

No. 27498

**JAPAN
and
CANADA**

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (with protocol). Signed at Tokyo on 7 May 1986

Authentic texts: Japanese, English and French.

Registered by Japan on 10 August 1990.

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et
CANADA**

Convention en vue d'éviter les doubles impositions et de prévenir l'évasion fiscale en matière d'impôts sur le revenu (avec protocole). Signée à Tokyo le 7 mai 1986

Textes authentiques : japonais, anglais et français.

Enregistrée par le Japon le 10 août 1990.

CONVENTION¹ BETWEEN THE GOVERNMENT OF JAPAN AND
THE GOVERNMENT OF CANADA FOR THE AVOIDANCE OF
DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVA-
SION WITH RESPECT TO TAXES ON INCOME

The Government of Japan and the Government of Canada,
Desiring to conclude a new convention for the avoidance of double taxation and
the prevention of fiscal evasion with respect to taxes on income,
Have agreed as follows:

Article 1

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

Article 2

1. The taxes which are the subject of this Convention are:

(a) In Canada: the income taxes imposed by the Government of Canada (here-
inafter referred to as “Canadian tax”);

(b) In Japan:

- (i) The income tax; and
- (ii) The corporation tax
(hereinafter referred to as “Japanese tax”).

2. This Convention shall also apply 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, those referred to in paragraph 1. The competent authorities of the
Contracting States shall notify each other of any substantial changes which have
been made in their respective taxation laws within a reasonable period of time after
such changes.

Article 3

1. For the purposes of this Convention, unless the context otherwise requires:

(a) The term “Canada” used in a geographical sense, means the territory of
Canada, and includes

- (i) Every area beyond the territorial seas of Canada that, in accordance with inter-
national law and the laws of Canada, is an area in respect of which Canada may
exercise rights with respect to the sea-bed and subsoil and their natural re-
sources; and
- (ii) The seas above every area described in sub-paragraph (i) to the extent that the
rights of Canada in these seas are recognized in international law;

(b) The term “Japan”, when used in a geographical sense, means all the terri-
tory of Japan, including its territorial sea, in which the laws relating to Japanese tax

¹ Came into force on 14 November 1987, i.e., the thirtieth day following the date of the exchange of the instruments of ratification, which took place at Ottawa on 15 October 1987, in accordance with article 27 (2).

are in force, and all the area beyond its territorial sea, including the sea-bed and subsoil thereof, over which Japan has jurisdiction in accordance with international law and in which the laws relating to Japanese tax are in force;

(c) The term “a Contracting State” and “the other Contracting State” mean Japan or Canada, as the context requires;

(d) The term “tax” means Japanese tax or Canadian tax, as the context requires;

(e) The term “person” includes an individual, a company and any other body of persons;

(f) The term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;

(g) 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;

(h) The term “nationals” means all individuals possessing the nationality of either Contracting State and all juridical persons created or organized under the laws of that Contracting State and all organizations without juridical personality treated for the purposes of tax of that Contracting State as juridical persons created or organized under the laws of that Contracting State;

(i) The term “international traffic” means any voyage of a ship or aircraft operated by an enterprise of a Contracting State except where the principal purpose of the voyage is to transport passengers or goods between places in the other Contracting State;

(j) The term “competent authority” means, in the case of Japan, the Minister of Finance or his authorized representative and, in the case of Canada, the Minister of National Revenue or his authorized representative.

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

Article 4

1. For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that Contracting State, is liable to tax 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 a person is a resident of both Contracting States, then the competent authorities of the Contracting States shall determine by mutual agreement the Contracting State of which that person shall be deemed to be a resident for the purposes of this Convention.

Article 5

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

2. The term “permanent establishment” includes especially:

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

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than 12 months.

4. Notwithstanding the provisions of the preceding paragraphs of this Article, the term “permanent establishment” shall be deemed not to include:

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

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person — other than an agent of an independent status to whom the provisions of paragraph 6 apply — is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that Contracting State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

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

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other Contracting State (whether through a perma-

ment establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

1. Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other Contracting State.

2. The term “immovable property” shall have the meaning which it has under the laws 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 immovable 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 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.

