

# **Convention between the Government of Canada and the Government of the Republic of Peru**

## **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 Republic of Peru, desiring to conclude a Convention 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 Convention**

#### **Article 1**

##### **Persons Covered**

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

#### **Article 2**

##### **Taxes Covered**

1. This Convention shall apply to taxes on [income](#) 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 the Convention shall apply are, in particular,
  - (a) in the case of Canada, the taxes imposed by the Government of Canada under the *Income Tax Act*, hereinafter

referred to as "Canadian tax"; and

(b) in the case of Peru, the taxes imposed by the Government of Peru under the Income Tax Act (*Ley del Impuesto a la Renta*) and the Solidarity Extraordinary Tax (*Impuesto Extraordinario de Solidaridad*) supported by an individual in respect of independent personal services, hereinafter referred to as "Peruvian tax".

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

## **II. Definitions**

### **Article 3**

#### **General Definitions**

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

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

(b) the term "Peru", used in a geographical sense, means the territory of the Republic of Peru which includes, in addition to the areas contained within its internationally recognized land boundaries, the adjacent maritime zones and airspace within which the Republic of Peru exercises sovereign rights and jurisdiction in accordance with its legislation and international law;

(c) the terms "a Contracting State" and "the other Contracting

State" mean, as the context requires, Canada or Peru;

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

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

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

(g) the term "competent authority" means

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

(ii) in the case of Peru, the Minister of Economy and Finance or the Minister's authorized representative;

(h) the term "national" means

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

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

(i) the term "international traffic" means any voyage of a ship or aircraft operated by an enterprise of a Contracting State to transport passengers or property except where the principal purpose of the voyage is to transport passengers or property between places within the other Contracting State.

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

#### **Article 4**

## **Resident**

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

(a) 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 or any other criterion of a similar nature but does not include any person who is liable to tax in that State in respect only of income from sources in that State, and

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

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

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

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

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

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

3. Where by reason of the provisions of paragraph 1 a 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;

(b) if it is a national of neither of the 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 Convention to the company. In the absence of such agreement, the company shall not be entitled to claim any relief or exemption from tax provided by the Convention.

4. Where by reason of the provisions of paragraph 1 a person other than an individual or a company is a 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 Convention to such person. In the absence of such agreement, such person shall not be entitled to claim any relief or exemption from tax provided by the Convention.

## **Article 5**

### **Permanent Establishment**

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

2. The term "permanent establishment" 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" shall also include:

- (a) a building site or construction or installation project but only if such site, project continues for a period or periods aggregating more than 183 days within any twelve-month period; and
- (b) the furnishing of services, including consulting services, by an enterprise of a Contracting State through employees or

other individuals engaged by the enterprise for such purposes in the other Contracting State, but only where such activities continue (for the same or a connected project) within that State for a period or periods aggregating more than 183 days within any twelve-month period.

For the purposes of computing the time period or periods in this paragraph, the duration of activities carried on by an enterprise shall include activities carried on by associated enterprises, within the meaning of Article 9, if the activities between the associated enterprises are connected.

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, 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, supplying information or carrying on scientific research for the enterprise, if such activity 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 7 applies) is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts on behalf of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent

establishment under the provisions of that paragraph.

6. Notwithstanding the preceding provisions of this Article , an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, the agent will not be considered an agent of an independent status within the meaning of this paragraph.

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

### **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) situated in the other Contracting State may be taxed in that other State.

2. For the purposes of this Convention, the term "immovable property" shall have the meaning which it has for the purposes of the relevant tax law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships and aircraft shall not be regarded as immovable

property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property and to income from the alienation of such property.

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

## **Article 7**

### **Business Profits**

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

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on 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 all other persons.

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 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 Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

## **Article 8**

### **Shipping and Air Transport**

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

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

4. For the purposes of this Article ,

(a) the term "profits" includes

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

(ii) interest that is incidental to the operation of ships or aircraft in international traffic; and

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

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

(ii) the rental of containers and related equipment,

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

## **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 income that would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, has not so accrued, may be included in the income of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the income of an enterprise of that State- and taxes accordingly- income on which an enterprise of the other Contracting State has been charged to tax in that other State and the income so included is income that would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those that would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of tax charged therein on that income. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

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

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 that is a resident of a Contracting

State to a resident of the other Contracting State may be taxed in that other State.

