAL SCOPE

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

Article 2. TAXES COVERED

1. This Convention shall apply to taxes on income and on capital imposed on behalf of each Contracting State, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation.

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

(a) In the case of Canada:

The income taxes imposed by the Government of Canada (hereinafter referred to as "Canadian tax");

(b) In the case of Austria:

1. The income tax (*die Einkommensteuer*);
2. The corporation tax (*die Körperschaftsteuer*);
3. The directors tax (*die Aufsichtsratsabgabe*);
4. The capital tax (*die Vermögensteuer*);
5. The tax on property eluding death duties (*die Abgabe von Vermögen, die der Erbschaftssteuer entzogen sind*);
6. The tax on commercial and industrial enterprises, including the tax levied on the sum of wages (*die Gewerbesteuer einschliesslich der Lohnsummensteuer*);
7. The land tax (*die Grundsteuer*);
8. The tax on agricultural and forestry enterprises (*die Abgabe von land- und forstwirtschaftlichen Betrieben*);
9. The contributions from agricultural and forestry enterprises to the fund for the equalisation of family burdens (*die Beiträge von land- und forstwirtschaftlichen Betrieben zum Ausgleichsfonds für Familien-beihilfen*);

<sup>1</sup> Came into force on 17 February 1981, i.e., 60 days after the exchange of the instruments of ratification, which took place at Ottawa, in accordance with article 29.

10. The tax on the value of vacant plots (*die Abgabe vom Bodenwert bei unbebauten Grundstücken*);

(hereinafter referred to as “Austrian tax”).

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes. The Contracting States shall notify each other of changes which have been made to their respective taxation laws.

### Article 3. GENERAL DEFINITIONS

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

(a) (i) The term “Canada” used in a geographical sense means the territory of Canada, including any area 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;

(ii) The term “Austria” used in geographical sense means the territory of the Republic of Austria;

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

(c) The term “person” includes an individual, a company, an estate or a trust created under Canadian law, or 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 Austria, the Federal Minister of Finance;

(g) The term “tax” means Canadian tax or Austrian tax as the context requires;

(h) The term “national” means:

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

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

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

### Article 4. FISCAL DOMICILE

1. For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the law of the 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, 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 endeavour to 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 the question by mutual agreement having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of any such settlement, such person shall be deemed not [to] be a resident of either Contracting State for the purposes of Articles 6 to 22 inclusive and Article 24.

#### Article 5. PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include especially:

- (a) A place of management;
- (b) A branch;
- (c) An office;
- (d) A factory;
- (e) A workshop;
- (f) A mine, quarry or other place of extraction of natural resources;
- (g) A building site or construction or assembly project which exists for more than 12 months.

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

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

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

#### *Article 6. INCOME FROM IMMOVABLE PROPERTY*

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

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

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

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

#### *Article 7. BUSINESS PROFITS*

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State

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

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

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

4. The term "profits" as used in this Article includes the profits derived by any partner from his participation in a partnership and, in the case of Austria, from a participation in a sleeping partnership (*Stille Gesellschaft*) created under Austrian law.

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

#### Article 8. SHIPPING AND AIR TRANSPORT

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

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

#### 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 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 resident of the other Contracting State is the beneficial owner of the dividends, the tax so charged shall not exceed 15 per cent of the gross amount of the dividends. The provisions of this paragraph shall not affect the taxation of the company on the profits out of which the dividends are paid.

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

4. The provisions of paragraph (2) shall not apply if the recipient 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, or performs in that other State professional services from a fixed base situated therein, and the holding by virtue of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a company is a resident of a Contracting State, the other Contracting State may not impose any tax on the dividends paid by the company 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. The provisions of this paragraph shall not prevent that other State from taxing dividends relating to a holding which is effectively connected with a permanent establishment or a fixed base operated in that other State.

6. Nothing in this Convention shall be construed as preventing 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 national of that State, provided that any additional tax so imposed shall not exceed 15 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 by that State; however, it does not include the profits attributable to a permanent establishment of a company in a Contracting State earned in a year during which the business of the company was not carried on principally in that State.