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

Article 7

1. The profits of an enterprise of a Contracting State shall be taxable only in that Contracting State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in that other Contracting 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 determining the profits of a permanent establishment, there shall be allowed those deductible expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere.

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

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

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

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

Article 8

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

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

Article 9

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

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 Contracting State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

(a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which owns at least 25 per cent of the voting shares of the company paying the dividends during the period of six months immediately before the end of the accounting period for which the distribution of profits takes place;

(b) 15 per cent of the gross amount of the dividends in all other cases.

The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term “dividends” as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the taxation laws of the Contracting State of which the company making the distribution is a resident.

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

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that 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 Contracting State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other Contracting State, nor subject the company’s undistributed profits to a tax on the company’s undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other Contracting State.

Article 11

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

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and derived by the Government of the other Contracting State including a political subdivision and a local authority thereof, the Central Bank of that other Contracting State or any financial institution wholly owned by that Government, or by any resident of the other Contracting State with respect to debt-claims guaranteed or indirectly financed by the Government of that other Contracting State including a political subdivision and a local authority thereof, the Central Bank of that other Contracting State or any financial institution wholly owned by that Government shall be exempt from tax in the first-mentioned Contracting State.

4. For the purposes of paragraph 3, the terms “the Central Bank” and “financial institution wholly owned by the Government” mean:

(a) In the case of Canada:

(i) The Bank of Canada;

(ii) The Export Development Corporation of Canada; and

- (iii) Such other financial institution the capital of which is wholly owned by the Government of Canada as may be agreed upon from time to time between the Governments of the two Contracting States;
 - (b) In the case of Japan:
 - (i) The Bank of Japan;
 - (ii) The Export-Import Bank of Japan;
 - (iii) The Overseas Economic Cooperation Fund;
 - (iv) The Japan International Cooperation Agency; and
 - (v) Such other financial institution the capital of which is wholly owned by the Government of Japan as may be agreed upon from time to time between the Governments of the two Contracting States.

5. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from Government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as income which is subjected to the same taxation treatment as income from money lent by the taxation laws of the Contracting State in which the income arises.

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

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

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

Article 12

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

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. 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 including cinematograph films and films or tapes for radio or television broadcasting, 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, or for information concerning industrial, commercial or scientific experience.

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

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

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

Article 13

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

2. Gains from the alienation of any property, other than immovable 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 any property, other than immovable property, pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other Contracting State.

3. Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic and any property, other than immovable property, pertaining to the operation of such ships or aircraft shall be taxable only in that Contracting State.

4. Gains derived by a resident of a Contracting State from the alienation of any property other than that referred to in paragraphs 1 to 3 and arising in the other Contracting State may be taxed in that other Contracting State.

Article 14

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

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

Article 15

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 Contracting 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 Contracting 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 Contracting State, if:

(a) The recipient is present in that 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 that other Contracting State; and

(c) The remuneration is not borne by a permanent establishment or a fixed base which the employer has in that other Contracting State.

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

Article 16

Directors's fees and other 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 Contracting State.

Article 17

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture,

radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other Contracting State.

Such income shall, however, be exempt from tax in that other Contracting State if such activities are exercised by an individual, being a resident of the first-mentioned Contracting State, pursuant to a special programme for cultural exchange agreed upon between the Governments of the two Contracting States.

2. Where income in respect of personal activities exercised in a Contracting State by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person who is a resident of the other Contracting State, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the first-mentioned Contracting State.

Such income shall, however, be exempt from tax in the first-mentioned Contracting State if such activities are exercised pursuant to a special programme for cultural exchange agreed upon between the Governments of the two Contracting States.

Article 18

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

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

- (i) Is a national of that other Contracting State; or
- (ii) Did not become a resident of that other Contracting State solely for the purpose of rendering the services.

2. The provisions of Articles 15, 16 and 17 shall apply to remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 19

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall be exempt from tax in the first-mentioned Contracting State, provided that such payments are made to him from outside that first-mentioned Contracting State.

Article 20

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other

Contracting State through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may be taxed in that other Contracting State.