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

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

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

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

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income 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 or has carried 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 or has performed in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

profits or income arising in such other State.

6. Nothing in this Convention shall be construed as preventing a Contracting State from imposing on the earnings of a company attributable to a permanent establishment in that State, or the earnings attributable to the alienation of immovable property situated in that State by a company carrying on a trade 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 that State, except that any additional tax so imposed shall not exceed 10 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 a Contracting State as may be taxed by that State under the provisions of Article 6 or of paragraph 1 of Article 13, and the profits, including any gains, attributable to a permanent establishment in a Contracting State in a year and previous years, after deducting therefrom all taxes, other than the additional tax referred to herein, imposed on such profits in that State.

7. 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 15 per cent of the gross amount of the interest.

3. 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 8 or Article 10.

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

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

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

7. 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 15 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, patent, trade mark, design or model, plan, secret formula or process or other intangible property, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience, and includes payments of any kind in respect of motion picture films and works on film, videotape or other means of reproduction for use in connection with television.

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

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

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

7. 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**

### **Capital Gains**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property 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 a fixed base, may be taxed in that other State.
3. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic or from containers used in, or other movable property pertaining to, the operation of such ships or aircraft shall be taxable only in that State.
4. Gains derived by a resident of a Contracting State from the alienation of
  - (a) shares, 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 rental property, in which the business of the company, partnership or trust is carried on.
5. Where a resident of a Contracting State alienates property in the course of a corporate or other organization, reorganization, amalgamation, division or similar transaction and profit, gain or income with respect to such alienation is not recognized for the purpose of taxation in that State, if requested to do so by the person

who acquires the property, the competent authority of the other Contracting State may agree, in order to avoid double taxation and subject to terms and conditions satisfactory to such competent authority, to defer the recognition of the profit, gain or income with respect to such property for the purpose of taxation in that other State until such time and in such manner as may be stipulated in the agreement.

6. 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.

7. The provisions of paragraph 6 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 (other than property to which the provisions of paragraph 8 apply) 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 six years immediately preceding the alienation of the property.

8. 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. However, this provision shall not apply to property which would give rise, if it were alienated immediately before the individual became a resident of that other State, to a gain which may be taxed in that other State.

## **Article 14**

### **Independent Personal Services**

1. Income derived by an individual who is a resident of a Contracting State in respect of professional or similar services performed in the other Contracting State may be taxed in that other State but the tax so charged shall not exceed 10 per cent of the gross amount of that income unless:

(a) the income is attributable to a fixed base which the individual has or had regularly available in that other State for the purpose of performing the activities; or

(b) such individual is present in that other State for a period or periods exceeding in the aggregate 183 days in any consecutive twelve month period.

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

## **Article 15**

### **Dependent Personal Services**

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

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the calendar year concerned, and either

(a) the total remuneration derived by the resident in respect of all employment exercised in the other Contracting State in the calendar year concerned does not exceed ten thousand Canadian dollars (\$10,000) or its equivalent in the currency of Peru or such amounts as may be specified and agreed in letters exchanged between the competent authorities of the Contracting States; or

(b) the remuneration is paid by, or on behalf of, a person who is not a resident of the other State, and such remuneration is not borne by a permanent establishment or a fixed base that the person has in the other State.

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

## **Article 17**

### **Artistes and Sportspersons**

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

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

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

## **Article 18**

### **Pensions 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 State.

2. Pensions 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 laws of that State. However, in the case of periodic pension payments 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 State in which they arise and according to the law of that State, but the tax so charged shall not exceed 15 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 to payments of any kind under an [annuity](#) contract the cost of which was deductible, in whole or in part, in computing the income of any person who acquired the contract.

