

Agreement Between the Government of Canada and the Government of the Sultanate of Oman

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

This electronic version of the Canada-Oman Income Tax Agreement signed on June 30, 2004, is provided for convenience of reference only and has no official sanction.

THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE SULTANATE OF OMAN, desiring to conclude 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:

I. Scope of the Agreement

Article 1

Persons Covered

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

Article 2

Taxes Covered

1. This Agreement shall apply to taxes on income and on capital imposed on behalf of a 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 the Agreement shall apply are, in particular:

a) in the case of the Sultanate of Oman:

(i) the company income tax imposed under Royal Decree No. 47/1981 as amended; and

(ii) the profit tax on establishments imposed under Royal Decree No. 77/1989 as amended;

(hereinafter referred to as "Omani tax");

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

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

II. Definitions

Article 3

General Definitions

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

a) the term "Sultanate of Oman" means the territory of the Sultanate of Oman and the islands belonging thereto, including the territorial waters and any area outside the territorial waters over which the Sultanate of Oman may, in accordance with international law and the laws of the Sultanate of Oman, exercise sovereign rights with respect to the exploration and exploitation of the natural resources of the seabed and the subsoil and the superjacent waters;

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

(i) any area beyond the territorial sea of Canada that, in accordance with international law and the laws of Canada, is an area in respect of 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);

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

d) the term "person" includes an individual, a company, a trust, a body of persons, and in the case of the Sultanate of Oman, an establishment owned or exploited by an individual that is treated as a taxable entity under its laws;

e) the term "company" means any body corporate or any entity that 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 "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;

h) the term "national" means:

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

(ii) any legal person, partnership or association deriving its status as a legal person, a partnership or an association as the case may be from the laws in force in a Contracting State;

i) the term "competent authority" means:

(i) in the case of the Sultanate of Oman, the Minister of National Economy and Supervisor of the Ministry of Finance or the Minister's authorised representative; and

(ii) in the case of Canada, the Minister of National Revenue or the Minister's authorised representative; and

j) the term "tax" means Omani tax or Canadian tax, as the context requires.

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

Article 4

Resident

1. For the purposes of this Agreement the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of the person's domicile, residence, place of management, place of registration or any other criterion of a similar nature.

2. For the purposes of paragraph 1, in the case of the Sultanate of Oman, the term "resident of a Contracting State" shall include any individual who has a substantial presence, permanent home or habitual abode in the Sultanate of Oman and the individual's personal and economic relations are closer to the Sultanate of Oman than to any other State.

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

a) that State or a political subdivision or a local authority thereof;

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

4. 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; and

d) if the residential status of the individual cannot be determined by reason of subparagraphs a) to c) in that sequence, the competent authorities of the Contracting States shall settle the question by mutual agreement.

5. Where by reason of the provisions of paragraph 1 a company is a resident of both Contracting States, then its status shall be determined as follows:

- a) it shall be deemed to be a resident only of the State of which it is a national; or
- b) if it is a national of neither of the States, it shall be deemed to be a resident only of the State in which its place of effective management is situated.

6. Where by reason of the provisions of paragraph 1 a person other than an individual or a company is resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question and to determine the mode of application of the Agreement to such person.

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. The term "permanent establishment" also encompasses:

- a) a building site or a construction or assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities continue for a period of more than six months;
- b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature

continue (for the same or a connected project) within a Contracting State for a period or periods aggregating more than six months within any twelve-month period.

4. 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 or display 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 or display;

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

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

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

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

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person (other than an agent of an independent status to whom paragraph 6 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 State in respect of any activities which that person undertakes for the enterprise, if such a person:

a) 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 those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or

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

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

are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, the agent will not be considered an agent of an independent status within the meaning of this paragraph.

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

III. Taxation of Income

Article 6

Income from Immovable Property

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

2. For the purposes of this Agreement, the term "immovable property" shall have the meaning that it has at that time 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 or forestry or aquaculture, and 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 considered as "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 and to income from the alienation of such property.

