

**Agreement Between the Government of Canada and the Government of the State  
of Kuwait  
For the Avoidance of Double Taxation and the Prevention Of Fiscal Evasion With  
Respect to Taxes on Income and on Capital**

**The Government of Canada and the Government of the State of Kuwait,**

**DESIRING** to promote their mutual economic relations by removing fiscal obstacles, through the conclusion of an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital;

**HAVE AGREED** as follows:

## **Article 1**

### ***Personal Scope***

This 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 on behalf of each Contracting State, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation.
3. The existing taxes to which this Agreement shall apply are in particular:
  - a) in the case of Canada: the taxes on income and on capital imposed by the Government of Canada (hereinafter referred to as "Canadian tax");
  - b) in the case of Kuwait:
    - (1) the corporate income tax;
    - (2) the contribution from the net profits of the Kuwaiti shareholding companies payable to the Kuwait Foundation for Advancement of Science (KFAS); and

(3) the Zakat;

(hereinafter referred to as "Kuwaiti tax").

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

## **Article 3**

### ***General Definitions***

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

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

(1) any area beyond the territorial seas 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;

(2) the seas and airspace above every area referred to in clause (1), 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 "Kuwait" means the territory of the State of Kuwait including any area beyond the territorial sea which in accordance with international law has been or may hereafter be designated, under the laws of Kuwait, as an area over which Kuwait may exercise sovereign rights or jurisdiction;

c) the terms "a Contracting State" and "the other Contracting State" mean Canada or Kuwait as the context requires;

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

e) the term "national" means:

(1) in respect of Canada: any Canadian within the meaning of the laws of Canada, and any legal person, partnership or association deriving its status as such from the laws in force in Canada;

(2) in respect of Kuwait: any individual possessing the Kuwaiti nationality, and any legal person, partnership, association or other entity deriving its status as such from the laws in force in Kuwait;

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

g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

i) the term "tax" means Canadian tax or Kuwaiti tax, as the context requires;

j) the term "competent authority" means:

(1) in Canada: the Minister of National Revenue or the Minister's authorized representative;

(2) in Kuwait: the Minister of Finance or the Minister's authorized representative;

k) the term "fixed base" includes a permanent place for the purpose of performing professional services or other activities of an independent nature.

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

## **Article 4**

### ***Resident***

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

a) in the case of Canada: any person who, under the tax law of Canada is liable to tax 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 Canada in respect only of income from sources in Canada;

b) in the case of Kuwait:

(1) an individual who is a Kuwaiti national, provided that the individual has a substantial presence, permanent home or habitual abode in Kuwait and that the individual's personal and economic relations are closer to Kuwait than to any other third state; and

(2) a company which is incorporated in Kuwait.

2. For the purposes of paragraph 1, the term "resident of a Contracting State" shall include:

a) the Government of that Contracting State or a political subdivision or local authority thereof; and

b) any corporation, Central Bank, fund, authority, foundation, commission, agency or other entity that was established under the law of that Contracting State and that is wholly-owned and controlled by the Government of that Contracting State or a political subdivision or local authority thereof, by any entity referred to in this subparagraph or by any combination thereof; and

c) any entity established in that Contracting State all the capital of which has been provided by the Government of that Contracting State or a political subdivision or local authority thereof either alone or together with the governments of other States.

3. 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 in accordance with the following rules:

a) the individual shall be deemed to be a resident only of the Contracting State in which the individual has a permanent home available;

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

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

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

e) if the individual's status cannot be determined under the provisions of subparagraphs a) to d), the competent authorities of the Contracting States shall settle the question by mutual agreement.

4. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the Contracting State of which it is a national.

# 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 relating to the exploration for or the exploitation of natural resources.
3. A building site, or construction, assembly, erection or installation project or a supervisory activity in connection therewith constitutes a permanent establishment only if such site, project or activity continues for a period of more than six months.
4. The furnishing of services, including consultancy services, by an enterprise of a Contracting State through employees or other engaged personnel in the other Contracting State constitutes a permanent establishment provided that such activities continue for the same project or a connected project for a period or periods aggregating more than six months within any twelve-month period.
5. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if substantial equipment is being used or installed for more than three months within any twelve-month period in the other Contracting State by, for or under contract with the enterprise.
6. 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 of 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;

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.

7. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 8 applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State, in respect of any activities which that person undertakes for the enterprise, if:

a) that person has and habitually exercises in the first-mentioned Contracting State a general authority to negotiate and conclude contracts in the name of such enterprise; or

b) that person has no such authority, but habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise belonging to such enterprise from which that person regularly delivers goods or merchandise on behalf of such enterprise; or

c) that person habitually secures orders in the first-mentioned Contracting State, exclusively or almost exclusively for the enterprise itself or for such enterprise and other enterprises which are controlled by it or have a controlling interest in it; or

d) in so acting, that person manufactures in that Contracting State for the enterprise goods or merchandise belonging to the enterprise.

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

person are devoted wholly or almost wholly on behalf of that enterprise, that person shall not be considered an agent of an independent status within the meaning of this paragraph.

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

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right of 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 profits from the alienation of such property.

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

## **Article 7**

### ***Business Profits***

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

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

3. In determining the profits of a permanent establishment, there shall be allowed as deductions those deductible expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on money's lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

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

5. 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.

6. If the information available to the competent authority of a Contracting State is inadequate to determine the profits to be attributed to the permanent establishment of an enterprise, nothing in paragraph 2 shall affect the application of any law or regulations of that Contracting State relating to the determination of the tax liability of the enterprise in relation to that permanent establishment by the making of an estimate by the competent authority of that Contracting State of the profits to be attributed to that permanent establishment, provided that such law or regulations shall be applied, so far as the information available to the competent authority permits, in accordance with the principles of this Article.

7. For the purpose 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.

8. 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**

### ***International Traffic***

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

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include:

a) profits from the rental on a bareboat basis of ships and aircraft; and

b) profits from the use, maintenance or rental of containers, including trailers and related equipment for the transport of containers, used for the transport of goods or merchandise;

where such rental or such use, maintenance or rental, as the case may be, is incidental to the operation of ships or aircraft in international traffic.

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

4. The provisions of paragraphs 1, 2 and 3 shall also apply to profits derived 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 Contracting State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall, if necessary, consult each other.

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 five years from the end of the year in which the profits which would be subject to such change would have accrued to an enterprise of that Contracting State.

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

## **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 Contracting State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that Contracting State, but if a resident of the other Contracting State is the beneficial owner of the dividends 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 owns 10 per cent or more of the issued and outstanding voting stock, or 25 per cent or more of the value of all the issued and outstanding stock, of the company paying the dividends; and

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

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

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

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

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other Contracting State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other Contracting State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Contracting 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 alienation of immovable property (within the meaning assigned by Article 6) 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:

(1) 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,

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

(3) 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 may 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

(4) five hundred thousand Canadian dollars (\$500,000) or its equivalent in the currency of Kuwait, less any amount deducted:

(i) by the company, or

(ii) 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 Contracting State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that Contracting State, but if 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,

a) interest arising in a Contracting State and paid in respect of indebtedness of the government of that Contracting State or of a political subdivision or local authority thereof shall, provided that the interest is beneficially owned by a resident of the other Contracting State, be taxable only in that other Contracting State;

b) interest arising in Kuwait and paid to a resident of Canada shall be taxable only in Canada if it is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by the Export Development Corporation, provided the loan or credit, as the case may be, was undertaken for the purpose of financing export from Canada;

c) interest arising in Canada and paid to a resident of Kuwait shall be taxable only in Kuwait if it is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by the Government of Kuwait or by any institution specified and agreed to in letters exchanged between the competent authorities of the Contracting States, provided the loan or credit, as the case may be, was undertaken for the purpose of financing export from Kuwait.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures as well as income which is subjected to the same taxation treatment as income from money lent by the laws of the Contracting 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 Contracting State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

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 Contracting State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that Contracting State, but if 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. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and works on films, tapes or other means of reproduction for use in connection with television or radio broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

