

Agreement Between Canada and the Federal Republic of Germany for the Avoidance of Double Taxation With Respect to Taxes on Income and Certain Other Taxes, the Prevention of Fiscal Evasion and the Assistance in Tax Matters

Canada and the Federal Republic of Germany,

DESIRING to conclude an Agreement for the avoidance of double taxation with respect to taxes on [income](#) and certain other taxes, the prevention of fiscal evasion and the assistance in tax matters,

HAVE AGREED as follows:

Article 1

Persons Covered

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

Article 2

Taxes Covered

1. This Agreement shall apply to taxes on [income](#) and on capital imposed by each Contracting State and, in the case of the Federal Republic of Germany, on behalf of its Laender, political subdivisions or local authorities, irrespective of the manner in which they are levied.

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

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

(a) in the case of Canada:

the taxes imposed by the Government of Canada under the Income Tax Act, (hereinafter referred to as "Canadian tax");

(b) in the case of the Federal Republic of Germany:

(aa) the income tax (Einkommensteuer),

(bb) the corporation tax (Körperschaftsteuer),

(cc) the [capital tax](#) (Vermögensteuer),

(dd) the trade tax (Gewerbsteuer), and

(ee) the solidarity surcharge (Solidaritätszuschlag),

(hereinafter referred to as "German tax").

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

Article 3

General Definitions

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

(a) the term "Canada" when used in a geographical sense, means the territory of Canada, including:

(aa) any area beyond the territorial sea of Canada which, in accordance with international law and the laws of Canada, is an area within which Canada may exercise rights with respect to the seabed and subsoil and their natural resources;

(bb) the sea and airspace above every area referred to in (aa) in respect of any activity carried on in connection with the exploration for or the exploitation of the natural resources referred to therein;

(b) the term "Federal Republic of Germany" when used in a geographical sense, means the territory of the Federal Republic of Germany as well as the area of the seabed, its subsoil and the superjacent water column adjacent to the territorial sea, wherein the Federal Republic of Germany exercises sovereign rights and jurisdiction in conformity with international law and its national legislation for the purpose of exploring, exploiting, conserving and managing the living and non-living natural resources;

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

(d) the term "person" includes an individual and a company;

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

(f) 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;

(g) the term "national" means:

(aa) in respect of Canada, any individual possessing the nationality of Canada and any legal person, partnership or association deriving its status as such from the law in force in Canada;

(bb) in respect of the Federal Republic of Germany, any German within the meaning of the Basic Law for the Federal Republic of Germany and any legal person, partnership and association deriving its status as such from the law in force in the Federal Republic of Germany;

(h) the term "competent authority" means:

(aa) in the case of Canada, the Minister of National Revenue or the Minister's authorized representative,

(bb) in the case of the Federal Republic of Germany, the Federal Minister of Finance or the Minister's delegate;

(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 property between places within the other Contracting State.

2. As regards the application of the Agreement by a Contracting State at any time, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that State concerning the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4

Resident

1. For the purposes of this Agreement, the term "resident of a Contracting State" means:

(a) any person who, under the laws of that State, is liable to tax therein by reason of that person's domicile, residence, place of management or any other criterion of a similar nature;

(b) that State itself, a "Land" or a political subdivision or local authority thereof or any agency or instrumentality of any such State, Land, subdivision or authority.

This term does not, however, include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then the individual's status shall be determined as follows:

(a) the individual shall be deemed to be a resident only of the State in which the individual has a permanent home available; if the individual has a permanent home available in both States, the individual shall be deemed to be a resident only of the State with which the individual's personal and economic relations are closer (centre of vital interests);

(b) if the State in which the individual's centre of vital interests is situated cannot be determined, or if there is not a permanent home available to the individual in either State, the individual shall be deemed to be a resident only of the State in which the individual has an habitual abode;

(c) if the individual has an habitual abode in both States or in neither of them, the individual shall be deemed to be a resident only of the State of which the individual is a national;

(d) if the individual is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle its status and to determine the application of the Agreement. Insofar as no such agreement has been reached, such person shall be deemed not to be a resident of either Contracting State for the purposes of enjoying benefits under the provisions of the Agreement.