#### 4. Notwithstanding anything in this Convention

(a) war pensions and allowances (including pensions and allowances paid to war veterans or paid as a consequence of damages or injuries suffered as a consequence of 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 be taxable in the first-mentioned State if the recipient were a resident thereof.

### **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 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 paragraph 1 shall not 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 20**

### **Students**

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 21**

### **Other Income**

1. Subject to the provisions of paragraph 2, items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Article s of this Convention shall be taxable only in that 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 State in which it arises and according to the law of that State. 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 15per cent of the gross amount of the income.

## **IV. Taxation of Capital**

### **Article 22**

#### **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 property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

3. Capital represented by ships and aircraft operated 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 only 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 for Elimination of Double Taxation**

### **Article 23**

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

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

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

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

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

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

(a) residents of Peru may credit against Peruvian tax on income or capital arising in Canada the income tax paid in Canada in an amount not exceeding the tax payable in Peru on such income;

(b) where a company which is a resident of Canada pays a dividend to a person which is a resident of Peru that controls directly or indirectly at least 10 per cent of the voting power in the company, the credit shall take into account the tax payable in Canada by the company in respect of the profits out of which such dividend is paid but only to the extent that the Peruvian tax exceeds the amount of the credit determined without reference to this subparagraph;

(c) for the purposes of this paragraph, the tax basis of a person that is a resident of Peru shall be that person's income before income tax paid by that person in Canada; and

(d) where, in accordance with any provision of the Convention, income derived or capital owned by a resident of Peru is exempt from tax in Peru, Peru may nevertheless, in calculating the amount of tax on the remaining income or capital, take into account 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 Convention shall be deemed to arise from sources in that other State.

## **VI. Special Provisions**

### **Article 24**

#### **Non-discrimination**

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith that is more burdensome than the taxation and connected

requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected.

2. The taxation on a permanent establishment that an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

3. Nothing in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities that it grants to its own residents.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith that is more burdensome than the taxation and connected requirements to which other similar enterprises that are residents of the first-mentioned State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State, are or may be subjected.

5. In this Article , the term "taxation" means taxes that are the subject of this Convention.

## **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 Convention, 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 Convention.

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 Convention.

3. A Contracting State shall not, after the expiry of the time limits provided in its domestic laws and, in any case, after five years from the end of the taxable period to which the income concerned was attributed, increase the [tax base](#) of a resident of either of the Contracting States by including therein items of income that have also been charged to tax in the other Contracting State. This paragraph shall not apply in the case of fraud, wilful default or neglect.

4. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention.

5. The competent authorities of the Contracting States may consult together for the elimination of double taxation in cases not provided for in the Convention and may communicate with each other directly for the purpose of applying the Convention.

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

## **Article 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 Convention or of the domestic laws in the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is not contrary to the Convention. 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, and only for use in connection with, the assessment or collection of, the enforcement in respect of, or the determination of appeals in relation to any tax. 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 that is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State; or

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

3. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall endeavour to obtain the information to which the request relates in the same way as if its own taxation were involved, even though the other State does not, at that time, need such information. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall endeavour to provide information under this Article in the form requested.

## **Article 27**

### **Members of Diplomatic Missions and Consular Posts**

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

2. Notwithstanding the provisions of Article 4, an individual who is a member of a diplomatic mission, consular post or permanent mission of a Contracting State that is situated in the other Contracting State or in a third State shall be deemed for the purposes of the Convention to be a resident of the sending State if that individual is liable in the sending State to the same obligations in relation to tax on total income as are residents of that sending State.

3. The Convention shall not apply to international organizations, to organs or officials thereof and to persons who are members of a

diplomatic mission, consular post or permanent mission of a third State or group of States, being present in a Contracting State and who are not liable in either Contracting State to the same obligations in relation to tax on their total income as are residents thereof.

## **Article 28**

### **Miscellaneous Rules**

1. The provisions of this Convention shall not be construed to restrict in any manner any exemption, allowance, credit or other deduction accorded by the laws of a Contracting State in the determination of the tax imposed by that State.