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

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

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

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

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

*a*) shares (other than shares listed on the Kuwaiti Stock Exchange or a Canadian stock exchange prescribed for the purpose of the *Income Tax Act*) of the capital stock of a company the property of which consists wholly or principally of immovable property situated in the other Contracting State, and

*b*) an interest in a partnership, trust or estate, the property of which consists wholly or principally of immovable property situated in the other Contracting State,

may be taxed in that other Contracting State. For the purposes of this paragraph, the term "immovable property" includes the shares of a company referred to in subparagraph *a*) or an interest in a partnership, trust or estate referred to in subparagraph *b*) but does not include any property, other than rental property, in which the business of the company, partnership, trust or estate is carried on.

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

6. The provisions of paragraph 5 shall not affect the right of either of the Contracting States to levy, according to its law, a tax on gains from the alienation of any property derived by an individual who is a resident of the other Contracting State and has been a resident of the first-mentioned Contracting State at any time during the five years immediately preceding the alienation of the property.

7. Where an individual who ceases to be a resident of a Contracting State, and immediately thereafter becomes a resident of the other Contracting State, 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 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.

## **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 Contracting 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 Contracting State but only so much of it as is attributable to that fixed base.

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

## **Article 15**

### ***Dependent Personal Services***

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

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

a) the recipient is present in the other Contracting 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, an employer who is not a resident of the other Contracting State; and

c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting 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 that Contracting State, 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 the capacity as a member of the board of directors or a similar organ of a company which is a resident of the other Contracting State shall be taxable only in the first-mentioned Contracting State.

## **Article 17**

### ***Artistes and Athletes***

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

2. Where income in respect of personal activities exercised by an entertainer or an athlete in that individual's capacity as such accrues not to the entertainer or athlete 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 athlete are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to income derived by entertainers or athletes who are residents of a Contracting State from personal activities as such exercised in the other Contracting State if their visit to that other Contracting State is substantially supported from the public funds of the first-mentioned Contracting State, including those of any political subdivision, a local authority or statutory body thereof, nor to income derived by a non-profit making organization in respect of such activities provided no part of its income is payable to, or is otherwise available for the personal benefit of its proprietors, founders or members.

# Article 18

## *Pensions and Annuities*

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

2. Pensions arising in a Contracting State and paid to a resident of the other Contracting State may also be taxed in the Contracting State in which they arise, and according to the law of that Contracting State. However, in the case of periodic pension payments, other than payments under the social security legislation in a Contracting State, the tax so charged shall not exceed 15 per cent of the gross amount of the payment.

3. Annuities arising in a Contracting State and paid to a resident of the other Contracting State may also be taxed in the Contracting State in which they arise, and according to the law of that Contracting State; but the tax so charged shall not exceed 15 per cent of the portion thereof that is subject to tax in that Contracting State. However, this limitation does not apply to lump-sum payments arising on the surrender, cancellation, redemption, sale or other alienation of an annuity.

4. As used in this Article:

a) the term "pensions" means periodic payments, including payments under the social security legislation in a Contracting State, made after retirement in consideration of past employment or by way of compensations for injuries received in connection with past employment;

b) the term "annuity" means a stated sum 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.

# Article 19

## *Government Service*

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

(1) is a national of that Contracting State; or

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

2. The provisions of Articles 15, 16 and 17 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 subdivision or local authority thereof.

## **Article 20**

### ***Students and Trainees***

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

## **Article 21**

### ***Income of Government and Institutions***

1. Notwithstanding the provisions of Articles 10 and 11, dividends paid by a company that is a resident of a Contracting State, and interest that arises in that Contracting State and that is paid by a company that is a resident of that Contracting State, to a resident of the other Contracting State that is referred to in paragraph 2 of Article 4 and that is the beneficial owner of the dividends or interest, as the case may be, shall be taxable only in the other Contracting State provided that:

a) the recipient, together with all other residents of the other Contracting State that are referred to in paragraph 2 of Article 4, neither own or control shares of the company representing more than 25 per cent of the value of all of its issued and outstanding shares nor control directly or indirectly in any manner whatever more than 25 per cent of the votes in respect of the shares of the company; and

b) the recipient has not received the dividends or interest, as the case may be, in the course of carrying on an industrial or commercial activity.