Article 5

Permanent Establishment

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

2. The term "permanent establishment" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop; and

(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

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

4. The use of an installation or drilling rig or ship in a Contracting State to explore for or exploit natural resources constitutes a permanent establishment if, but only if, such use is for more than three months in any twelve-month period.

5. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or for collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (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.

6. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 7 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts on behalf of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 5 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.

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

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

Article 6

Income from Immovable Property

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

2. The term "immovable property" shall have the meaning which it has for the purposes of the relevant taxation 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 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 income from the alienation of such property.

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

Article 7

Business Profits

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

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

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

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

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

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

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

Article 8

Shipping and Air Transport

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

2. Profits of an enterprise of a Contracting State from the use or rental of containers (including trailers, barges, and related equipment for the transport of containers) used in international traffic shall be taxable only in that State.

3. Notwithstanding the provisions of Article 7, profits derived by an enterprise of a Contracting State from a voyage of a ship where the principal purpose of the voyage is to transport passengers or property between places in the other Contracting State, may be taxed in that other State.

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

Article 9

Associated Enterprises

Where

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

Article 10

Dividends

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

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

(a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company that controls at least 10 per cent of the voting power in the company paying the dividends;

(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:

(a) dividends on shares including income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, and

(b) other income which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident, and for the purpose of taxation in the Federal Republic of Germany, income derived by a "stiller Gesellschafter" (sleeping partner) from the partner's participation as such, income from a "partiarisches Darlehen" (loan, with [interest rate](#) linked to borrower's profit) or "Gewinnobligationen" (profit sharing bonds) and similar remuneration which is dependent on profits as well as distributions on certificates of an [investment trust](#).

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

6. Notwithstanding any provision in this Agreement, Canada may impose on the earnings of a company attributable to permanent establishments in Canada, or on the earnings attributable to the alienation of immovable property situated in Canada by a company carrying on a trade in immovable property, tax in addition to the tax which would be chargeable on the earnings of a company that is a resident of Canada, provided that the rate of such additional tax so imposed shall not exceed the percentage limitation provided for under subparagraph (a) of paragraph 2 of the amount of such earnings which have not been subjected to such additional tax in previous taxation years. For the purpose of this provision, the term "earnings" means:

(a) the earnings attributable to the alienation of such immovable property situated in Canada as may be taxed by Canada under the provisions of Article 6 or of paragraph 1 of Article 13, and

(b) the profits attributable to such permanent establishments in Canada (including gains from the alienation of property forming part of the business property, referred to in paragraph 2 of Article 13, of such permanent establishments) in accordance with Article 7 in a year and previous years after deducting therefrom:

(aa) business losses attributable to such permanent establishments (including losses from the alienation of property forming part of the business property of such permanent establishments) in such year and previous years,

(bb) all taxes chargeable in Canada on such profits, other than the additional tax referred to herein,

(cc) the profits reinvested in Canada, provided that the amount of such deduction shall be determined in accordance with the provisions of the law of Canada, as they be amended from time to time without changing the general principle hereof, regarding the computation of the allowance in respect of investment in property in Canada, and

(dd) five hundred thousand Canadian dollars (\$500,000) or its equivalent in the currency of the Federal Republic of Germany, less any amount deducted

(aaa) by the company, or

(bbb) by a person related thereto from the same or a similar business as that carried on by the company

under this clause.

