

CONVENTION BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE ITALIAN REPUBLIC

For the Avoidance of Double Taxation With Respect to Taxes on Income and the Prevention of Fiscal Evasion

This electronic version of the Canada-Italy Income Tax Convention signed on June 3, 2002 is provided for convenience of reference only and has no official sanction.

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

ARTICLE 1

Persons Covered

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

ARTICLE 2

Taxes Covered

1. This Convention shall apply to taxes on income imposed on behalf of each Contracting State, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which the Convention shall apply are, in particular,
 - (a) in the case of Canada: the taxes on income imposed by the Government of Canada under the *Income Tax Act* (hereinafter referred to as "Canadian tax");
 - (b) in the case of Italy:
 - (i) the individual income tax (imposta sul reddito delle persone fisiche);
 - (ii) the corporate income tax (imposta sul reddito delle persone giuridiche);
 - (iii) the regional tax on productive activities (imposta regionale sulle attività produttive),even when deducted at source;
(hereinafter referred to as "Italian tax").
4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent

authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

5. The Convention shall not apply to taxes (even when deducted at source) payable on lottery winnings, on premiums other than those on securities, and on winnings from games of chance or skill, competitions and betting.

ARTICLE 3

General Definitions

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

(a) the terms "a Contracting State" and "the other Contracting State" mean, as the context requires, Canada or Italy;

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

(i) 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, and

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

(c) the term "Italy" means the Italian Republic and includes any area beyond the territorial waters of Italy which is designated as an area within which Italy, in compliance with its legislation and in conformity with the International Law, exercises sovereign rights in respect of the exploration and exploitation of the natural resources of the seabed, the subsoil and the superjacent waters;

(d) the term "person" includes an individual, a company and any other body of persons;

(e) the term "company" means any body corporate or any 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 "competent authority" means

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

(ii) in the case of Italy, the Ministry of Finance;

(h) the term "national" means

(i) any individual possessing the nationality of a Contracting State, and

(ii) any legal person, partnership and association deriving its status as such from the laws in force in a Contracting State;

(i) the term "international traffic" means any voyage of a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State to transport passengers or property 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 Convention at any time by a Contracting State, 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 for the purposes of the taxes to which the Convention applies.

ARTICLE 4

Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to taxation therein by reason of the person's domicile, residence, place of management or any other criterion of a similar nature but does not include any person who is liable to tax in that State in respect only of income from sources in that State.

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 and 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 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 endeavour to settle the question by mutual agreement having regard in particular to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to claim any relief or exemption from tax provided by the Convention.

ARTICLE 5

Permanent Establishment

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" shall include especially

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, an oil or gas well, a quarry or any other place of exploration for or exploitation of natural resources;

(g) a building site or construction or installation project only if it lasts for more than 12 months.

3. 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 advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the enterprise.

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

5. 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.

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

ARTICLE 6

Income from Immovable Property

1. Income 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 tax 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 as well as 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 shall also be deemed to be "immovable property". 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

Business Profits

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

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

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions 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 Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8

Shipping and Air Transport

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

3. 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

Associated Enterprises

1. Where

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

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

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

2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits that would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those that would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of tax charged therein on those profits. Any such adjustment shall be made only in accordance with the mutual agreement procedure in Article 24.

3. A Contracting State shall not change the profits of an enterprise in the circumstances referred to in paragraph 1 after the expiry of the time limits provided in its national laws and, in any case, after six years from the end of the year in which the profits that would be subject to such change would, but for the conditions referred to in paragraph 1, have accrued to that enterprise.

4. The provisions of paragraphs 2 and 3 shall not apply in the case of fraud or wilful offence.

ARTICLE 10

Dividends

1. Dividends paid by a company that 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 the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

(a) except in the case of dividends paid by a non-resident-owned investment corporation that is a resident of Canada, 5 per cent of the gross amount of the dividends if the beneficial owner is a company that controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividends; and

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

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

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, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other rights which is subjected to the same taxation treatment as income from shares by the taxation laws of the 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 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 dividends may be taxed in that other Contracting State in accordance with its own internal laws.

