

No. 24860

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**CANADA**  
**and**  
**REPUBLIC OF KOREA**

**Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (with protocol). Signed at Seoul on 10 February 1978**

*Authentic texts: English, French and Korean.*

*Registered by Canada on 16 July 1987.*

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**CANADA**  
**et**  
**RÉPUBLIQUE DE CORÉE**

**Convention tendant à éviter les doubles impositions et à prévenir l'évasion fiscale en matière d'impôts sur le revenu (avec protocole). Signée à Séoul le 10 février 1978**

*Textes authentiques : anglais, français et coréen.*

*Enregistrée par le Canada le 16 juillet 1987.*

# CONVENTION<sup>1</sup> BETWEEN CANADA AND THE REPUBLIC OF KOREA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

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

## I. SCOPE OF THE CONVENTION

### *Article I. PERSONAL SCOPE*

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

### *Article II. TAXES COVERED*

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

2. 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 Korea:

(i) the income tax, and

(ii) the corporation tax

(hereinafter referred to as "Korean tax").

3. This 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.

## II. DEFINITIONS

### *Article III. GENERAL DEFINITIONS*

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

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

(ii) the term "Korea" means the Republic of Korea, and when used in a geographical sense, the term means all the territory in which the laws relating to

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<sup>1</sup> Came into force on 19 December 1980 by the exchange of the instruments of ratification, which took place at Ottawa, in accordance with article XXVI (2).

Korean tax are in force. The term also includes the territorial sea thereof, and the sea-bed and sub-soil of the submarine areas adjacent to the coast thereof, but beyond the territorial sea, over which Korea exercises sovereign rights, in accordance with international law, for the purpose of exploration and exploitation of the natural resources of such area;

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

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

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

(e) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” means 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 Korea, the Minister of Finance or his authorized representative;

(g) the term “tax” means Canadian tax or Korean 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 IV. FISCAL DOMICILE*

1. For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of head or main office, 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 this case 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 company is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State of which it is a national.

#### *Article V. 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 store or other sales outlet;
- (e) a factory;
- (f) a workshop;
- (g) a mine, quarry or other place of extraction of natural resources;
- (h) a building site or a construction, installation or assembly project or activities of providing personal services such as supervisory, technical or any other professional services in connection therewith, where such site, project or activity exists for more than six 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. 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:

- (a) he has and habitually exercises in that State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for that enterprise; or
- (b) he has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of 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. However, when the activities of such an agent are performed wholly or almost wholly on behalf of that enterprise, he would not be considered an agent of an independent status within the meaning of this paragraph.

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.

### III. TAXATION OF INCOME

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

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

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

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

4. The provisions of paragraphs 1 and 3 shall also apply to 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 business in the other Contracting State

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

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

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

4. 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. 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 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 exempt from tax in the other Contracting State.

2. The provisions of paragraph 1 shall also apply to profits referred to in that paragraph derived by an enterprise of a Contracting State from its participation in a pool, a joint business or in 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. A Contracting State shall not change the profits of an enterprise in the circumstances referred to in paragraph 1 after the expiry of the time limits

provided in its national laws and, in any case, after five years from the end of the year in which the profits which would be subject to such change would have accrued to an enterprise of that State. This paragraph shall not apply in the case of fraud, 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 if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed 15 per cent of the gross amount of the dividends. The provisions of this paragraph shall not affect the taxation of the company on the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares, 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, has in the other Contracting State, of which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provisions of Article VII shall apply.

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

#### *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 if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. 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, 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 recipient of the interest, being a resident of a Contracting State, has in the other Contracting State in which the interest arises, a permanent establishment with which the debt-claim from which the interest arises is effectively connected. 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 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, interest arising in a Contracting State shall be exempt from tax in that State if the interest is received by the Government of the other Contracting State including a political subdivision or a local authority thereof, the central bank of that other Contracting State or any financial instrumentality wholly-owned by that Government or that central bank or by both.

#### *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 if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 15 per cent of the gross 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 of literary, artistic or scientific work, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, (including ships or aircraft leased under a bare boat charter contract) or for information concerning industrial, commercial or scientific experience, and includes payments of any kind in respect of motion picture films and works on film or videotape for use in connection with television.

4. The provisions of paragraphs 1 and 2 shall likewise apply to the gains from the alienation of any right, property or information giving rise to royalties if such right, property or information is alienated by a resident of a Contracting State for exclusive use in the other Contracting State and the cost thereof is borne by an enterprise of that other State or a permanent establishment situated therein.