Article 11

Interest

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

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if a resident of the other Contracting State 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 paid to a resident of the other Contracting State who is the beneficial owner thereof shall be taxable only in that other State to the extent that such interest:

(a) is paid in connection with the sale on credit of any equipment or merchandise by the purchasing person to the selling person, except where the sale is made between associated persons;

(b) is paid in respect of indebtedness of the government of a Contracting State or of a "Land", or political subdivision or local authority thereof;

(c) is paid to the Canadian [Export Development Corporation](#) or to the German "Kreditanstalt für Wiederaufbau" or the "Deutsche Gesellschaft für Wirtschaftliche Zusammenarbeit";

(d) is paid to the government of a Contracting State or of a "Land", or political subdivision thereof, or to the central [bank](#) of a Contracting State; or

(e) is paid to a resident of the other State which was constituted and is operated exclusively to administer or provide benefits under one or more pension, retirement or other employee benefits plans provided that:

(aa) the resident is generally exempt from income tax in the other State, and

(bb) the interest is not derived from carrying on a trade or a business or from an associated person.

For the purpose of subparagraphs (a) and (e), a person is associated with another person if it is related to, or controlled or managed by the other person or if both persons are related to, or controlled by or managed by a third person. For the purpose of the preceding sentence, a person is related to another person if more than 50 per cent of the voting shares belongs to the other person, to persons with whom the other person is associated, or to other persons so associated with it.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, 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 laws of the State in which the income arises. However, the term "interest" does not include income dealt with in Article 10.

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

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

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In

such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12

Royalties

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

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

3. Notwithstanding the provisions of paragraph 2, royalties arising in a Contracting State and paid to a resident of the other Contracting State who is the beneficial owner of the royalties shall be taxable only in that other State if they are:

(a) copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or artistic work (but not including royalties in respect of motion picture films nor royalties in respect of works on film or videotape or other means of reproduction for use in connection with television broadcasting);

(b) royalties for the use of, or the right to use, computer software or any patent or for information concerning industrial, commercial or scientific experience (but not including any such royalty provided in connection with a rental or franchise agreement).

4. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright, patent, trade mark, design or model, plan, secret formula or process or other intangible property, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience, and includes payments of any kind in respect of motion picture films and works on film, videotape or other means of reproduction for use in connection with television.

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

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

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

Article 13

Capital Gains

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

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

3. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated, or containers used, in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

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

(a) shares (other than shares listed on an approved stock exchange in the other Contracting State) forming part of a substantial interest in the capital stock of a company which is a resident of that other State the value of which shares is derived principally from immovable property situated in that other State; or

(b) an interest in a partnership, trust or estate the value of which is derived principally from immovable property situated in the other Contracting State,

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

5. Where a resident of a Contracting State alienates property in the course of an organization, reorganization, amalgamation, division or similar transaction and profit, gain or income with respect to such alienation is not recognized for the purpose of taxation in that State, if requested to do so by the person who acquires the property, the competent authority of the other Contracting State may agree, subject to terms and conditions satisfactory to such competent authority, to defer the recognition of the profit, gain or income with respect to such property for the purpose of taxation in that other State.

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

7. In the case of an individual who has been a resident of a Contracting State and who has become a resident of the other Contracting State:

(a) the provisions of paragraph 6 shall not affect the right of either of the Contracting States to levy, according to its law, a tax on gains from the alienation of any property derived by such individual at any time during the ten years following the date on which the individual has ceased to be a resident of the first-mentioned State;

(b) where that individual is treated for the purposes of taxation in the first-mentioned State as having alienated a property and is taxed in that State by reason thereof, the individual may elect to be treated for the purposes of taxation in the other State as if the individual had, immediately before becoming a resident of that State, sold and repurchased the property for an amount equal to its fair market value at that time. However, this provision shall not apply to property any gain from which, arising immediately before the individual became a resident of that other State, may be taxed in that other State nor to immovable property situated in a third State.

Article 14

Independent Personal Services

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless the individual has a fixed base regularly available in the other Contracting State for the purpose of performing the activities. If the individual has or had such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.

