

**TAX TREATY BETWEEN  
ITALY AND CANADA  
FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON  
INCOME AND FOR THE PREVENTION OF FISCAL EVASION  
WITH PROTOCOL  
TORONTO, IL 17 NOVEMBRE 1977<sup>1 2</sup>**

The Government of Canada and the Government of Italy,

Desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income and for the prevention of fiscal evasion,

Have agreed as follows:

*Article 1 - Personal scope*

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 imposed on behalf of each Contracting State, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes on which the Convention shall apply are, in particular:
  - (a) in the case of Canada: the income taxes imposed by the Government of Canada (hereinafter referred to as "Canadian tax");
  - (b) in the case of Italy:
    - (i) the individual income tax (imposta sul reddito delle persone fisiche);
    - (ii) the corporate income tax (imposta sul reddito delle persone giuridiche);
    - (iii) the local income tax (imposta locale sui redditi), even when deducted at source (hereinafter referred to as "Italian tax").
4. The 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 changes which have been made in their respective taxation laws.

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<sup>1</sup> Ratificata con L. 21 dicembre 1978, n. 912 (G.U. 24 gennaio 1979, n. 23, S.O). Scambio degli strumenti di ratifica: 24 dicembre 1980. Entrata in vigore il 24 dicembre 1980 (G.U. 20 gennaio 1981, n. 18). Protocollo aggiuntivo del 20 marzo 1989, ratificato con L. 7 giugno 1993, n. 194. Le modifiche introdotte con il protocollo aggiuntivo non sono state inserite nel testo perché il protocollo non è ancora entrato in vigore.

<sup>2</sup> Ratified in Italy with Law L. 21 December 1978, n. 912 (G.U. 24 January 1979, n. 23, S.O). Exchange of ratification instruments: 24 December 1980. Entry into force: 24 December 1980 (G.U. 20 January 1981, n. 18). Additional protocol of 20 March 1989, ratified in Italy with Law 7 June 1993, n. 194. The text as modified by the protocol was not included since the protocol has not entered into force yet.

5. The Convention shall not apply to taxes (even when deducted at source) payable on lottery winnings, on premiums other than those on securities, and on winnings from games of chance or skill, competitions and betting.

### Article 3 - *General definitions*

1. In this Convention, unless the context otherwise requires:

(a) the terms "a Contracting State" and "the other Contracting State" mean, as the context requires, Canada or Italy;

(b) the term "Canada" used in a geographical sense, means the territory of Canada, including any area beyond the territorial waters of Canada which, under the laws of Canada, is an area within which Canada may exercise rights with respect to the seabed and subsoil and their natural resources;

(c) the term "Italy" means the Italian Republic and includes the zones outside the territorial sea of Italy and in particular the seabed and subsoil adjacent to the territory of the Italian peninsula and islands and situated outside the territorial sea up to the limit provided for under Italian laws allowing exploration of the natural resources of such zones;

(d) the term "person" includes an individual, 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; in French, the term "soci,t," also means a "corporation" within the meaning of Canadian law;

(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 his authorized representative,
- (ii) in the case of Italy, the Ministry of Finance;

(h) the term "nationals" means:

- (i) all individuals possessing the nationality of a Contracting State;
- (ii) all legal persons, partnerships and associations deriving their status as such from the laws in force in a Contracting State;

(i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State.

2. As regards the application of the Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of the Convention.

#### Article 4 - *Fiscal domicile*

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 taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who may be taxed in that State in respect only of income derived from source in that State.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
  - (a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (hereinafter referred to as his "centre of vital interests");
  - (b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
  - (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
  - (d) if he is a national of both Contracting 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 endeavour to settle the question by mutual agreement having regard in particular to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall be deemed not to be a resident of either Contracting State for the purposes of Articles VI to XX inclusive and Article XXII.

#### Article 5 - *Permanent establishment*

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.
2. The term "permanent establishment" shall include especially:
  - (a) a place of management;
  - (b) a branch;
  - (c) an office;
  - (d) a factory;
  - (e) a workshop;
  - (f) a mine, quarry or other place of extraction of natural resources;
  - (g) a building site or construction or installation project which exists for more than 12 months.

3. The term "permanent establishment" shall not be deemed 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 for collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State - other than an agent of an independent status to whom paragraph 5 applies - shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

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

6. 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 from immovable property including income from agriculture or forestry may be taxed in the Contracting State in which such property is situated.