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

Article 7

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on or has carried on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on 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 of this Article, 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 and with any other person.
3. In the determination of the profits of a permanent establishment, there shall be allowed those deductible expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses, whether incurred in the State in which the permanent establishment is situated or elsewhere.
4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
5. 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.
6. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

Shipping and Air Transport

1. Profits 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. Notwithstanding the provisions of paragraph 1 and Article 7, profits derived by an enterprise of a Contracting State from a voyage of a ship or aircraft where the principal purpose of the voyage is to

transport passengers or property between places in the other Contracting State may be taxed in that other State.

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

a) profits from the rental on a bareboat basis of ships or 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.

4. For the purposes of this Article, interest on funds directly connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft, and the provisions of Article 11 shall not apply in relation to such interest.

5. The provisions of paragraphs 1, 2, 3 and 4 shall also apply to profits derived from the participation in a pool, a joint business or in an international operating agency.

6. For the purposes of this Article, the term "operation of ships or aircraft" means the business of transportation by sea or by air of passengers, mail, livestock or goods carried on by the owners, lessees or charterers of ships or aircraft, including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of ships or aircraft and any other activity directly connected with such transportation.

7. For the purposes of this Article, paragraph 3 of Article 14 and paragraph 3 of Article 16, notwithstanding subparagraph f) of paragraph 1 of Article 3, the term "enterprise of a Contracting State" includes, in the case of the Sultanate of Oman, Gulf Air Company.

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 that differ from those that 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 tax in that other State and the profits so included are profits which 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, if the time limits for making an adjustment provided in the domestic laws of that other State have not expired, 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. The provisions of paragraph 2 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 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) five per cent of the gross amount of the dividends if the beneficial owner is a company which controls directly or indirectly, in the case of Canada, at least ten per cent of the voting power in the company paying the dividends and, in the case of the Sultanate of Oman, at least ten per cent of the capital in the company paying the dividends;

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

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

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, and also includes any other income which is subjected to the

same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

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

6. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.

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 ten 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 to the other Contracting State, or to a political subdivision or a local authority thereof, shall be exempt from tax in the first-mentioned State;

b) interest arising in the Sultanate of Oman 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 Export Development Canada;

c) interest arising in Canada and paid to a resident of the Sultanate of Oman shall be taxable only in the Sultanate of Oman if it is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by Export Credit Guarantee Agency (S.A.O.C.); and

d) interest arising in a Contracting State and paid to a resident of the other Contracting State that is operated exclusively to administer or provide benefits under one or more pension, retirement or employee benefits plans shall not be taxable in the first-mentioned State provided that:

(i) the resident is the beneficial owner of the interest and is generally exempt from tax in the other State, and

(ii) the interest is not derived from carrying on a business or from a related person.

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 paragraph 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 provisions of Article 7 or Article 15, as the case may be, shall apply.

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

8. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

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 ten per cent of the gross amount of the royalties.

3. Notwithstanding the provisions of paragraph 2,

a) 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 motion picture films nor royalties in respect of works on film or videotape or other means of production for use in connection with television broadcasting), and

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

arising in a Contracting State and paid to a resident of the other Contracting State who is the beneficial owner of the royalties shall be taxable only in that other State.

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, cinematograph films, or films or tapes or discs or other means of reproduction used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

5. The provisions of paragraphs 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 provisions of Article 7 or Article 15, as the case may be, shall apply.

6. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether the 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 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 State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount of the royalties. 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.

8. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.

Article 13

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 State and that is paid by a company that is a resident of that State, to a resident of the other Contracting State that is referred to in paragraph 3 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 3 of Article 4, neither own nor control shares of the company representing more than twenty five per cent of the value of all of its issued and outstanding shares nor control directly or indirectly in any manner whatever more than twenty five 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 14, gains derived by a resident of a Contracting State that is referred to in paragraph 3 of Article 4 from the alienation of shares or debt-claims, the dividends or interest from which would be exempt from taxation in the other Contracting State, shall be taxable only in the first-mentioned Contracting State.