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

Article 15

Dependent Personal Services

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

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

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the [fiscal year](#) concerned, and

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

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

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

Article 16

Directors' Fees

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

2. Salaries, wages and other remuneration derived by a resident of a Contracting State in that resident's capacity as an officer, or an official responsible under commercial law for the overall direction of the affairs, of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17

Artistes and Sportspersons

1. Notwithstanding the provisions of Articles 7, 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from that resident's personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in that individual's capacity as such accrues not to the entertainer or sportsperson personally but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting State by entertainers or sportspersons if the visit to that State is substantially supported, directly or indirectly, by public funds of the other Contracting State or a "Land" or a political subdivision or a local authority thereof. In such a case, the income shall be taxable only in the Contracting State of which the entertainer or sportsperson is a resident.

Article 18

Pensions, Annuities and Similar Payments

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

(a) they are derived from sources in that other Contracting State;

(b) contributions to the pension fund or plan were deductible for the purposes of taxation in that other State or if the pension was funded by that other State, a "Land", a political subdivision, a local authority or a governmental instrumentality thereof; and

(c) they are not paid in respect of services rendered or activities exercised outside that other State by a person when this person was not a resident of that other State.

2. [Annuities](#) derived by a resident of a Contracting State shall be taxable only in that State unless they are derived from sources within the other Contracting State. If they are so derived, such [annuities](#) may be taxed in that other State. The term "annuities" means stated sums payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth but does not include any [annuity](#) the cost of which was deductible for the purposes of taxation in the Contracting State in which it was acquired.

3. Notwithstanding any provision in this Agreement:

(a) war pensions and allowances (including pensions and allowances paid to war veterans or paid as a consequence of damages or injuries suffered as a consequence of war) received from Canada and paid to a resident of the Federal Republic of Germany shall be taxable only in Canada;

(b) periodic or non-periodic payments received by a resident of Canada from the Federal Republic of Germany, or a "Land" or a governmental instrumentality thereof as compensation for an injury or damage sustained as a result of hostilities or past political persecution shall be taxable only in the Federal Republic of Germany;

(c) benefits under the [social security](#) legislation in a Contracting State paid to a resident of the other Contracting State may be taxed in that other State, but the amount of any such benefits that would be excluded from [taxable income](#) in the first-mentioned State if the recipient were a resident thereof shall be exempt from taxation in that other State;

(d) alimony or similar allowances arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.

Article 19

Government Service

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

(b) However, such salaries, wages and similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State other than a national of the State referred to in subparagraph (a) whose salary, wage or similar remuneration is taxed in the last-mentioned State.

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

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

Article 20

Students

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

Article 21

Other Income

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

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

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income derived by a resident of a Contracting State from sources in the other Contracting State may also be taxed in that other State.

Article 22

Capital

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

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

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

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

Article 23

Relief from Double Taxation

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

(a) Subject to the existing provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada and to any subsequent modification of those provisions, which shall not affect the general principle hereof, and unless a greater deduction or relief is provided under the laws of Canada, German tax (other than capital tax) payable in accordance with this Agreement on profits, income or gains arising in the Federal Republic of Germany shall be deducted from any Canadian tax payable in respect of such profits, income or gains.

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

(c) Where in accordance with any provision of the Agreement income derived or capital owned by a resident of Canada is exempt from tax in Canada, Canada may nevertheless, in calculating the amount of tax on other income or capital, take into account the exempted income or capital.

(d) For the purposes of this paragraph, profits, income or gains of a resident of Canada shall be deemed to arise from sources in the Federal Republic of Germany if they may be taxed in the Federal Republic of Germany in accordance with this Agreement.

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

(a) Subject to the provisions of subparagraph (b), there shall be excluded from the basis upon which German tax is imposed, any item of income from sources within Canada and any item of capital situated within Canada, which according to the foregoing Articles of this Agreement may be taxed, or shall be taxable only, in Canada; in the determination of its rate of tax applicable to any item of income or capital not so excluded, the Federal Republic of Germany will, however, take into account the items of income and capital, which according to the foregoing Articles may be taxed in Canada.