2. The term "immovable property" shall be defined in accordance with 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 as well as rights to which the provisions of general law respecting landed property apply. Usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources shall also be deemed to be "immovable property". Ships, boats 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 used for the performance of professional 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, whether incurred 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 - *Shipping and air transport*

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.
3. 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*

Where:

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

## 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 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 recipient is the beneficial owner of the dividends, the tax so charged shall not exceed 15% of the gross amount of the dividends. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation. 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 from other rights which is subjected to the same taxation treatment as income from shares by the taxation 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 recipient 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 professional services from a fixed base situated therein, and the holding by virtue of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the dividends may be taxed in that other Contracting State in accordance with its own internal laws.
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 provisions of this Convention a company which is a resident of Italy and which has a permanent establishment in Canada shall, in accordance with the provisions of Canadian law, remain subject to the additional tax on companies other than Canadian corporations, but the rate of such tax shall not exceed 15% and the taxable base for such tax shall not include profits attributable to a permanent establishment in Canada of a company which is a resident of Italy earned in a year during which the business of the company was not carried on principally in Canada.

#### 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 be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 15% of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, interest arising in one of the Contracting States shall not be taxable in that State if:

(a) the payer of the interest is that Contracting State or a political or administrative sub-division or local authority thereof; or

(b) the interest is paid to the other Contracting State or a political or administrative sub-division or local authority thereof or to an institution or organization (including financial institutions) wholly owned by that Contracting State or subdivision or authority thereof; or

(c) the interest is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by any institution specified and agreed in letters exchanged between the competent authorities of the Contracting States.

4. The term "interest" as used in this Article means income from government securities, from bonds or debentures, whether or not secured by mortgages and whether or not carrying a right to participate in profits, and from debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation laws of the State in which the income arises. However, the term "interest" does not include income dealt with in Article X.

5. The provisions of paragraphs 1 and 2 shall not apply if the recipient 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 professional 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 interest may be taxed in that other Contracting State in accordance with its own internal laws.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political or administrative subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which

the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

7. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, 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 recipient 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 be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 10% of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or artistic work (but not including royalties in respect of motion picture films and recordings for television broadcasting) arising in a Contracting State and paid to a resident of the other Contracting State who is the beneficial owner thereof shall be taxable only in that other State.

4. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including motion picture films and recordings for radio and television broadcasting, patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the recipient 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 professional 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 royalties may be taxed in that other Contracting State in accordance with its own internal laws.

6. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political or administrative subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the royalties was incurred, and those royalties are borne as such by that permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

7. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, 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 recipient 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 from the alienation of immovable property, as defined in paragraph 2 of Article VI, may be taxed in the Contracting State in which such property is situated.
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 professional 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 the other State. However, gains from the alienation of ships or aircraft operated in international traffic and movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
3. Gains from the alienation of shares of a company, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State. Gains from the alienation of an interest in a partnership or a trust, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State.
4. Gains from the alienation of any property, other than those mentioned in paragraphs 1, 2 and 3 shall be taxable only in the Contracting State of which the alienator is a resident.
5. The provisions of paragraph 4 shall not affect the right of a Contracting State to tax according to its law gains derived by an individual who is a resident of the other Contracting State from the alienation of any property, if the alienator:
  - (a) is a national of the first-mentioned State or was a resident of that first-mentioned 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 alienation.

#### Article 14 - *Independent personal services*

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.

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

#### Article 15 - *Dependent personal services*

1. Subject to the provisions of Articles XVI, XVIII, XIX and XX, 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:

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days 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 shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

#### Article 16 - *Directors' fees*

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

#### Article 17 - *Artistes and athletes*

1. Notwithstanding the provisions of Articles XIV and XV, income derived by entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

2. Where income in respect of personal activities as such of an entertainer or athlete accrues not to that entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles VII, XIV and XV, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

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

#### Article 18 - *Pensions*

1. Pensions arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State. However, such pensions may also be taxed in the first-mentioned Contracting State but only to the extent that the total amount thereof paid in any taxation year to a resident of the other Contracting State exceeds ten thousand Canadian dollars or twelve million Italian liras, whichever is the greater. However, the tax so charged shall not exceed the lesser of

(a) 15% of the gross amount of the periodic payment; 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 him in the year, if he were resident in the Contracting State in which the payment arises.