Article 14

Capital Gains

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

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment that an enterprise of a Contracting State has or had in the other Contracting State or of movable property pertaining to a fixed base that is or was 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 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, the value of which is derived principally from immovable property situated in the other State, or

b) an interest in a partnership or trust, 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 that owned for renting, in which the business of the company, partnership or trust 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 a Contracting State 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 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 15

Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that 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 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 16

Income from Employment

1. Subject to the provisions of Articles 17, 19 and 20 of this Agreement, salaries, wages and other remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned;

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

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

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State, shall be taxable only in that State unless the remuneration is derived by a resident of the other Contracting State.

Article 17

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 similar body of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 18

Artists and Sportspersons

1. Notwithstanding the provisions of Articles 15 and 16, 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 the 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, 15 and 16, 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.

4. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting State by a resident of the other Contracting State in the context of a visit in the first-mentioned State of a non-profit organization of the other State, if the visit is primarily supported by public funds.

Article 19

Pensions, Annuities and Similar Payments

1. Pensions and annuities paid to a resident of a Contracting State shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1,

a) pensions arising in Canada and paid to a resident of the Sultanate of Oman may also be taxed in Canada according to the laws of Canada; however, in the case of periodic pension payments, other than payments under the social security legislation of Canada, the tax so charged shall not exceed the lesser of:

(i) fifteen per cent of the gross amount of the payment, and

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

b) any pension paid by, or out of funds created by, the Government of the Sultanate of Oman or any statutory body thereof to any individual in respect of services rendered to that Government or any such statutory body shall not be taxable in Canada, provided that any such pension would not be taxed in the Sultanate of Oman if the recipient were a resident thereof;

c) pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State shall be taxable only in that State; and

d) annuities arising in a Contracting State and paid to a resident of the other Contracting State may also be taxed in the State in which they arise and according to the law of that State, but the tax so charged shall not exceed fifteen per cent of the portion thereof that is subject to tax in that State; however, this limitation does not apply to lump-sum payments arising on the surrender, cancellation, redemption, sale or other alienation of an annuity, or a payment of any kind under an annuity contract the cost of which was deductible, in whole or in part, in computing the income of any person who acquired the contract.

3. Notwithstanding anything in this Agreement

a) war pensions and allowances (including pensions allowances paid to war veterans or paid as a consequence of damages or injuries suffered as a consequence of a war) arising in a Contracting State and paid to a resident of the other Contracting State shall be exempt from tax in that other State to the extent that they would be exempt from tax if received by a resident of the first-mentioned State; and

b) alimony and other similar payments arising in a Contracting State and paid to a resident of the other Contracting State who is subject to tax therein in respect thereof shall be taxable only in that other State, but the amount taxable in that other State shall not exceed the amount that would have been taxable in the first-mentioned State if the recipient were a resident thereof.

Article 20

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 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. The provisions of Article 16, 17, 18 and 19 of this Agreement 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 a local authority thereof.

Article 21

Students and Apprentices

Payments which a student, apprentice 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 State solely for the purpose of that individual's education or training receives for the purpose of that individual's maintenance, education or training shall not be taxed in that State, if such payments arise from sources outside that 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 State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting State may also be taxed in that other State. However, where such income is income from 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 fifteen per cent of the gross amount of the income.

IV. Taxation of Capital

Article 23

Capital

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

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

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

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

V. Methods of Elimination of Double Taxation

Article 24

Elimination of Double Taxation

1. In the Sultanate of Oman, double taxation shall be avoided as follows:

a) where a resident of the Sultanate of Oman derives income which, in accordance with the provisions of this Agreement, may be taxed in Canada, the Sultanate of Oman shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in Canada, whether directly or by deduction, however such a deduction shall not exceed that part of the income tax (as computed before the deduction is given) which is attributable to the income which may be taxed in Canada; and

b) where, in accordance with any provision of the Agreement, income derived by a resident of the Sultanate of Oman is exempt from tax in the Sultanate of Oman, the Sultanate of Oman may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into consideration the exempted income.