The foregoing provisions of this paragraph shall also apply to dividends on shares which are paid to a company which is a resident of the Federal Republic of Germany by a company which is a resident of Canada if at least 10 per cent of the capital of the Canadian company is held directly by the German company. There shall also be excluded from the basis upon which German tax is imposed any participation the dividends of which are excluded or, if paid, would be excluded, according to the immediately foregoing sentence from the basis upon which German tax is imposed.

(b) There shall be allowed as a credit against German tax on income, subject to the provisions of German tax law regarding credit for foreign tax, the Canadian tax (including taxes on income paid to any political subdivision or local authority in Canada) paid in accordance with the provisions of this Agreement referred to below on the following items of income:

- (aa) dividends within the meaning of Article 10 which are not dealt with in subparagraph (a) above;
- (bb) interest within the meaning of Article 11 and royalties within the meaning of Article 12;
- (cc) gains from the alienation of property taxable in Canada by reason only of Article 13, paragraph 4 and subparagraph (a) of paragraph 7;
- (dd) income within the meaning of Article 15, paragraph 3 and Articles 16 and 17;
- (ee) pensions and annuities within the meaning of Article 18, paragraphs 1 and 2 and subparagraph (c) of paragraph 3;
- (ff) income taxable in Canada by reason only of Article 21.

(c) Instead of the provisions of subparagraph (a), the provisions of subparagraph (b) shall apply to income within the meaning of Articles 7 and 10 and to items of capital underlying such income unless the resident of the Federal Republic of Germany proves that the gross receipts of the permanent establishment in the business year in which the profit was realised, or the gross receipts of the company resident in Canada in the business year for which the dividend was distributed, derive exclusively or almost exclusively from activities coming under Section 8 paragraph 1 subparagraphs 1 to 6 of the German Law on External Tax Relations ("Aussensteuergesetz") or from participations coming under Section 8 paragraph 2 of that Law; the same shall apply to immovable property forming part of the business property of a permanent establishment (paragraph 4 of Article 6) and to gains from the alienation of such immovable property (paragraph 1 of Article 13) and of movable property forming part of the business property of the permanent establishment (paragraph 2 of Article 13).

Article 24

Non-Discrimination

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 more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to individuals who are not residents of one or both of the Contracting States.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes which it grants to its own residents.
3. 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 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.
4. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to all taxes imposed by a Contracting State.

Article 25

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with the provisions of this Agreement, that person may, irrespective of the remedies provided by the domestic law of those States, address to the competent authority of the Contracting State of which that person is a resident or, if that person's case comes under paragraph 1 of Article 24, to that of the Contracting State of which that person is a national, 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 resulting in taxation not in accordance with the provisions of the Agreement.

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

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

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

(a) to the same attribution of profits to an enterprise of a Contracting State and to its permanent establishment situated in the other Contracting State;

(b) to the same allocation of profits between associated enterprises as provided for in Article 9;

(c) to the method of avoiding double taxation in the case of an estate or trust.

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

6. If any question, difficulty or doubt arising as to the interpretation or application of the Agreement cannot be resolved or dealt with by the competent authorities as a result of the application of the provisions of paragraphs 1, 2 or 3, these questions, difficulties or doubts may, if the competent authorities agree, be submitted to an arbitration commission. The decisions of the commission shall be binding. The composition of the commission and the arbitration procedures shall be determined, after consultation between the competent authorities, through an exchange of diplomatic notes between the Contracting States.

Article 26

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is relevant for carrying out the provisions of this Agreement or of the domestic laws in the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of the taxes covered by the Agreement or, notwithstanding the provisions of paragraph 4, the taxes imposed by a "Land", or a political subdivision or local authority of a Contracting State that are substantially similar to the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes. Such information may be disclosed in public court proceedings or in judicial decisions only if the competent authority of the Contracting State supplying the information raises no objection.

