

# **1999 Income Tax Convention and Final Protocol**

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## **CONVENTION BETWEEN CANADA AND THE PORTUGUESE REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME**

The Government of Canada and the Government of the Portuguese Republic, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, 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. The existing taxes to which the Convention shall apply are:

(a) in the case of Canada:

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

(b) in the case of Portugal:

(i) the personal income tax (Imposto sobre o Rendimento das Pessoas Singulares - IRS);

(ii) the corporate income tax (Imposto sobre o Rendimento das Pessoas Colectivas - IRC);

(iii) the local surtax on the corporate income tax (Derrama);

(hereinafter referred to as "Portuguese tax").

2. The Convention shall apply also to any identical or substantially similar taxes 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 terms "a Contracting State" and "the other Contracting State" mean Canada or Portugal as the context requires;

(b) 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;

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

(c) the term "Portugal", used in a geographical sense, means the territory of the Portuguese Republic situated in the European Continent and the archipelagoes of Azores and Madeira, the territorial sea as well as any other zone in which, in accordance with the laws of Portugal and international law, the Portuguese Republic has jurisdiction or sovereign rights with respect to the exploration and exploitation of the natural resources of the seabed and subsoil, and of the superjacent waters;

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

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

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

(g) the term "competent authority" means:

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

(ii) in the case of Portugal, the Minister of Finance, the Director General of Taxation or their authorized representatives;

(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 such from the laws in force in a Contracting State;

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

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

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, 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 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; however, this term does not include any person that is liable to tax in that State in respect only of income from sources in that State;

(b) that State itself or a political or administrative subdivision or local authority thereof or any agency or instrumentality of any such government, 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; if the individual has a permanent home available in both States, the individual shall be deemed to be a resident only of the State with which the individual's personal and economic relations are closer (centre of vital interests);

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

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

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

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question and to determine the mode of application of the Convention to such person. In the absence of such agreement, such person shall be considered not to be a resident of either Contracting State for the purposes of enjoying benefits under 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. A building site or construction or installation project constitutes a permanent establishment only if it lasts for more than six months.

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 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 7 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name 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. Subject to the provisions of paragraphs 4, 7 and 8, an enterprise of a Contracting State that carries on business in the other Contracting State through its own employees or any other personnel rendering substantially similar services for a period or periods amounting to or exceeding 120 days in any twelve month period commencing or ending in the taxation year concerned shall be deemed to have a permanent establishment in that other State.

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

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

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

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

#### **Article 7 Business Profits**

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

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

3. In determining the profits of a permanent establishment, there shall be allowed as deduction expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether 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. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

### **Article 9 Associated Enterprises**

1. Where

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

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any income which 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 which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which 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 which would be subject to such change would, but for the conditions referred to in paragraph 1, have accrued to that enterprise.

4. The provisions of paragraphs 2 and 3 shall not apply in the case of fraud, 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) (i) in the case of dividends paid by a company that is a resident of Canada, except in the case of dividends paid by a non-resident-owned investment corporation, 10 per cent of the gross amount of the dividends if the beneficial owner is a company that is a resident of Portugal and that controls directly or indirectly at least 25 per cent of the voting power in the company paying the dividends;

(ii) in the case of dividends paid by a company that is a resident of Portugal, 10 per cent of the gross amount of the dividends if the beneficial owner is a company that is a resident of Canada and that, for an uninterrupted period of 2 years prior to the payment of the dividends owns at least 25 per cent of the capital (capital social) of the company paying the dividends;

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

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

3. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income which is subjected to the same taxation treatment as income from shares by the 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 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other 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. Notwithstanding any provision in this Convention, a Contracting State may impose on the earnings of a company attributable to permanent establishments situated in that State, or on the alienation of immovable property situated in that State by a company carrying on a trade in immovable property, tax in addition to the tax which would be chargeable on the earnings of a company that is a resident of that State, provided that the rate of such additional tax so imposed shall not exceed the 10 per cent of the amount of such earnings which have not been subjected to such additional tax in previous taxation years. For the purpose of this provision, the term "earnings" means:

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

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

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

(ii) all taxes chargeable in that State on such profits, other than the additional tax referred to herein,

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

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

(a) by the company, or

(b) by a person related thereto from the same or a similar business as that carried on by the company under this clause; for the purposes of this clause, a company is related to another company if one company directly or indirectly controls the other, or both companies are directly or indirectly controlled by the same person or persons, or if the two companies deal with each other not at arm's length.

### **Article 11 Interest**

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

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

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

(a) the debtor of such interest is the Government of that State or a political or administrative subdivision or a local authority thereof; or

(b) the interest is paid to the Government of the other Contracting State or to a political or administrative subdivision or local authority thereof, or to an institution or organization (including a financial institution) with respect to a financing between the Governments of the Contracting States; or

(c) the interest is paid in respect of a loan made or a credit extended by:

(i) in the case of Canada, the Export Development Corporation; and

(ii) in the case of Portugal, the Companhia de Seguro de Créditos (COSEC).