2. 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 the Sultanate of Oman on profits, income or gains arising in the Sultanate of Oman shall be deducted from any Canadian tax payable in respect of such profits, income or gains; and

b) where, in accordance with any provision of the Agreement, 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 or capital, take into consideration the exempted income or capital.

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

VI. Special Provisions

Article 25

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with the provisions of this Agreement, that person may, irrespective of the remedies provided by the domestic law of those States, address to the competent authority of the Contracting State of which that person is a resident an application in writing stating the grounds for claiming the revision of such taxation. To be admissible, the said application must be submitted within two years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
2. The competent authority referred to in paragraph 1 shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Agreement.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement.
4. The competent authorities of the Contracting States may consult together for the elimination of double taxation in cases not provided for in the Agreement and may communicate with each other directly for the purpose of applying the Agreement.

Article 26

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is relevant for carrying out the provisions of this Agreement or of the domestic laws in the Contracting States concerning taxes covered by this Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement in respect of, or the determination of appeals in relation to taxes. 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 the administrative practice of that or of the other Contracting State;

b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State; 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 27

Members of Diplomatic Missions and Consular Posts

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

Article 28

Miscellaneous Rules

1. The laws in force in a Contracting State shall continue to govern taxation in that State except where the provisions of this Agreement differ from the provisions of those laws.

2. The provisions of this Agreement shall not restrict in any manner any exclusion, exemption, credit or other deduction or allowance accorded by the laws of a Contracting State in the determination of the tax imposed by that State.

3. Nothing in the Agreement 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.

4. The Agreement shall not apply to any company, trust or other entity that is a resident of a Contracting State and is beneficially owned or controlled, directly or indirectly, by one or more persons who are not residents of that State, if the amount of the tax imposed on the income or capital of the company, trust or other entity 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 other entity, as the case may be, were beneficially owned by one or more individuals who were residents of that State.

5. The Agreement shall not apply to a company or other entity that is entitled to income tax benefits pursuant to:

a) any legislation in either Contracting State relating to tax-free zones at the date of signature of the Agreement; or.

b) any other legislation adopted by either Contracting State after the date of signature of the Agreement that provides benefits similar to those referred to in sub-paragraph a).

6. However, paragraph 5 shall not apply where:

a) the company or other entity is wholly-owned directly or indirectly (including through one or more entities) by individuals who are resident of the Contracting State providing the income tax benefits; or

b) ninety per cent or more of the income eligible for such benefits is derived exclusively from the active conduct of a trade or business carried on by it other than an investment business.

7. 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 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 4 of Article 25 or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.

8. Notwithstanding the provisions of Article 10, dividends arising in a Contracting State and paid to an organization that is operated in the other Contracting State exclusively to administer or provide benefits under one or more pension, retirement or employee benefits plans shall be exempt from tax in the first-mentioned State if:

a) the organisation is the beneficial owner of the shares on which the dividends are paid, holds those shares as an investment and is generally exempt from tax in the other State;

b) the organisation does not own directly or indirectly more than five per cent of the capital or five per cent of the voting stock of the company paying the dividends; and

c) the class of shares of the company on which the dividends are paid is regularly traded on an approved stock exchange.

9. For the purposes of subparagraph 8 c), the term "approved stock exchange" means:

a) in the case of dividends arising in Canada, a Canadian stock exchange prescribed for the purposes of the *Income Tax Act*;

b) in the case of dividends arising in the Sultanate of Oman, the Muscat Securities Market;

c) any other stock exchange agreed to in letters exchanged between the competent authorities of the Contracting State.

Article 29

Protocol to the Agreement

The attached Protocol forms an integral part of the Agreement.

VII. Final Provisions

Article 30

Entry into Force

Each of the Contracting States shall notify the other Contracting State through diplomatic channels of the completion of the procedures required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the later of these notifications and shall thereupon have effect as follows:

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

b) in respect of other taxes, for any taxable year commencing on or after the first day of January next following the date on which this Agreement enters into force.