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

(a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;

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

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

3. The competent authorities of the Contracting States shall agree upon the principles and procedures relating to the exchange of personal data.

4. For the purposes of this Article, the taxes covered by the Agreement are, notwithstanding the provisions of Article 2, all taxes imposed by a Contracting State.

Article 27

Assistance in Collection

1. The Contracting States undertake to lend assistance to each other in the collection of taxes referred to in paragraph 8, together with interest, costs, additions to such taxes and administrative penalties, referred to in this Article as a "revenue claim". The provisions of this Article are not restricted by Article 1.

2. An application for assistance in the collection of a revenue claim shall include a certification by the competent authority of the applicant State that, under the laws of that State, the revenue claim has been finally determined. For the purposes of this Article, a revenue claim is finally determined when the applicant State has the right under its internal law to collect the revenue claim and all administrative and judicial rights of the taxpayer to restrain collection in the applicant State have lapsed or been exhausted.

3. A revenue claim of the applicant State that has been finally determined may be accepted for collection by the competent authority of the requested State and, subject to the provisions of paragraph 7, if accepted shall be collected by the requested State as though such revenue claim were the requested State's own revenue claim finally determined in accordance with the laws applicable to the collection of the requested State's own taxes.

4. Where an application for collection of a revenue claim in respect of a taxpayer is accepted:

(a) by the Federal Republic of Germany, the revenue claim shall be enforced by the Federal Republic of Germany in the same way as a revenue claim under Federal Republic of Germany laws against the taxpayer as of the time the application is received; and

(b) by Canada, the revenue claim shall be treated by Canada as an amount payable under the Income Tax Act, the collection of which is not subject to any restriction.

5. Nothing in this Article shall be construed as creating or providing any rights of administrative or judicial review of the applicant State's finally determined revenue claim by the requested State, based on any such rights that may be available under the laws of either Contracting State. Proceedings relating to measures taken under this Article by the requested State shall be brought only before the appropriate body of that State. If, at any time pending execution of a request for assistance under this Article, the applicant State loses the right under its internal law to collect the revenue claim, the competent authority of the applicant State shall promptly withdraw the request for assistance in collection.

6. Unless the competent authorities of the Contracting States otherwise agree, the ordinary costs incurred in providing collection assistance shall be borne by the requested State and any extraordinary costs so incurred shall be borne by the applicant State.

7. A revenue claim of an applicant State accepted for collection shall not have in the requested State any priority accorded to the revenue claims of the requested State even if the recovery procedure used is the one applicable to its own revenue claims.

8. Notwithstanding the provisions of Article 2, the provisions of this Article shall apply to all categories of taxes collected by or on behalf of the Government of a Contracting State including, in the case of the Federal Republic of Germany, the "Laender".

9. Nothing in this Article shall be construed as imposing on either Contracting State the obligation to carry out administrative measures at variance with its laws or administrative practice or that would be contrary to its fundamental principles of tax policy or its public policy (ordre public).

10. The competent authorities of the Contracting States shall agree upon the mode of application of this Article, including agreement to ensure comparable levels of assistance to each of the Contracting States.

Article 28

Members of Diplomatic Missions and Consular Posts

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

2. Notwithstanding the provisions of Article 4, an individual who is a member of a diplomatic mission, consular post or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed for the purposes of the Agreement to be a resident of the sending State if:

(a) in accordance with international law that individual is not liable to tax in the receiving State in respect of income from sources outside that State or on capital situated outside that State, and

(b) that individual is liable in the sending State to the same obligations in relation to tax on total income or on capital as are residents of that State.

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

Article 29

Miscellaneous Rules

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

(a) by the laws of a Contracting State in the determination of the tax imposed by that State; or

(b) by any other agreement entered into by a Contracting State.