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as income which is subjected to the same taxation treatment as income from money lent by the laws of the 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 14, as the case may be, shall apply.

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

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

## **Article 12 Royalties**

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

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

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, 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, and 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 business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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 person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the 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 some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

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

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

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

(a) shares, the value of which is derived principally from immovable property situated in the other State;

(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.

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 if the alienator:

(a) is a national of the first-mentioned Contracting State or has been a resident of that State for fifteen years or more prior to the alienation of the property; and

(b) was a resident of that first-mentioned State at any time during the five years immediately preceding such the alienation.

### **Article 14 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. However, such income may also be taxed in the other Contracting State in the following cases:

(a) if a fixed base is regularly available to the resident in that other State for the purpose of performing the activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State; or

(b) if the resident's stay in that other State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve month period commencing or ending in the calendar year concerned.

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

### **Article 15 Dependent Personal Services**

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

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

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

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

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

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

### **Article 16 Directors' Fees**

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 supervisory board (in Portugal, conselho fiscal) 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 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, provided the visit is principally supported by public funds.

### **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 law of that State, but in the case of periodic pension payments, the tax so charged shall not exceed the lesser of:

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

(b) the rate determined by reference to the amount of tax that the recipient of the payment would otherwise be required to pay for the year on the total amount of the periodic pension payments received by the individual in the year, if the individual were a resident of the Contracting State in which the payment arises.

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 laws 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;

(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.

### **Article 19 Government Service**

1.

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

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a national of that State; or

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

2. The provisions of Articles 15, 16 and 17 shall apply to salaries, wages and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political or administrative 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, provided that 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 Articles 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, provided that the income is taxable in the Contracting State in which the beneficial owner is a resident, not exceed 15 per cent of the gross amount of the income.

### **IV. Methods for Prevention of Double Taxation**

#### **Article 22 Elimination of Double Taxation**

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

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

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

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

(a) where a resident of Portugal derives income that, in accordance with the provisions of this Convention, may be taxed in Canada, Portugal shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in Canada; such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, that is attributable to the income that may be taxed in Canada;

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

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

### **V. Special Provisions**

#### **Article 23 Non-Discrimination**

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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

as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties or other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. The provisions of paragraph 3 shall not affect the operation of any provision of the taxation laws of a Contracting State:

(a) relating to the deductibility of interest and which is in force on the date of signature of this Convention (including any subsequent modification of such provisions that does not change the general nature thereof); or

(b) adopted after such date by a Contracting State and which is designed to ensure that a person who is not a resident of that State does not enjoy, under the laws of that State, a tax treatment that is more favourable than that enjoyed by residents of that State.

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

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

#### **Article 24 Mutual Agreement Procedure**

1. Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with the provisions of this Convention, that person may, irrespective of the remedies provided by the domestic law of those States, address to the competent authority of the Contracting State of which that person is a resident or, if that person's case comes under paragraph 1 of Article 23, to that of the Contracting State of which that person is a national, an application in writing stating the grounds for claiming the revision of such taxation. To be admissible, the said application must be submitted within two years from the first notification of the action which gives rise to 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. 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.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of applying the Convention.

#### **Article 25 Exchange of Information**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the 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 the assessment or collection of, the enforcement or prosecution 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;

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

### **Article 26 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 Article 4, an individual who is a member of a diplomatic mission, consular post or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed for the purposes of the 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 27 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:

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

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

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

3. Notwithstanding the provisions of Article 4, a company or other entity that is entitled to income tax benefits under the legislation and other measures relating to the tax-free zones of a Contracting State, or to benefits similar to those provided with respect to such tax-free zones that are made available under any legislation or other measure adopted after the date of signature of the Convention, shall be deemed not to be a resident of that State for the purposes of the Convention. However, this paragraph shall not apply to a company or other entity deriving income from:

(a) an active trade or business in that State, the selling of goods or merchandise in that State or the rendering of services, other than services referred to in subparagraph (b), in that State or

(b) the rendering of services offered in the ordinary course of business by a bank, an insurance company, a registered securities dealer or a deposit-taking financial institution, if at least 75 per cent of its income from all sources is taxed under the ordinary rules of the tax law 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 this Convention may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph 3 of Article 24 or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.

### **VI. Final Provisions**

#### **Article 28 Entry Into Force**

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

2. The Convention shall enter into force 30 days after the exchange of instruments of ratification and its provisions shall have effect:

(a) in Canada:

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

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

(b) in Portugal:

(i) in respect of taxes withheld at source, the fact given rise to them appearing on or after the first day of January in the calendar year next following that in which the Convention enters into force;

(ii) in respect of other taxes, to income derived during any taxable period beginning on or after the first day of January in the calendar year next following that in which the Convention enters into force.