### Article 11. INTEREST

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

2. However, such interest may be taxed in the Contracting State in which it arises, and according to the law of that State; but 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 such securities, bonds or debentures, as well as income assimilated to income from money lent by the taxation law of the State in which the income arises. However, the term "interest" does not include income dealt with in Article 10.

4. The provisions of paragraph (2) shall not apply if the recipient 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, or performs in that other State professional services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

6. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

7. Notwithstanding the provisions of paragraph (2),

- (a) Interest arising in a Contracting State and paid in respect of a bond, debenture or other similar obligation of the government of that Contracting State or of a political subdivision or local authority thereof shall, provided that the interest is beneficially owned by a resident of the other Contracting State, be taxable only in that other State;
- (b) Interest arising in Austria and paid to a resident of Canada shall be taxable only in Canada with respect to a loan made, guaranteed or insured, or any other debt-claim or credit guaranteed or insured, by the Export Development Corporation;
- (c) Interest arising in Canada and paid to a resident of Austria shall be taxable only in Austria with respect to a loan made, guaranteed or insured, or any other debt-claim or credit guaranteed or insured, by the Österreichische Kontrollbank AG;



- (d) Interest arising in a Contracting State and paid to the Central Bank of the other Contracting State shall be exempt from tax in the first-mentioned State.

#### *Article 12. ROYALTIES*

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

2. However, such royalties may be taxed in the Contracting State in which they arise, and according to the law of that State; but 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. 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 films or videotapes for use in connection with television) arising in a Contracting State and paid to a resident of the other Contracting State who is subject to tax thereon 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, trademark, 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 films or videotapes for use in connection with television.

5. The provisions of paragraphs (2) and (3) shall not apply if the recipient 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, or performs in that other State professional services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the obligation to pay the royalties was incurred, and those royalties are borne by that permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

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

### *Article 13. GAINS FROM THE ALIENATION OF PROPERTY*

1. Gains from the alienation of immovable property, as defined in paragraph (2) of Article 6, may be taxed in the Contracting State in which such property is situated.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise or an interest therein) or of such a fixed base may be taxed in the other State. However, gains from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which such property is taxable according to paragraph (3) of Article 22.

3. Paragraphs (1) and (2) also apply to gains from the alienation of an interest in a partnership to the extent that the gain can be attributed to immovable property or to movable property forming part of the business property of an enterprise.

4. Gains from the alienation of

(a) Shares of a company, or

(b) An interest in a trust created under Canadian law,

the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State.

5. Gains from the alienation of any property, other than those mentioned in paragraphs (1), (2), (3) and (4) shall be taxable only in the Contracting State of which the alienator is a resident.

6. The provisions of paragraph (5) 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 a resident thereof for ten years or more prior to the alienation of the property, and

(b) Was a resident of the first-mentioned State at any time during the five years immediately preceding the alienation of the property.

### *Article 14. 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 shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.

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

### *Article 15. DEPENDENT PERSONAL SERVICES*

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) The recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned, and
- (b) The remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) The remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

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

### *Article 16. DIRECTORS' FEES*

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

### *Article 17. ARTISTES AND ATHLETES*

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

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

3. The provisions of paragraph 2 shall not apply if it is established that neither the entertainer 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 AND ANNUITIES*

1. Pensions and annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the first-mentioned State.

2. Notwithstanding anything in this Convention, social security pensions, pensions and allowances in respect of military service and any other compensation for an injury or damage sustained as a result of hostilities or past political persecution arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in the first-mentioned State.

3. Alimony and other similar payments 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 paid by or out of the public funds of a Contracting State or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof shall be taxable only in that State.

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

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

#### *Article 20. STUDENTS*

Payments which a student, apprentice or business trainee who is, or was immediately before visiting one of the Contracting States, a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that first-mentioned State, provided that such payments are made to him from sources outside that State.