2. Notwithstanding the provisions of Article 13, gains derived by a resident of a Contracting State that is referred to in paragraph 2 of Article 4 from the alienation of shares or debt-claims the dividends or interest on which would be exempt from taxation in the other Contracting State shall be taxable only in the first-mentioned Contracting State.

## **Article 22**

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

## **Article 23**

### ***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 Contracting 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 Contracting State.
3. Capital represented by ships and aircraft operated in international traffic by an enterprise of a Contracting State and by movable property pertaining to the operation of such ships and aircraft, shall be taxable only in that Contracting State.
4. All other elements of capital of a resident of a Contracting State shall be taxable only in that Contracting State.

## **Article 24**

### ***Elimination of Double Taxation***

1. It is agreed that double taxation shall be avoided in accordance with the following paragraphs of this Article:

a) In the case of Canada:

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 Kuwait on profits, income or gains arising in Kuwait shall be deducted from any Canadian tax payable in respect of such profits, income or gains.

b) In the case of Kuwait:

Where a resident of Kuwait derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in both Canada and Kuwait, Kuwait shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Canada; and as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in Canada.

Such deduction in either case shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in Canada.

2. For the purposes of this Article, profits, income or gains of a resident of a Contracting State which are taxed in the other Contracting State in accordance with this Agreement shall be deemed to arise from sources in that other 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 Contracting States, present a case to the competent authority of the Contracting State of which the person is a resident. The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of this 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 a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States, provided that the competent authority of the other Contracting State has received notification that such a case exists within six years from the end of the taxable year to which the case relates.

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

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.

## **Article 26**

### ***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 Agreement or of the domestic laws of the Contracting States concerning taxes covered by this Agreement insofar as the taxation thereunder is not contrary to this 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 Contracting State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use the information only for such purposes. They 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 and administrative practices 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).

## **Article 27**

### ***Miscellaneous Rules***

1. The laws in force in either of the Contracting States shall continue to govern the taxation in the respective Contracting State except where provisions to the contrary are made in this Agreement.

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

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

b) by any other special arrangement on taxation in connection with the economic or technical cooperation between the Contracting States.

3. Nothing in this Agreement shall be construed as preventing 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.

4. For 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 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.

## **Article 28**

### ***Diplomatic and Consular Privileges***

1. Nothing in this Agreement shall affect the fiscal privileges of members of a diplomatic mission, a consular post or an international organization under the general rules of international law or under the provisions of special agreements.

## Article 29

### *Entry into Force*

Each of the Contracting States shall notify to the other the completion of its constitutional procedures for the entry into force of this Agreement. This Agreement shall enter into force on the date of the later of these notifications and its provisions shall thereupon have effect in both Contracting States:

a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January of the year in which this Agreement enters into force;

b) in respect of other taxes, for taxable periods beginning on or after the first day of January of the year in which this Agreement enters into force.

## Article 30

### *Termination*

This Agreement shall remain in force for a period of five years and shall continue thereafter for a similar period or periods unless, either Contracting State notifies the other in writing at least six months before the expiry of the initial period, or any subsequent period, of its intention to terminate this Agreement. In such event, this Agreement shall cease to have effect in both Contracting States:

a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January of the year next following that in which the notice of termination is given; and

b) in respect of other taxes, for taxable periods beginning on or after the first day of January of the year next following that in which the notice of termination is given.

In **WITNESS WHEREOF** the respective plenipotentiaries of both Contracting States, have signed this Agreement.

Done at Ottawa this 28<sup>th</sup> day of January 2002 corresponding to 15 Shawal 1422, in duplicate, in the English, French and Arabic languages, all texts being equally authoritative.

Pierre Pettigrew

**FOR THE GOVERNMENT OF CANADA**

Yousef Hamad Al-Ibrahim

**FOR THE GOVERNMENT OF THE STATE OF KUWAIT**