2. It is understood that nothing in the Agreement shall be construed as preventing:

(a) Canada from imposing a tax on amounts included in the income of a resident of Canada with respect to a partnership, trust or controlled foreign affiliate, in which that resident has an interest;

(b) the Federal Republic of Germany from imposing its taxes on amounts included in the income of a resident of the Federal Republic of Germany according to part 4 of the German "Aussensteuergesetz".

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

3. The Agreement shall not apply to any company (nor to income derived from such company by a shareholder thereof), trust or partnership that is a resident of a Contracting State and is beneficially owned or controlled directly or indirectly by one or more persons who are not residents of that State, if the amount of the tax imposed on the income or capital of the company, trust or partnership by that State is substantially lower than the amount that would be imposed by that State if all of the shares of the capital stock of the company or all of the interests in the trust or partnership, as the case may be, were beneficially owned by one or more individuals who were residents of that State.

4. Contributions in a year in respect of services rendered in that year paid by, or on behalf of, an individual who is a resident of one of the Contracting States or who is temporarily present in that State, to a pension plan that is recognized for tax purposes in the other Contracting State shall, during a period not exceeding in the aggregate 60 months, be treated in the same way for tax purposes in the first-mentioned State as a contribution paid to a pension plan that is recognized for tax purposes in that first-mentioned State, provided that:

(a) such individual was contributing on a regular basis to the pension plan for a period ending immediately before the individual became a resident of or temporarily present in the first-mentioned State; and

(b) the competent authority of the first-mentioned State agrees that the pension plan generally corresponds to a pension plan recognized for tax purposes by that State.

For the purposes of this paragraph, "pension plan" includes a pension plan created under the [social security](#) system in a Contracting State.

5. For purposes of paragraph 3 of Article XXII of the [General Agreement on Trade in Services](#), the Contracting States agree that, notwithstanding that paragraph, any dispute between them as to whether a measure falls within the scope of this Agreement may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph 3 of Article 25 or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.

6. Nothing in the Agreement shall be construed as preventing a Contracting State from denying benefits under the Agreement where it can reasonably be concluded that to do otherwise would result in an abuse of the provisions of the Agreement or of the domestic laws of that State.

Article 30

Protocol to the Agreement

The attached Protocol forms an integral part of this Agreement.

Article 31

Entry into Force

1. This Agreement shall enter into force on the date on which the Contracting States have notified each other that the national requirements for such entry into force have been fulfilled. The relevant date shall be the day on which the last notification is received. The provisions of the Agreement 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 2001; and

(b) in respect of other taxes for taxation years beginning on or after the first day of January 2001.

2. The Agreement between Canada and the Federal Republic of Germany for the Avoidance of Double Taxation with respect to Taxes on Income and Certain other Taxes signed at Ottawa on July 17, 1981 shall cease to have effect in respect of taxes to which this Agreement applies in accordance with the provisions

of paragraph 1 and shall terminate on the last date on which it has effect in accordance with the foregoing provisions.

3. Where any greater relief from tax would have been afforded by any provision of the Agreement between Canada and the Federal Republic of Germany for the Avoidance of Double Taxation with respect to Taxes on Income and Certain other Taxes signed at Ottawa on July 17, 1981 to a resident of either Contracting State, such provision shall continue to have effect up to and including the taxation year in which this Agreement enters into force.

Article 32

Termination

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the year in which the Agreement entered into force. In such event, the Agreement 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 the expiration of the six-month period referred to above; 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 the expiration of the six-month period referred to above.

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

DONE at Berlin, this 19th day of April, 2001, in duplicate, in the English, French and German languages, each text being equally authentic.