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

3. The Convention 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 (after taking into account any reduction or offset of the amount of tax in any manner, including a refund, reimbursement, contribution, credit, or allowance to the company, trust or partnership, or to any other person) 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.

4. 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 the convention may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph 4 of Article 25 or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.

## **VII. Final Provisions**

### **Article 29**

### **Entry Into Force**

Each of the Contracting States shall notify the other through diplomatic channels of the completion of the procedures required by law for the bringing into force of this Convention. The Convention shall enter into force on the date of the later of these notifications and its provisions shall thereupon have effect

(a) in Canada

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

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

(b) in Peru, in respect of Peruvian taxes and amounts paid, credited to an account, made at the disposal or accounted as an expense, on or after the first day of January of the calendar year immediately following that in which the Convention enters force.

### **Article 30**

#### **Termination**

This Convention shall continue in effect indefinitely but either Contracting State may, on or before June 30 of any calendar year after the year of the entry into force, give to the other Contracting State a notice of termination in writing through diplomatic channels. In such event, the Convention shall cease to have effect

(a) in Canada

(i) in respect of tax withheld at the source on amounts paid or credited to non-residents, after the end of that calendar year, and

(ii) in respect of other Canadian tax, for taxation years beginning after the end of that calendar year; and

(b) in Peru, in respect of Peruvian taxes and amounts paid, credited to an account, made at the disposal or accounted as an expense, on or after the first day of January of the next following calendar year.

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

**DONE** in duplicate at Lima, this 20th day of July, 2001, in the English, French and Spanish languages, each version being equally authentic.

**FOR THE GOVERNMENT  
OF CANADA**

**FOR THE GOVERNMENT  
OF PERU**

Graeme Clark

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Javier Silva Ruete

### **Protocol**

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

1. With reference to subparagraph (d) of paragraph 1 of Article 3, the term "person" shall, in the case of Peru, include undivided estates (sucesiones indivisas) as well as matrimonial partnerships (sociedades conyugales).

2. With reference to paragraph 2 of Article 9, it is understood that the other State is only required to make the appropriate adjustment to the extent it considers that the adjustment made in the first State is justified both in principle and in amount.

3. In the event that, pursuant to an agreement or convention concluded with a country that is a member of the [Organisation for Economic Co-operation and Development](#) after the date of signature of the Convention, Peru agrees:

(a) with reference to subparagraph(a) of paragraph 2 of Article 10, to a rate of tax on dividends that is lower than 10 per cent, the greater of such new rate and a rate of 5 per cent shall automatically apply for the purposes of that subparagraph as well as for paragraph 6 of that same Article;

(b) with reference to paragraph 2 of Article 11, to a rate of tax on

interest that is lower than 15 per cent, the greater of such new rate and a rate of 10 per cent shall automatically apply for the purposes of that paragraph; and

(c) with reference to paragraph 2 of Article 12, to a rate of tax on royalties referred to in that paragraph that is lower than 15 per cent, the following shall apply for the purposes of that paragraph:

(i) to the extent that such lower rate applies to:

(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 reproduction for use in connection with television), or

(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),

that lower rate shall automatically apply in similar circumstances,

(ii) to the extent that such lower rate applies to other royalties referred to in that paragraph, the greater of such lower rate and the rate of 10 per cent shall automatically apply in similar circumstances.

4. Nothing in the Convention shall preclude the application of the provisions of Peruvian Law Acts (Decretos Legislativos) number 662, 757 and 109 and Acts (Leyes) number 26221, 27342, 27343 as they are in force at the time of the signature of the Convention and as they may be amended from time to time without changing their general principle or the optional nature of entering into the tax stability contracts. A person that is a party to a contract which grants tax stability in accordance with the above-mentioned provisions shall, notwithstanding any rate of tax set out in the Convention, remain subject to the rates of tax stabilized by the contract for its duration.

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

**DONE** in duplicate at Lima, this 20th day of July, 2001, in the English, French and Spanish languages, each version being equally authentic.

**FOR THE GOVERNMENT**

**FOR THE GOVERNMENT**

**OF CANADA**

**OF PERU**

Graeme Clark

Javier Silva Ruete