

Convention Between Canada and the Republic of Serbia for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital

This electronic version of the Canada-Serbia Income Tax Convention signed on April 27, 2012, is provided for convenience of reference only and has no official sanction.

CANADA AND THE REPUBLIC OF SERBIA,

DESIRING to conclude a Convention for the avoidance of double taxation with respect to taxes on income and on capital,

HAVE AGREED as follows:

ARTICLE 1

Persons Covered

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

ARTICLE 2

Taxes Covered

1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State and, in the case of Serbia, or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation.

3. The existing taxes to which this Convention shall apply are in particular:

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

2) in the case of Serbia:

(1) corporate income tax;

(2) personal income tax;

(3) tax on capital

(hereinafter referred to as "**Serbian tax**").

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

ARTICLE 3

General Definitions

1. For the purposes of this Convention:

1) the terms "**a Contracting State**" and "**the other Contracting State**" mean Canada or Serbia, as the context requires;

2) the term "**Canada**", used in a geographical sense, means the territory of Canada, including its territorial sea and air space over the territory and the territorial sea, as well as the exclusive economic zone and the continental shelf beyond that zone, over which Canada exercises, in accordance with its legislation and with international law, sovereign rights or jurisdiction;

3) the term "**Serbia**" means the Republic of Serbia, and when used in a geographical sense it means the territory of the Republic of Serbia;

4) the term "**national**" means:

- (1) any individual possessing the nationality of a Contracting State; and
 - (2) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
 - 5) the term "**person**" includes an individual, a trust, a company and any other body of persons;
 - 6) the term "**company**" means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - 7) 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;
 - 8) the term "**international traffic**" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - 9) the term "**competent authority**" means:
 - (1) in the case of Canada, the Minister of National Revenue or the Minister's authorized representative;
 - (2) in the case of Serbia, the Ministry of Finance or its authorized representative.
2. As regards the application of this 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 this 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 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. It also includes that State, and any political subdivision or local authority thereof, or any agency or legal entity wholly-owned by that State, subdivision or authority. However, this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

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:

1) 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);

2) if the State in which the individual's centre of vital interests cannot be determined, or if the individual has 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;

3) 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;

4) 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 this Convention to that person, having regard to that person's place of effective management, the place where that person is incorporated or any other relevant criteria. In the absence of mutual agreement, that person shall not be entitled to claim any relief or exemption from tax provided by this Convention, except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States.

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:

1) a place of management;

2) a branch;

3) an office;

4) a factory;

5) a workshop; and

6) 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 more than twelve months.

4. Notwithstanding the preceding provisions of this Article, the term "**permanent establishment**" shall be deemed not to include:

1) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

2) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

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

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

5) 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;

6) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs 1) to 5), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 6 applies – is acting 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. 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.

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

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 purpose 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.

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

ARTICLE 7

Business Profits

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

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

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

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

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8

International Traffic

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

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

1) interest on funds directly connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft, if they are incidental to the carrying on of such business, and the provisions of Article 11 shall not apply in relation to such interest; and

2) the term "**operation of ships or aircraft in international traffic**" by an enterprise of a Contracting State, includes:

(1) the charter or rental on a bare boat basis of ships or aircraft; and

(2) the rental of containers (including trailers and related equipment for the transport of containers),

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

1) 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

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

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

2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits 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 the tax charged therein on those profits. 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 profits 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 profits that would be subject to such change would have accrued to an enterprise of that State.

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

ARTICLE 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other 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:

1) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) that controls directly at least 25 per cent of the voting power of the company paying the dividends;

2) 15 per cent of the gross amount of the dividends in all other cases.

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

3. The term "**dividends**" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, 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 paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the

holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the 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 the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

6. 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 resident of that State. Any additional tax so imposed shall not exceed 5 per cent of the amount of those earnings that have not been subjected to this additional tax in previous taxation years.

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 it is derived and beneficially owned by:

1) the Government of the other Contracting State or of a political subdivision or local authority of that State; or

2) the Central or National Bank of the other Contracting State.