Article 21

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

(a) Subject to the existing provisions of the laws of Canada regarding the deduction from tax payable in Canada of foreign tax paid 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 Japan on profits, income or gains arising in Japan shall be deducted from any Canadian tax payable in respect of such profits, income or gains.

(b) Subject to the existing provisions of the laws 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 which is a resident of 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 a resident of Japan.

For the purposes of this paragraph, profits, income or gains of a resident of Canada which are taxed in Japan in accordance with the provisions of this Convention shall be deemed to arise from sources in Japan.

2. Subject to the laws of Japan regarding the allowance as a credit against Japanese tax of tax payable in any country other than Japan:

(a) Where a resident of Japan derives income from Canada which may be taxed in Canada in accordance with the provisions of this Convention, the amount of Canadian tax payable in respect of that income shall be allowed as a credit against the Japanese tax imposed on that resident. The amount of credit, however, shall not exceed that part of the Japanese tax which is appropriate to that income.

(b) Where the income derived from Canada is a dividend paid by a company which is a resident of Canada to a company which is a resident of Japan and which owns not less than 25 per cent either of the voting shares of the company paying the dividend, or of the total shares issued by that company, the credit shall take into account the Canadian tax payable by the company paying the dividend in respect of its income.

Article 22

1. 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 Contracting State in the same circumstances are or may be subjected.

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

2. The 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 Contracting State than the taxation levied on enterprises of that other Contracting 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 Contracting 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 Contracting 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 the taxes which are the subject of this Convention.

Article 23

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic laws of those Contracting States, present his case in writing to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 22, to that of the Contracting State of which he is a national. The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of this Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory 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 provisions of this 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 this Convention. They may also consult together for the elimination of double taxation in cases not provided for in this Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs of this Article.

Article 24

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is not contrary to the provisions of this

Convention, or for the prevention of fiscal evasion with respect to such taxes. Any information so exchanged shall be treated as secret and shall be disclosed only to persons or authorities, including courts, involved in the assessment or collection of the taxes covered by this Convention or the determination of appeals in relation thereto.

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 and the administrative practice of that or of the other Contracting State;

(b) To supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) To supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

Article 25

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 by the laws of a Contracting State in the determination of the tax imposed by that Contracting State or any agreement between the Governments of the Contracting States.

2. Except to the extent provided in paragraph 3, this Convention shall not affect the taxation by a Contracting State of its residents.

3. The provisions of paragraph 2 shall not affect the benefits provided under Articles 18, 19, 21, 22 and 23.

Article 26

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

Article 27

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

2. This Convention shall enter into force on the thirtieth day after the date of the exchange of instruments of ratification and shall have effect:

(a) In Canada:

(i) In respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January in the calendar year next following that in which this Convention enters into force; and

(ii) In respect of other Canadian tax for taxation years beginning on or after the first day of January in the calendar year next following that in which this Convention enters into force; and

(b) In Japan: as regards income for any taxable year beginning on or after the first day of January in the calendar year next following that in which this Convention enters into force.

3. The Convention between Japan and Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at Tokyo on September 5, 1964,¹ shall terminate and cease to have effect in respect of income to which this Convention applies under the provisions of paragraph 2.

4. The termination of the Convention between Japan and Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at Tokyo on September 5, 1964 as provided in paragraph 3 shall not revive the Agreement between the Government of Japan and the Government of Canada made by the Notes exchanged at Ottawa on September 21, 1929, concerning reciprocal exemption from income tax on profits accruing from the operation of ships.² Upon the entry into force of this Convention that Agreement shall terminate.

Article 28

This Convention shall continue in effect indefinitely but either Contracting State may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting State, through the diplomatic channel, written notice of termination and, in such event, this Convention shall cease to have effect:

(a) In Canada:

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

(b) In Japan: as regards income for any taxable year beginning on or after the first day of January in the calendar year next following that in which the notice of termination is given.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Convention.

DONE in duplicate at Tokyo on the seventh day of May 1986 in the Japanese, English and French languages, each text being equally authentic.