5. Where a company that is a resident of a Contracting State, derives profits or income from the other Contracting 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 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. Nothing in this Convention shall be construed as preventing Canada from imposing on the earnings attributable to the alienation of immovable property situated in Canada by a company carrying on a trade in immovable property or on the earnings of a company attributable to a permanent establishment in Canada, a tax in addition to the tax that would be chargeable on the earnings of a company that is a national of Canada, except that any additional tax so imposed shall not exceed 5 per cent of the amount of such earnings that have not been subjected to such additional tax in previous taxation years. For the purpose of this provision, the term "earnings" means 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 the profits, including any gains, attributable to a permanent establishment in Canada in a year and previous years after deducting therefrom all taxes, other than the additional tax referred to herein, imposed on such profits in Canada.

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 the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State if:

(a) the interest is paid to a beneficial owner who is a resident of the other Contracting State and if the payer of the interest is the first-mentioned Contracting State or a political or administrative subdivision or local authority thereof; or

(b) the interest is paid to the other Contracting State or a political or administrative subdivision or local authority thereof or to an institution or organization (including financial institutions) wholly owned by that Contracting State or subdivision or authority thereof; or

(c) the interest is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by any institution specified and agreed in letters exchanged between the competent authorities of the Contracting States.

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 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 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 interest may be taxed in that other Contracting State in accordance with its own internal laws.

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 that 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

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 the beneficial owner of the royalties is a resident of the other Contracting State the tax so charged shall not exceed:

(a) 5 per cent of the gross amount of the royalties in respect of payments 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 royalties provided in connection with a rental or franchise agreement);

(b) 10 per cent of the gross amount of the royalties in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

3. Notwithstanding the provisions of paragraph 2, copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or other artistic work (but not including royalties in respect of computer software, 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) 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.

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 of literary, artistic or scientific work including computer software, motion picture films and royalties in respect of works on film or videotape or other means of reproduction for use in connection with television broadcasting, 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.

5. The provisions of paragraphs 1, 2 and 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 royalties may be taxed in that other Contracting State in accordance with its own internal laws.

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 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 obligation to pay the royalties was incurred, and such royalties are borne by that 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 that 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

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in paragraph 2 of 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 that 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 from the alienation of ships or aircraft operated in international traffic or from movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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 a Contracting State) forming part of a substantial interest in the capital stock of a company the value of which shares is derived principally from immovable property situated in the other State, or

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

may be taxed in that other State. For the purposes of this paragraph, the term "immovable property" does not include any property, other than rental property, in which the business of the company, partnership, trust or estate is carried on.

5. Where a resident of a Contracting State alienates property in the course of a corporate or other 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 until such

time and in such manner as may be stipulated in the agreement between the competent authority and the person acquiring the property. The competent authority of a Contracting State that has entered into such an agreement shall inform the competent authority of the other Contracting State of the terms of such agreement.

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

7. Where an individual who is a resident of a Contracting State and immediately thereafter becomes a resident of the other Contracting State, is treated by the first-mentioned Contracting State as having alienated property, and is taxed by that State in respect of gains accrued from such property as of the date of change of residence, the individual may elect in the other Contracting State in the individual's return of income for the year of alienation to be liable to tax as if the individual has sold and repurchased the property for an amount equal to its fair market value at the date of change of residence.

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 independent activities of a similar 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, 17 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 calendar year concerned, and

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

(c) the remuneration is not borne by a permanent establishment or a fixed base which the person 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 shall be taxable only in the State in which the place of effective management of the enterprise is situated unless the remuneration is derived by a resident of the other Contracting State.

ARTICLE 16

Directors' Fees

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.

ARTICLE 17

Artistes and Sportspersons

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 a sportsperson, 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 paragraph 2 shall not apply if it is established that neither the entertainer or the sportsperson nor persons related thereto, participate directly or indirectly in the profits of the person referred to in that paragraph.

ARTICLE 18

Pensions

1. Pensions 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 pensions may also be taxed in the Contracting State in which they arise and according to the laws of that State but, in the case of periodic pension payments, the tax so charged shall not exceed the lesser of

(a) 15 per cent of the gross amount of such periodic pension payments paid to the recipient in the calendar year concerned that exceeds twelve thousand Canadian dollars or its equivalent in Italian currency, and

(b) 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 resident in the year, if the recipient were resident in the Contracting State in which the payment arises.