FOR CANADA

FOR THE FEDERAL REPUBLIC OF GERMANY

Philip Somerville

Gerd Westdickenberg

Protocol to the Agreement Between Canada and the Federal Republic of Germany for the Avoidance of Double Taxation With Respect to Taxes on Income and Certain Other Taxes, the Prevention of Fiscal Evasion and the Assistance in Tax Matters

Canada and the Federal Republic of Germany have agreed at the signing at Berlin on April 19, 2001 of the Agreement between the two States for the Avoidance of Double Taxation with respect to Taxes on Income and Certain other Taxes, the Prevention of Fiscal Evasion and the Assistance in Tax Matters, on the following provisions:

1. With reference to Article 4, paragraph 1, it is understood that the term "resident of a Contracting State" includes a person that is liable to tax on world income even if that person is liable to tax on capital only on capital situated in that State.

2. With reference to Article 6, the term "immovable property" shall include an interest in mineral deposits, sources and other natural resources and an option in respect of immovable property.

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

4. With reference to Article 12, paragraph 2, the term "gross amount" does not include turnover taxes.

5. With reference to income taxable in accordance with Article 18, paragraph 1,

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

(aa) 15 per cent of the gross amount of the payment, and

(bb) the rate determined by reference to the amount of tax that the recipient of the payment would otherwise be required to pay for the year on the total amount of the periodic pension payments received by the individual in the year, if the individual were resident in Canada,

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

6. With reference to Article 18, paragraph 2, the rate of tax charged by a Contracting State on annuities derived from sources within that State shall not exceed 15 per cent of the taxable portion of the payment. However, this limitation shall not apply to lump-sum payments arising on the surrender, cancellation, redemption, sale or other alienation of an [annuity](#), or to payments of any kind under an annuity contract the cost of which was deductible, in whole or in part, in computing the income of any person who acquired the contract.

7. With reference to Article 18, paragraph 3, subparagraph (c), the competent authority of a Contracting State shall notify the competent authority of the other Contracting State of changes made to the amount of social security benefits excluded from the [taxable income](#) of a resident of the first-mentioned State receiving such benefits.

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

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

(a) would result in double taxation of such income, the Federal Republic of Germany shall eliminate such double taxation by the granting of a credit in accordance with the principles contained in Article 23, paragraph 2, subparagraph (b);

(b) would result in an exemption or a relief of such income from Canadian tax and an exemption from German tax, the Federal Republic of Germany shall not grant, with respect to such income, an exemption within the meaning of Article 23, paragraph 2, subparagraph (a) but shall grant a credit in accordance with the principles contained in Article 23, paragraph 2, subparagraph (b).

10. With reference to Article 23 and Article 25, the Federal Republic of Germany shall avoid double taxation by a [tax credit](#) as provided for in Article 23, paragraph 2, subparagraph (b) and not by a tax exemption under Article 23, paragraph 2, subparagraph (a), if the Federal Republic of Germany has, after due consultation and subject to the limitations of its internal law, notified Canada through diplomatic channels of other items of income to which it intends to apply this paragraph. A notification made under this paragraph shall have effect from the day the notification is received.

11. With reference to Article 26, it is understood that if information is requested by a Contracting State in accordance with that Article, the other Contracting State shall endeavour to obtain the information to which the request relates in the same way as if its own taxation were involved notwithstanding the fact that the other State does not, at that time, need such information.

12. With reference to the Agreement,

(a) if in the Federal Republic of Germany the taxes on dividends, interest, royalties or other items of income are levied on a resident of Canada by deduction at source, then the right of the Federal Republic of Germany to apply the deduction of tax at the rate provided for under its domestic law shall not be affected by the provisions of the Agreement; the tax so deducted at source shall be refunded upon application by the taxpayer to the extent that it is reduced or eliminated under the Agreement;

(b) refund applications must be submitted by the end of the fourth year following the calendar year in which the tax that was deducted at source was assessed on the dividends, interest, royalties or other items of income; and

(c) the Federal Republic of Germany may require an administrative certification by the competent authority of Canada that the taxpayer is a resident of Canada.