For the Government
of Japan:
SHINTARO ABE

For the Government
of Canada:
B. C. STEERS

¹ United Nations, *Treaty Series*, vol. 569, p. 99.

² League of Nations, *Treaty Series*, vol. XCVI, p. 143.

PROTOCOL

At the signing of the Convention between the Government of Japan and the Government of Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (hereinafter referred to as "the Convention"), the undersigned have agreed upon the following provisions which form an integral part of the Convention.

1. With reference to sub-paragraph (e) of paragraph 1 of Article 3 of the Convention, the term "person" shall include an estate and a trust.

2. With reference to paragraph 2 of Article 4 of the Convention, where an individual or a company is a resident of both Contracting States the question shall be settled by mutual agreement by applying the following rules:

(a) In the case of an individual,

(i) 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 (centre of vital interests);

(ii) 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;

(iii) 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;

(b) In the case of a company, it shall be deemed to be a resident of the Contracting State of which it is a national.

3. With reference to Articles 6 and 13 of the Convention, in the case of Canada, income from the alienation of immovable property shall be subjected to taxation in accordance with the provisions of paragraph 1 of Article 6 of the Convention.

4. With reference to paragraph 1 of Article 7 of the Convention, where an enterprise of a Contracting State which has carried on business in the other Contracting State through a permanent establishment situated therein, receives, after the enterprise has ceased to carry on business as aforesaid, profits attributable to the permanent establishment, such profits may be taxed in that other Contracting State in accordance with the principles contained in Article 7 of the Convention.

5. Notwithstanding the provisions of paragraph 5 of Article 11 of this Convention, in the case of Canada, the term "dividends" as defined in paragraph 3 of Article 10 of the Convention shall include income from bonds or debentures which is treated as a distribution of profits.

6. Notwithstanding the provisions of paragraphs 1 and 2 of Article 15 and of paragraph 2 of Article 25 of the Convention, a professor or teacher who enters a Contracting State before the date of entry into force of the Convention and stays for a period not exceeding two years for the purpose of teaching at a university, college, school or other educational institution in that Contracting State, and who is, or immediately before his entry was, a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State in respect of remuneration for such teaching.

7. (a) Nothing in the Convention shall be construed as preventing Canada from imposing a tax on the earnings (other than those derived from the operation of ships or aircraft in international traffic) of a company, being a resident of Japan, which are attributable to its permanent establishments in Canada, in addition to the tax which would be chargeable on the profits of a company which is a resident of Canada. For the purposes of this paragraph, the term "earnings" means the amount by which the business profits attributable to permanent establishments in Canada (including gains from the alienation of property forming part of the business property of such permanent establishments) in a taxation year and previous taxation years exceeds the sum of:

(i) Business losses attributable to such permanent establishments (including losses from the alienation of property forming part of the business property of such permanent establishments) in such taxation year and previous taxation years;

(ii) All taxes, other than the additional tax referred to in this paragraph, imposed on such profits in Canada; and

(iii) The profits reinvested in Canada, provided that such amount shall be determined in accordance with the provisions of paragraph (1) (h) of Section 219 of the Income Tax Act of Canada as they are in force at the date of signature of the Convention regarding the computation of the allowance in respect of investment in property in Canada, and any subsequent modification of those provisions which shall not affect the general principle hereof.

(b) The provisions of sub-paragraph (a) of this paragraph shall apply only to the extent that the total earnings in the taxation year and previous taxation years of the company and of any associated company with respect to the same or a similar business exceed five hundred thousand Canadian dollars (\$500,000), or an amount that may be agreed upon from time to time by the competent authorities of the two Contracting States; for the purposes of this sub-paragraph (b), a company is associated with another company if one company directly or indirectly controls the other, or both companies are directly or indirectly controlled by the same person or persons.

(c) For the purposes of sub-paragraph (a) of this paragraph, any additional tax so imposed shall not exceed 10 per cent of the amount of such earnings which have not been subjected to such additional tax.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Protocol.

DONE in duplicate at Tokyo on the seventh day of May 1986 in the Japanese, English and French languages, each text being equally authentic.

For the Government
of Japan:

SHINTARO ABE

For the Government
of Canada:

B. C. STEERS