5. The provisions of paragraph 2 shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise, a permanent establishment with which the right or property giving rise to the royalties is effectively connected. In such a case, the provisions of Article VII 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 in connection with which the obligation to pay the royalties was incurred, 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.

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

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

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

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, 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 a Contracting State from the alienation of ships or aircraft operated in international traffic and movable property pertaining to the operation of such ships or aircraft shall be taxable only in that Contracting State.

3. Gains from the alienation of shares forming part of a substantial interest in the capital stock of a company which is a resident of a Contracting State may be taxed in that State. For the purposes of this paragraph, a substantial interest exists when the alienator, alone or together with associated persons, owns directly or indirectly 25 per cent or more of the shares of any class of the capital stock of a company.

4. Gains from the alienation of any property, other than those mentioned in preceding paragraphs of this Article and in paragraph 4 of Article XII shall be taxable only in the Contracting State of which the alienator is a resident.

#### *Article XIV.* PERSONAL SERVICES

1. Subject to the provisions of Articles XV, XVII and XVIII, remuneration derived by a resident of a Contracting State in respect of personal services (including professional services) shall be taxable only in that State unless the services are rendered in the other Contracting State. If the services are so

rendered 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 services rendered in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned; and
- (b) the remuneration is paid by, or on behalf of, a person who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment which the person paying the remuneration 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 XV. 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 or a similar organ of a company which is a resident of the other Contracting State, may be taxed in that other State.

#### Article XVI. ARTISTES AND ATHLETES

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

2. The provisions of paragraph 1 shall not apply if the visit of the entertainers or athletes to a Contracting State is supported wholly or substantially from public funds of the other Contracting State, a political subdivision or a local authority thereof.

#### Article XVII. PENSIONS AND ANNUITIES

1. Pensions and other similar remuneration for past employment 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. War veterans pensions paid by a Contracting State or a political subdivision, a local authority or a governmental instrumentality thereof (*personne morale ressortissant à son droit public*), shall be taxable only in that State.

#### Article XVIII. GOVERNMENTAL FUNCTIONS

1. (a) Remuneration, other than a pension, paid by, or out of funds created by one of the Contracting States 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 in the discharge of functions of a governmental nature shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the recipient is a resident of that State who:

- (i) is a national of that State; or
- (ii) 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 for the purpose of profits by one of the Contracting States or a political subdivision or a local authority thereof.

3. The provisions of paragraph 1 shall likewise apply in respect of remuneration paid by the Bank of Korea, the Korea Exchange Bank, the Korea Trade Promotion Corporation, the Bank of Canada and any other government owned instrumentality performing functions of a governmental nature.

#### *Article XIX.* 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, and according to the law of that State.

### IV. METHODS FOR PREVENTION OF DOUBLE TAXATION

#### *Article XX.* ELIMINATION OF DOUBLE TAXATION

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

- (a) Subject to the existing provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada and to any subsequent modification of those provisions — which shall not affect the general principle hereof — and unless a greater deduction or relief is provided under the laws of Canada, tax payable in Korea on profits, income or gains arising in Korea 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 Korea.

2. For the purposes of paragraph 1 (a), tax payable in Korea by a resident of Canada in respect of dividends, interest or royalties received by it from a company which is a resident of Korea, shall be deemed to include any amount

which would have been payable as Korean tax for any year but for an exemption from, or reduction of, tax granted for that year or any part thereof under:

- (a) the provisions of Articles XV and XXIV of the Foreign Capital Inducement Law of Korea, so far as they were in force on, and have not been modified since, the date of signature of this Convention, or have been modified only in minor respects so as not to affect their general character; and
- (b) any other provision which may subsequently be made granting an 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;

provided that any deduction from Canadian tax granted in accordance with the provisions of this paragraph shall not exceed 15 per cent of the gross amount of the dividends, interest or royalties.

3. In the case of a resident of Korea, double taxation shall be avoided as follows:

— Subject to the existing provisions of the law of Korea regarding credit for foreign tax and to any subsequent modification of those provisions — which shall not affect the general principle hereof —, there shall be allowed as a credit against Korean tax payable in respect of income from sources within Canada, the Canadian tax payable under the laws of Canada and in accordance of this Convention. The credit shall not, however, exceed that proportion of Korean tax which the income from sources within Canada bears to the entire income subject to Korean tax.

4. 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 Convention shall be deemed to arise from sources in that other State.

## V. SPECIAL PROVISIONS

### Article XXI. 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 State than the taxation levied on enterprises of that other State carrying on the same activities.

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

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more

burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State, are or may be subjected.