3. Notwithstanding any provision of this Convention:

(a) pensions paid by, or out of funds created by, the Italian State or a political or administrative subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in Italy;

(b) benefits under the social security legislation in a Contracting State paid in a calendar year to an individual who is a resident of the other Contracting State shall be taxable only in the State in which they arise and according to the laws of that State but the tax so charged shall not exceed the amount that the recipient would otherwise be required to pay in that year if the recipient were a resident of that first-mentioned State;

(c) non-periodic pension payments, severance or similar lump-sum payments, and payments made as a consequence of the termination of any office or employment arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the State in which they arise and according to the laws of that State;

(d) war veterans pensions and allowances arising in a Contracting State and received by a resident of the other Contracting State shall not be taxable in that other State as long as they would not be taxable if received by a resident of the Contracting State in which they arise.

4. For the purposes of paragraphs 1 and 2, where an individual who is a resident of a Contracting State in a particular taxable period first receives a payment under a pension fund in the other Contracting State that can reasonably be attributed to a pension to which the individual was entitled for any period preceding that particular period, the individual may in each Contracting State elect to treat for the purposes of taxation in each such State such portion as the individual may elect of the payment relating to all preceding periods as having been paid to and received by the individual on the last day of the taxable period immediately preceding the particular period and not to have been so paid to and received by the individual in that particular period.

ARTICLE 19

Government Service

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

(b) However, such salaries, wages and other 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 who

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. Notwithstanding the provisions of subparagraph (b) of paragraph 1, salaries, wages and other similar remuneration referred to therein paid by a Contracting State or a political or administrative subdivision or a local authority thereof to an individual who is a national of the other Contracting State being also a national of the first-mentioned State, or is a national of the first-mentioned State, shall be taxable only in that first-mentioned State if such salaries, wages and other similar remuneration are taxed under the ordinary rules of taxation of such income in that first-mentioned State.

3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political or administrative subdivision or a local authority thereof.

ARTICLE 20

Students

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 State solely for the purpose of that individual's education or professional training receives for the purpose of that individual's maintenance, education or professional training shall not be taxed in that State, if 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 Convention 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 income may be taxed in that other Contracting State in accordance with its own internal laws.

3. Notwithstanding the provisions of paragraph 1, if such income is derived by a resident of a Contracting State from sources in the other Contracting State, such income may also be taxed in the State in which it arises and according to the law of that State. Where such income is income from an estate or a trust, other than a trust to which contributions were deductible, the tax so charged shall, if the income is taxable in the Contracting State in which the beneficial owner is a resident, not exceed 15 per cent of the gross amount of the income.

ARTICLE 22

Elimination of Double Taxation

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

(a) subject to the existing provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada and to any subsequent modification of those provisions which shall not affect the general principle hereof and unless a greater deduction or relief is provided under the laws of Canada, tax payable in Italy on profits, income or gains arising in Italy shall be deducted from any Canadian tax payable in respect of such profits, income or gains;

(b) where, in accordance with any provision of the Convention, income derived by a resident of Canada is exempt from tax in Canada, Canada may nevertheless, in calculating the amount of tax on other income, take into account the exempted income.

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

Where a resident of Italy derives items of income which may be taxed in Canada, Italy may, in computing its own income taxes referred to in Article 2 of this Convention, include such items of income in the tax base unless otherwise expressly provided by this Convention.

In such case, Italy shall allow as a deduction from the tax so computed the income taxes paid in Canada but the deduction shall not exceed the proportion Italian tax attributable to such items of income that such items bear to the entire income.

No deduction will, however, be allowed in cases where, at the request of the recipient and in accordance with Italian laws, the item of income is subjected to tax in Italy by way of a final withholding.

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

ARTICLE 23

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 other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

In particular, the nationals of a Contracting State who are subject to tax in the other Contracting State shall be granted the same exemptions, basic abatements, deductions and reductions for taxation purposes on account of family responsibilities which are granted to nationals of the other Contracting State in the same circumstances.

2. The taxation on a permanent establishment that 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 on account of civil status or family responsibilities 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 other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State, are or may be subjected.

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

ARTICLE 24

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 Convention, that person may, irrespective of the remedies provided by the domestic laws of those States, present that person's case 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 23, to that of the Contracting State of which that person 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 Convention.

2. That 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 Convention.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the 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. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

5. If any difficulty or doubt arising as to the interpretation or application of the Convention cannot be resolved by the competent authorities pursuant to the preceding paragraphs of this Article, the case may be submitted for arbitration if both competent authorities and the taxpayer agree and the taxpayer agrees in writing to be bound by the decision of the arbitration board. The decision of the arbitration board in a particular case shall be binding on both States with respect to that case. The procedure shall be established in an exchange of notes between the Contracting States.