Article 31

Termination

This Agreement shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the period of five years from the date on which the Agreement enters into force. In such event, the Agreement shall cease to have effect as follows:

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

b) in respect of other taxes, for any tax year commencing on or after the first day of January in the calendar year immediately following that in which the notice of such termination is given.

In WITNESS WHEREOF, the undersigned, duly authorised to that effect by their respective Governments, have signed this Agreement.

Done at Muscat on this 12th day of 05 1425 AH, corresponding to the 30th day of June, 2004, in two identical originals each in the English, French and Arabic languages, all texts being equally authoritative.

Roderick L. Bell

Ambassador of Canada to the Sultanate of Oman

For the Government of Canada

Ahmed bin Abdulnabi Macki

Minister of National Economy and Deputy Chairman of Financial Affairs and Energy Resources Council

For the Government of the Sultanate of Oman

Protocol to the Agreement Between the Government of Canada and the Government of the Sultanate of Oman

For the Avoidance of Double Taxation With Respect to Taxes on Income and on Capital

On signing of the Agreement between the Government of Canada and the Government of the Sultanate of Oman for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital (hereinafter referred to as the "Agreement"), the undersigned have agreed upon the following provisions:

1. With reference to subparagraph j) of paragraph 1 of Article 3 of the Agreement, it is understood that the term "tax" shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which the Agreement applies or which represents a penalty imposed relating to those taxes.
2. With reference to paragraphs 1 and 2 of Article 7 of the Agreement, it is understood that where an enterprise of a Contracting State sells goods or merchandise or otherwise carries on business in the other Contracting State through a permanent establishment situated therein, the profits of that permanent establishment shall be determined only on the basis of the profits that are attributable to the actual activity of the permanent establishment for such business. Without limiting the foregoing, in the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits of the enterprise attributable to such permanent establishment shall be determined only on the basis of that part of the contract that is effectively carried out by the permanent establishment in the State where the permanent establishment is situated. Any other profits related to that part of the contract that is carried out by the enterprise outside that State shall be taxable only in the State of which the enterprise is resident.
3. With reference to Articles 8 and 14 of the Agreement, it is agreed that in the event of a Canadian air transport enterprise being subjected to any tax similar to those mentioned in Article 2 with respect to profits referred to in Article 8, by any other State which is a shareholder in Gulf Air Company, the provisions of paragraphs 1, 3 and 4 of Article 8 and paragraph 3 of Article 14 shall apply only, with respect to profits and gains derived by Gulf Air Company, which are attributable under its constitutive contract to the Government of the Sultanate of Oman.
4. It is agreed that in the event that, pursuant to an income tax convention or agreement concluded by Canada after the date of the signature of the Agreement, Canada agrees to a lower rate of withholding tax on interest than that provided in paragraph 2 of Article 11 of the Agreement, the appropriate authorities of Canada shall consult within a reasonable period of time with the appropriate authorities of the Sultanate of Oman regarding a further reduction in the rate of withholding tax on interest.

5. With reference to paragraphs 4 and 5 of Article 28 of the Agreement, it is agreed that nothing in the provisions of those paragraphs shall be construed as preventing a Contracting State from granting the benefits provided by its legislation relating to tax-free zones.

6. It is agreed that nothing in the Agreement shall be construed as preventing Canada from imposing on the earnings of a company attributable to a permanent establishment in Canada, or the earnings attributable to the alienation of immovable property situated in Canada by a company carrying on a trade or business in immovable property, 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 five 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 paragraph 1 of Article 14 of the Agreement, 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.

In WITNESS WHEREOF, the undersigned, duly authorised to that effect, by their respective Governments, have signed this Agreement.

DONE at Muscat on this 12th day of 05 1425 AH, corresponding to the 30th day of June, 2004, in two identical originals each in the English, French and Arabic languages, all texts being equally authoritative.

Roderick L. Bell

Ambassador of Canada to the Sultanate of Oman

For the Government of Canada

Ahmed bin Abdulnabi Macki

Minister of National Economy and Deputy Chairman of Financial Affairs and Energy Resources Council

For the Government of the Sultanate of Oman