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

#### *Article XXII. MUTUAL AGREEMENT PROCEDURE*

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

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

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

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

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

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

#### *Article XXIII. 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 preventing fraud or fiscal evasion in relation to the taxes which are the subject of this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities, other than those concerned with assessment, collection, enforcement or legal process with respect to 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 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*).

3. The Contracting States shall notify each other of any amendments of the laws relating to the taxes referred to in paragraph 2 of Article II and of the adoption of any taxes referred to in paragraph 3 of Article II by transmitting the texts of any amendments or new statutes, if any, at least once a year.

#### *Article XXIV. DIPLOMATIC AND CONSULAR OFFICIALS*

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

#### *Article XXV. MISCELLANEOUS RULES*

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

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

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

### VI. FINAL PROVISIONS

#### *Article XXVI. ENTRY INTO FORCE*

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

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

- (a) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January in the calendar year in which the exchange of instruments of ratification takes place; and
- (b) in respect of other taxes 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 XXVII. TERMINATION*

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

of a period of five years from the year of exchange of the instruments of ratification, give written notice of termination 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 or credited to non-residents on or after the first day of January in the calendar year next following that in which the notice is given; and
- (b) in respect of other taxes for taxation years beginning on or after the first day of January in the calendar year next following that in which the notice is given.

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

DONE at Seoul, this 10th day of February, 1978, in duplicate, in the English, French and Korean languages, each version being equally authentic.

For the Government  
of Canada:

G. E. SHANNON

For the Government  
of the Republic of Korea:

TONG-JIN PARK

## PROTOCOL

At the signing of the Convention concluded this day between Canada and the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed on the following provisions which shall be an integral part of the Convention:

1. It is understood that as long as the temporary defense surtax is imposed in Korea and charged by reference to the income tax and the corporation tax, it shall be the subject of this Convention within the meaning of paragraph 2(b) of Article II.

2. With reference to Article IV, it is understood that where by reason of the provisions of paragraph 1 of that Article, a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question and to determine the mode of application of the Convention to such person.

3. It is understood that notwithstanding the provisions of paragraph 1 of Article VIII and the provisions of Article VII, income or profits derived by an enterprise of a Contracting State from a voyage of a ship or aircraft where the principal purpose of the voyage is to transport passengers or goods between places in the other Contracting State may be taxed in that other State.

4. It is understood that the provisions of paragraph 7 of Article [XXI]<sup>1</sup> concerning interest arising in a Contracting State and paid to a financial instrumentality wholly-owned by the Government or the central bank of the other Contracting State or both, shall apply only to interest paid to the Export Development Corporation of Canada, the Korea Exchange Bank and to any other instrumentality which is specified and agreed to in letters exchanged between the competent authorities of the Contracting States.

<sup>1</sup> Reads as "XI" and "II" in the authentic French and Korean texts, respectively.

5. It is understood that for the purposes of applying the provisions of paragraph 1 of Article XIII, the term immovable property shall also include shares of a company the property of which consists principally of immovable property.

6. It is understood that 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 State solely for the purpose of his education or training shall not be taxed in that first-mentioned State in respect of remittances received by him from abroad for the purpose of his maintenance, education or training. It is further understood that a student, apprentice or business trainee who is, or was immediately before visiting Canada, a resident of Korea and who is present in Canada solely for the purpose of his education or training shall, in determining his income for any taxation year be allowed to deduct, for purposes of Canadian taxation, five hundred Canadian dollars (\$500) from the total amount of scholarships or bursaries received by him in the year from sources in Canada and, subject to the appropriate existing provisions of Canadian law and to any subsequent modification of those provisions which shall not affect the general principle hereof, the amount of any fees for his tuition paid in the year to an educational institution in Canada.

7. It is understood that nothing in the Convention shall be construed as preventing a Contracting State from imposing:

- (a) on the profits attributable to a permanent establishment in that State of a company which is a resident of the other Contracting State, a tax at a maximum rate of 15 per cent in addition to the tax which would be chargeable on such profits if the company were a resident of the first-mentioned State; however, any additional tax so imposed shall not be levied on the profits attributable to such permanent establishment for a year during which the business of the company was not carried on principally in that first-mentioned State;
- (b) 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 has been a resident of the first-mentioned State at any time during the six years immediately preceding the alienation of the property;
- (c) tax on amounts included in the income of its residents according to the international tax avoidance provisions of its domestic law.

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

DONE at Seoul, this 10th day of February, 1978, in duplicate, in the English, French and Korean languages, each version being equally authentic.

For the Government  
of Canada:

G. E. SHANNON

For the Government  
of the Republic of Korea:

TONG-JIN PARK