3. Notwithstanding the provisions of paragraph 2, the provisions of Article 8 and of paragraph 3 of Article 13 shall have effect in respect of taxes on income arising during the 1994 taxation year and subsequent taxation year.

### **Article 29 Termination**

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention in writing and through the diplomatic channel, by giving at least six months notice before the end of any calendar year beginning from the second year following that in which the instruments of ratification are exchanged. In such event, the Convention shall cease to have effect:

(a) in Canada:

(i) in respect of tax withheld at the source on amounts paid or credited to non-residents, on or after the first day of January of the calendar year next following that mentioned in the notice of termination;

(ii) in respect of other Canadian tax, for taxation years beginning on or after the first day of January of the calendar year next following that mentioned in the notice of termination;

(b) in Portugal:

(i) in respect of taxes withheld at source, the fact given rise to them appearing on or after the first day of January of the calendar year next following that mentioned in the notice of termination;

(ii) in respect of other taxes, to income derived during any taxable period beginning on or after the first day of January of the calendar year next following that mentioned in the notice of termination.

In witness whereof the undersigned, duly authorized to that effect, have signed this Convention.

Done in duplicate at Ottawa, this 14th day of June 1999, in the English, French and Portuguese languages, each version being equally authentic.

**FOR THE GOVERNMENT OF CANADA:**

*Lloyd Axworthy*

**FOR THE GOVERNMENT OF THE PORTUGUESE REPUBLIC:**

*Jaime Gama*

### **PROTOCOL**

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

1. With reference to Article 3, paragraph 1(j), and Articles 5 and 8, ferry-boats, deep-sea ferry-boats or other vessels devoted principally to the transportation of passengers or goods exclusively between places in a Contracting State shall, when so operated, be deemed not to be operated in international traffic; the landing site or sites situated in a Contracting State and used regularly in such operation by such boats or vessels shall constitute a permanent establishment in that State of the enterprise operating such boats or vessels.

2. With reference to Article 6, it is understood that its provisions shall also apply to income from immovable property and services which, according to the tax legislation of the Contracting State in which the property in question is situated, is assimilated to income from immovable property.

3. With reference to Article 6, paragraph 3, it is understood that its provisions shall also apply to income from the alienation of property referred to therein.

4. With reference to Article 7, paragraph 1, it is understood that the profits attributable to a permanent establishment in a Contracting State may be taxed in that State even though the permanent establishment has ceased to exist.

5. With reference to Article 7, paragraph 3, the term "expenses which are incurred for the purposes of the permanent establishment" refers to expenses directly related to the activity of the permanent establishment which are deductible under the laws of the Contracting State in which the permanent establishment is situated.

6. With reference to Article 9, paragraph 2, it is understood that the State being asked to make the adjustment to income is required to do it only if it considers that the adjustment made in the other Contracting State is justified in principle and in its amount.

7. With reference to Article 10, paragraph 3, the term "dividends" also means, in the case of Portugal, profits attributable or paid under an arrangement for participation in profits (*associação em participação*).

8. With reference to Article 12, it is understood that its provisions shall also apply to remuneration for technical assistance where such assistance is related to the use of, or the right to use, rights, property or information referred to in paragraph 3 of that Article.

9. With reference to paragraph 6 of Article 13, it is agreed that, if the Canadian legislation concerning the taxation of former residents is amended in the sense of the Canadian announcement of December 23, 1998 (Communique no. 98-134), the provisions of paragraph 6 of Article 13 will automatically be replaced by the following:

"6. 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 any gain from which, arising immediately before the individual became a resident of that other State, may be taxed in that other State nor to immovable property situated in a third State."

10. With reference to Article 14, paragraph 1, it is understood that the profits attributable to a fixed base in a Contracting State may be taxed in that State even though the fixed base has ceased to exist.

11. With reference to Article 16, it is understood that remuneration paid by a company to a member of its boards in respect of the exercise of a continuous activity may be taxed in accordance with the provisions of Article 15.

12. With reference to Article 17, paragraph 2, it is understood that its provisions shall not apply if it is established that neither the entertainer or the sportsman nor persons related thereto, participate directly or indirectly in the profits of the person referred to in that paragraph.

13. With reference to subparagraph (a) of paragraph 1 of Article 22, it is understood that the existing provisions of the law of Canada regarding the taxation of income from a foreign affiliate in force at the time of signature of the Convention shall continue to apply as long as they are not amended or terminated.

In witness whereof the undersigned, duly authorized to that effect, have signed this Protocol. Done in duplicate at Ottawa, this 14th day of June 1999 in the English, French and Portuguese languages, each version being equally authentic.

**FOR THE GOVERNMENT OF CANADA:**

*Lloyd Axworthy*

**FOR THE GOVERNMENT OF THE PORTUGUESE REPUBLIC:**

*Jaime Gama*