ARTICLE 25

Exchange of Information

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 this Convention and for the prevention of fiscal evasion. 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) involved in the assessment or collection of, the enforcement in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. These persons or authorities may disclose the information in public court proceedings or in judicial decisions.

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 that is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State; or

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

Article 26

Diplomatic and Consular Officials

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

ARTICLE 27

Request for Refunds

1. Taxes withheld at source in Italy shall, at the request of the taxpayer, be refunded to the extent that the right to levy the taxes is limited by the provisions of this Convention. Such request shall be submitted within the time limits provided for by the Italian laws and must contain an official certificate issued by the competent authority of Canada stating that the conditions for claiming the exemptions or reductions provided for in this Convention have been fulfilled.

2. The competent authorities of the Contracting States may, by mutual agreement and in accordance with the provisions of Article 24, agree on other procedures for the application of the limitations provided for by this Convention.

ARTICLE 28

Entry into Force

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

2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions 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 in which the exchange of instruments of ratification takes place; and

(ii) in respect of other Canadian tax, for taxation years beginning on or after the first day of January in the calendar year in which the exchange of instruments of ratification takes place;

(b) in Italy

in respect of income derived during the taxable periods beginning on or after the first day of January in the calendar year in which the exchange of instruments of ratification takes place.

3. Notwithstanding the provisions of paragraph 2, the provisions of paragraph 2 of Article 19 shall have effect on or after the first day of January of the year that is three years before the year of the exchange of the instruments of ratification.

4. The provisions of the Convention between Canada and Italy for the avoidance of double taxation with respect to taxes on income and for the prevention of fiscal evasion signed at Toronto on November 17, 1977, and as amended by the Protocol signed at Ottawa on March 20, 1989, shall cease to have effect with respect to taxes to which this Convention applies in accordance with the provisions of paragraph 2.

5. Notwithstanding the provisions of paragraph 4, where any greater relief from tax would have been afforded by the provisions of the 1977 Convention, as amended by the 1989 Protocol, any such provision as aforesaid shall continue 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 before the last day of the calendar year next following that in which the Convention enters into force; and

(ii) in respect of other Canadian tax, for taxation years ending on or before the last day of the calendar year next following that in which the Convention enters into force;

(b) in Italy

in respect of income derived during the taxable periods ending on or before the last day of the calendar year next following that in which the Convention enters into force.

ARTICLE 29

Termination

This Convention shall continue in effect indefinitely but either Contracting State may, on or before June 30 in any calendar year after the expiration of the fifth year from that of its ratification, give to the other Contracting State a notice of termination in writing and through diplomatic channels. In such event, the 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 following that in which the notice 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 following that in which the notice is given;

(b) in Italy

in respect of income derived during the taxable periods beginning on or after the first day of January in the calendar year following that in which the notice is given.

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

DONE at Ottawa on the third day of June 2002, in two originals, each in the English, French and Italian languages, all texts being equally authentic.

FOR THE GOVERNMENT OF CANADA

FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC

Leonard J. Edwards

Marco Colombo

PROTOCOL OF UNDERSTANDING

to the Convention between the Government of Canada and the Government of the Italian Republic for the avoidance of double taxation with respect to taxes on income and the prevention of fiscal evasion.

At the moment of signing the Convention this day concluded between the Government of Canada and the Government of the Italian Republic for the avoidance of double taxation with respect to taxes on income and the prevention of fiscal evasion, the undersigned plenipotentiaries have agreed upon the following additional provisions which shall be an integral part of the Convention.

It is understood that

(a) With reference to subparagraph (d) of paragraph 1 of Article 3, the term "person" includes, in the case of Canada, a partnership, an estate and a trust.

(b) With reference to Article 4, the term "resident of a Contracting State" also includes the Government of that State or a political or administrative subdivision or local authority thereof or any agency or instrumentality of any such government, subdivision or authority.

(c) With reference to paragraph 3 of Article 4, the compromise solution adopted reflects the common desire of both Contracting States to prevent fiscal evasion.