4. The term "**interest**" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and in particular, income from government securities and income from

bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures as well as income which is subjected to the same taxation treatment, as income from money lent, by the laws of the State in which the income arises. However, the term "**interest**" does not include income dealt with in Article 10.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the 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 payer is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount 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,

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

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other 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 liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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. Income and 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 that is available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including 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 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 shares or comparable interests deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting 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 (other than property to which paragraph 7 applies) 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.
7. Where an individual ceases to be a resident of a Contracting State and by reason thereof is treated under the laws of that State as having alienated property before ceasing to be a resident of that State and is taxed in that State accordingly and, at any time thereafter, becomes a resident of the other Contracting State, the other Contracting State may tax gains in respect of the property only to the extent that such gains had not accrued while the individual was a resident of the first-mentioned State. However, this provision shall not apply to property, any gain from which that other State could have taxed in accordance with this Article, other than this paragraph, if the individual had realized the gain before becoming a resident of the 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 services or other activities of an independent character shall be taxable only in that State, unless:
 - 1) the individual has a fixed base regularly available in the other Contracting 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 Contracting State; or
 - 2) the individual's stay in the other Contracting 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 fiscal year concerned; in that case, only so much of the income as is derived from the activities performed in that other Contracting State may be taxed in that other State.

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

ARTICLE 15

Dependent Personal Services

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that 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:

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

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

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

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

4. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment directly connected with a building site or construction or installation project in the other Contracting State which does not constitute a permanent establishment of the employer paying the remuneration, or on whose behalf the remuneration is paid, under the provisions of paragraph 3 of Article 5, shall be taxable only in the first-mentioned State.

ARTICLE 16

Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in that resident's capacity as a member of the board of directors 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 person 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 to them participate directly or indirectly in the profits of the person referred to in that paragraph.

4. Notwithstanding the provisions of paragraphs 1 and 2, income derived by a resident of a Contracting State from that person's personal activities as an entertainer or as a sportsperson shall be taxable only in that State if the activities are wholly or mainly supported by public funds of one or both of the Contracting States or political subdivisions or local authorities thereof or the activities are exercised in the other Contracting State within the framework of a cultural or sports exchange programme approved by both Contracting States.

ARTICLE 18

Pensions

1. Pensions and other similar remuneration arising in a Contracting State and paid to a resident of the other Contracting State shall, subject to the provisions of paragraphs 2 and 3 of this Article, be taxable only in that other State.

2. Pensions and other similar remuneration 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. 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. Any pension paid by, or out of funds created by Serbia or a political subdivision or a local authority thereof to an individual in respect of services rendered to Serbia or to a subdivision or authority shall be taxable only in Serbia. However, such pension shall be taxable only in Canada if the individual is a resident of, and a national of Canada.

ARTICLE 19

Government Service

1.

1) 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.

2) 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:

(1) is a national of that State; or

(2) 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 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, if the income is taxable in the Contracting State in which the beneficial owner is a resident, not exceed 15 per cent of the gross amount of the income.

ARTICLE 22

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 which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other 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.

ARTICLE 23

Elimination of Double Taxation

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

1) subject to the existing provisions of the laws 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 Serbia on profits, income or gains arising in Serbia shall be deducted from any Canadian tax payable in respect of such profits, income or gains;

2) where, in accordance with any provision of this 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 Serbia, double taxation shall be eliminated as follows:

1) Where a resident of Serbia derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Canada, Serbia shall allow:

(1) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Canada;

(2) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in Canada.

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

2) Where in accordance with any provision of this Convention income derived or capital owned by a resident of Serbia is exempt from tax in Serbia, Serbia may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, 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.

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, 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.

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.

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 which 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 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 the other Contracting State or of a third State are or may be subjected.

5. The provisions of this Article shall apply to the taxes referred to in Article 2.

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 or, if that person's case comes under paragraph 1 of Article 24, 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. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this 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 which is not in accordance with this Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. A Contracting State shall not, after the expiry of the time limits provided in its domestic law and, in any case, after five years from the end of the year 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 this Convention.

They may also consult together for the elimination of double taxation in cases not provided for in this Convention.

5. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

ARTICLE 26

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, insofar as the taxation thereunder is not contrary to this Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 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 the taxes referred to in paragraph 1, or the oversight of the above. 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.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

1) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

2) 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;

3) 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*).

4. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution,

nominee or person acting in an agency or fiduciary capacity or because the information relates to ownership interests in a person.

5. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

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 this 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 or capital as are residents of that sending State.

3. This 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 or capital as are residents thereof.

ARTICLE 28

Miscellaneous Rules

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

2. Any company, trust or partnership that is a resident of a Contracting State and is beneficially owned or controlled, directly or indirectly, by one or more persons who are not residents of that State shall not be entitled to the benefits of this Convention if the amount of the tax imposed on the income

or capital of the company, trust or partnership 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) is substantially lower than the amount that would be imposed by that State if all of the shares of the capital stock of the company or all of the interests in the trust or partnership, as the case may be, were beneficially owned by one or more residents of that State.

3. Where under any provision of this Convention any income is relieved from tax in a Contracting State and, under the law in force in the other Contracting State a person, in respect of that income, is subject to tax by reference to the amount thereof that is remitted to or received in that other Contracting State and not by reference to the full amount thereof, then the relief to be allowed under this Convention in the first-mentioned Contracting State shall apply only to so much of the income as is taxed in the other Contracting State.

4. This Convention shall not apply to a company or other entity that is entitled to income tax benefits pursuant to any law in either Contracting State relating to promotion of increased economic activity (including any law providing for tax-free zones), unless:

- 1) the company or other entity is a resident of the Contracting State providing the income tax benefits and is wholly-owned directly by individuals who are residents of that State or indirectly by such individuals through one or more entities provided that all such entities are resident of that State; or
- 2) 90 per cent or more of the income eligible for such benefits is derived exclusively from the active conduct of a trade or business carried on by it other than an investment business.

ARTICLE 29

Entry into Force

1. The Contracting States shall notify each other in writing, through diplomatic channels, that the procedures required by their domestic laws for the entry into force of this Convention have been completed.

2. This Convention shall enter into force on the date of the later of these notifications and its provisions shall have effect:

1) in the case of Canada:

(1) 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 the year in which this Convention enters into force;

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

2) in the case of Serbia:

in respect of the taxes on income derived and the taxes on capital owned in each fiscal year beginning on or after the first day of January in the calendar year next following the year in which this Convention enters into force.

ARTICLE 30

Termination

This Convention shall remain in force until terminated by a Contracting State. A Contracting State may terminate this Convention, through diplomatic channels, by giving written notice of termination at least six months before the end of any calendar year after the fifth year from the date of entry into force of this Convention. In such event, this Convention shall cease to have effect:

1) in the case of Canada:

(1) 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 notice of termination has been given;

(2) 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 notice of termination has been given;

2) in the case of Serbia:

in respect of the taxes on income derived and the taxes on capital owned in each fiscal year beginning on or after the first day of January in the calendar year next following the year in which the notice of termination has been given.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Convention.

DONE in duplicate at Belgrade, this 27th day of April 2012, in the English, French and Serbian languages, each version being equally authentic.

FOR CANADA

Roman Waschuk

FOR THE REPUBLIC OF SERBIA

Dusan Nikezic

 **PROTOCOL**

At the moment of signing the *Convention between the Republic of Serbia and Canada for the Avoidance of Double Taxation with respect to Taxes on Income and Capital* (hereinafter referred to as "Convention"), the undersigned have agreed upon the following provisions, which shall form an integral part of this Convention:

1. With reference to paragraph 4 of Article 13 of this Convention, it is understood that the term "**comparable interests**" includes an interest in a partnership or trust.
2. With reference to subparagraph 2) of paragraph 1 of Article 14 of this Convention, it is understood that in the determination of the income of the individual there shall be allowed as deductions those deductible expenses incurred for the purposes of earning the income as is derived from the activities performed in the other Contracting State.
3. It is understood that, should Serbia become a member of World Trade Organization, the following provision would apply:

For the purposes of paragraph 3 of Article XXII (Consultation) of the *General Agreement on Trade in Services, of the Agreement Establishing the World Trade Organization*, done at Marrakesh on 15 April 1994, 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 4 of Article 25 or, failing agreement under that procedure, pursuant to any other procedure accepted by both Contracting States.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Protocol.

DONE in duplicate at Belgrade, this 27th day of April 2012, in the English, French and Serbian languages, each version being equally authentic.

FOR CANADA

Roman Waschuk

FOR THE REPUBLIC OF SERBIA

Dusan Nikezic