#### *Article 21. INCOME NOT EXPRESSLY MENTIONED*

1. Subject to the provisions of paragraph (2) of this Article, items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Convention shall be taxable only in that Contracting 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, according to the law of that State. However, in the case of income from an estate or trust, created under Canadian law, the tax so charged shall not exceed 15 per cent of the gross amount of the income.

#### *Article 22. TAXATION OF CAPITAL*

1. Capital represented by immovable property, as defined in paragraph (2) of Article 6, may be taxed in the Contracting State in which such property is situated.

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

3. Ships and aircraft operated by an enterprise of a Contracting State in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in that State.

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

#### *Article 23. 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 territory outside Canada and to any subsequent modification of those provisions — which shall not affect the general principle hereof — tax payable under the law of Austria and in accordance with this Convention on profits, income or gains arising in Austria 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 Austria.

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

- (a) Where a resident of Austria derives income from sources within Canada, which, in accordance with the provisions of this Convention, may be taxed in Canada, Austria shall allow as a deduction from the tax on the income of that person, an amount equal to the tax on income paid in Canada. The deduction shall not, however, exceed that part of the tax on income as computed before the deduction is given, which is appropriate to the income which may be taxed in Canada.
- (b) Where a company resident in Austria owns at least 25 per cent of the share capital of a company resident in Canada, Austria shall, notwithstanding the provision of subparagraph (a) and subject to the provisions of the law of Austria regarding the treatment of intercorporate dividends and to any subsequent modification of those provisions — which shall not affect the general principle hereof —, exempt the dividends received from its taxes on income and the value of shares from its taxes on capital.

3. For the purpose 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 Convention shall be deemed to arise from sources in that other State.

4. Where a resident of a Contracting State owns capital which, in accordance with Article 22, may be taxed in the other Contracting State, the first-mentioned State shall exempt such capital from tax but may, in calculating tax on the remaining capital of that person, apply the rate of tax which would have been applicable if the exempted capital had not been so exempted.

#### *Article 24. NON-DISCRIMINATION*

1. The nationals of a Contracting State shall not be subject in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to

which nationals of that other State in the same circumstances are or may be subjected.

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

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

4. In this Article, the term "taxation" means taxes which are the subject of this Convention.

#### *Article 25. MUTUAL AGREEMENT PROCEDURE*

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

2. The competent authority referred to in paragraph (1) shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Convention.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. In particular, the competent authorities of the Contracting States may consult together to endeavour to agree:

- (a) To the same attribution of profits to a resident of a Contracting State and its permanent establishment situated in the other Contracting State;
- (b) To the same allocation of income between a resident of a Contracting State and any associated person provided for in Article 9.

#### *Article 26. EXCHANGE OF INFORMATION*

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention or of the domestic laws of the Contracting States concerning taxes covered by this Convention. 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 Convention.

2. In no case shall the provisions of paragraph (1) be construed so as to impose on one of the Contracting States 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 27. DIPLOMATIC AND CONSULAR OFFICIALS

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

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

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

#### Article 28. MISCELLANEOUS RULES

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

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

2. Nothing in this Convention shall be construed as preventing 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. However, that section shall not apply to income from an active business carried on in Austria by a foreign affiliate of a person resident in Canada or to income that pertains to or is incident to an active business carried on in Austria.

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

#### Article 29. ENTRY INTO FORCE

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

2. The Convention shall enter into force 60 days after the exchange of the instruments of ratification and its provisions shall have effect:

- (a) In respect of tax withheld at the source 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; and

- (b) In respect of other 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.

*Article 30. TERMINATION*

This Convention shall continue in effect indefinitely but either Contracting State may, on or before June 30 in any calendar year after the year of the exchange of the instruments of ratification, give written notice of termination through diplomatic channels to the other Contracting State and in such event the Convention shall cease to have effect:

- (a) In respect of tax withheld at the source 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
- (b) In respect of other 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.

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

DONE in Vienna on the 9th day of December 1976 in duplicate in the English, French and German languages, each version being equally authentic.

For Canada:

THOMAS CARTER

For the Republic of Austria:

ALFRED TWAROCH