(d) With reference to Articles 5 and 8, ferry-boats, deep-sea ferry boats or other vessels devoted principally to the transportation of passengers or goods exclusively between places in a Contracting State shall, when so operated, not be considered to be operated in international traffic; it is further agreed that the landing site or sites situated in the Contracting State and used regularly in such operation by such boats or vessels shall constitute a permanent establishment in that State of the enterprise operating such boats or vessels.

(e) With reference to paragraph 1 of Article 7, 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 it has ceased to carry on business as aforesaid, profits attributable to that permanent establishment, such profits may be taxed in that other State in accordance with the principles laid down in Article 7.

(f) With reference to paragraph 3 of Article 7, the term "expenses which are incurred for the purposes of the permanent establishment" means those deductible expenses directly relating to the business of the permanent establishment.

(g) For the purposes of Article 8,

(a) the term "profits" includes

(i) gross receipts and revenues derived directly from the operation of ships or aircraft in international traffic, and

(ii) interest on sums generated directly from the operation of ships or aircraft in international traffic if that interest is incidental to the operation; and

(b) the term "operation of ships or aircraft in international traffic" by an enterprise, includes

(i) the charter or rental of ships or aircraft,

(ii) the rental of containers and related equipment, and

(iii) the alienation of ships, aircraft, containers and related equipment

by that enterprise if that charter, rental or alienation is incidental to the operation by that enterprise of ships or aircraft in international traffic.

(h) The provisions of paragraphs 1 and 2 of Article 13 shall also apply to profits from the alienation of property referred to therein.

(i) With reference to Article 13, the inclusion of the provisions contained in paragraph 4 of the said Article arises from extensive possibilities of abuses in connection with investment in immovable property in a Contracting State by non-residents and takes into account the fact that one of the Contracting States has ascertained the existence of actual cases of fiscal evasion in this area.

(j) For the purposes of subparagraph (b) of paragraph 3 of Article 18, the term "social security" means:

(a) in the case of Canada, any pension or benefit paid under the Old Age Security Act of Canada;

(b) in the case of Italy, payments received out of funds for which no direct contributions were made by the recipient and, in particular, to such portion of any pension or benefit paid under the social security laws of Italy as is certified by the competent authority of Italy as the amount necessary to increase such pension or benefit to the minimum amount for the category of pension payable to that individual under those laws.

(k) The Convention 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 or group of States, being present in a Contracting State and who are not liable in either Contracting State to the same obligations in relation to tax on their total income as are residents thereof.

(l) Nothing in the Convention shall be construed to restrict in any manner any tax allowance now or hereafter accorded by the domestic law of a Contracting State or by any other agreement entered into by a Contracting State.

(m) Nothing in the Convention shall be construed as preventing a Contracting State from imposing a tax on amounts included in the income of a resident of that State with respect to a partnership, trust or controlled foreign affiliate, in which that resident has an interest.

(n) The Convention shall not apply to any company, 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 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.

(o) For the purposes of paragraph 3 of Article XXII (Consultation) 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 Convention 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 24 of the Convention or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.

(p) For the purposes of the Convention, where an individual who is a participant in a pension fund that is established and recognized under the legislation of a Contracting State performs personal services in the other Contracting State:

(a) contributions paid by or on behalf of the individual to the fund during the period that the individual performs such services in the other State shall, during a period not exceeding in the aggregate 60 months, be deductible in computing the individual's taxable income in that State. Any benefits accrued under the fund or payments made to the fund by or on behalf of the individual's employer during that period shall not be treated as part of the employee's taxable income and shall be allowed as a deduction in computing the profits of the individual's employer in that other State.

(b) The provisions of this paragraph shall apply only if:

(i) contributions by or on behalf of the individual to the fund (or to another similar fund for which this fund was substituted) were made before the individual arrived in the other State; and

(ii) the competent authority of the other State has agreed that the pension fund generally corresponds to a pension fund recognized for tax purposes by that State.

The benefits granted under this paragraph shall not exceed the benefits that would be allowed by the other State to its residents for contributions to, or benefits otherwise accrued under a pension fund recognized for tax purposes by that State.

IN WITNESS THEREOF the undersigned, being duly authorized by their respective Governments, have signed this Protocol of Understanding.

DONE at Ottawa on the third day of June 2002, in two originals, each in the English, French and Italian languages, all texts being equally authentic.

FOR THE GOVERNMENT OF CANADA

FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC

Mr. Leonard J. Edwards

Marco Colombo