The competent authorities of the Contracting State may, if necessary, agree to modify the above-mentioned amounts as a result of monetary or economic developments.

2. Notwithstanding anything in this Convention, pensions paid by, or out of funds created by, the Italian 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 Italy.

#### Article 19 - *Government service*

1. (a) 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 sub-division or local authority thereof shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the recipient 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 XV, XVI and XVIII shall apply to remuneration or pensions in respect of services rendered in connection with a business carried on by one of the Contracting States or a political or administrative sub-division or a local authority thereof.

#### Article 20 - *Students*

Payments which a student or business apprentice who is or was formerly a resident of a Contracting State and who is present in the other Contracting State solely for the purpose of his education or professional training shall not be taxed in that other State, provided that such payments are made to him from sources outside that other State.

## Article 21 - *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 Italy on profits, income or gains arising in Italy shall be deducted from any Canadian tax payable in respect of such profits, income or gains.

(b) Subject to the existing provisions of the law of Canada regarding the determination of the exempt surplus of a foreign affiliate and to any subsequent modification of those provisions - which shall not affect the general principle hereof - for the purpose of computing Canadian tax, a company resident in Canada shall be allowed to deduct in computing its taxable income any dividend received by it out of the exempt surplus of a foreign affiliate resident in Italy.

2. In the case of Italy, double taxation shall be avoided as follows: Where a resident of Italy derives items of income which may be taxed in Canada, Italy may, in computing its own income taxes referred to in Article II of this Convention, include such items of income in the tax base unless otherwise expressly provided by this Convention.

In such case, Italy shall allow as a deduction from the tax so computed the income taxes paid in Canada but the deduction shall not exceed the proportion of Italian tax attributable to such items of income that such items bear to the entire income.

No deduction will, however, be allowed in cases where, at the request of the recipient and in accordance with Italian laws, the item of income is subjected to tax in Italy by way of a final withholding.

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

## Article 22 - *Non-discrimination*

1. The nationals of a Contracting State, whether or not they are residents of one of the Contracting States, 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 are or may be subjected.

In particular, the nationals of a Contracting State who are subject to tax in the other Contracting State shall be granted the same exemptions, basic abatements, deductions and reductions for taxation purposes on account of family responsibilities which are granted to nationals of the other Contracting State in the same circumstances.

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. 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.

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

#### *Article 23 - Mutual agreement procedure*

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article XXII, to that of the Contracting State of which he is a national. The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the Convention.

2. That Competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate 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. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

#### *Article 24 - 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 this Convention insofar as the taxation thereunder is not contrary to this Convention and for the prevention of fiscal evasion. The exchange of information is not restricted by Article I. 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) involved in the assessment or collection of, the enforcement in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the

information only for such purposes. These persons or authorities 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 one of the Contracting States the obligation: (a) to carry out administrative measures at variance with the laws or 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 25 - Diplomatic and consular officials*

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

#### *Article 26 - Request for refunds*

1. Taxes withheld at source in Italy shall, at the request of the taxpayer, be refunded to the extent that the right to levy the taxes is limited by the provisions of this Convention. Such request shall be submitted within the time limits provided for by the Italian laws and must contain an official certificate issued by the competent authority of Canada stating that the conditions for claiming the exemptions or reductions provided for in this Convention have been fulfilled.

2. The competent authorities of the Contracting States may, by mutual agreement and in accordance with the provisions of Article XXIII, agree on other procedures for the application of the limitations provided for by this Convention.

#### *Article 27 - Entry into force*

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

2. The Convention shall enter into force upon 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 nonresidents on or after the first day of January in the calendar year in which the exchange of instruments of ratification takes place; and

(ii) in respect of other Canadian tax for taxation years beginning on or after the first day of January in the calendar year in which the exchange of instruments of ratification takes place;

(b) in Italy:

in respect of income derived during the taxable periods beginning on or after the first day of January in the calendar year in which the exchange of instruments of ratification takes place.

3. The exchange of notes between Canada and Italy dated March 29, 1932 concerning the reciprocal tax exemption on income derived from the operation of ships, and dated October 29, 1974 concerning an Agreement for the avoidance of double taxation of income derived from the operation of aircraft, are terminated.

Their provisions shall cease to have effect with respect to taxes to which this Convention applies in accordance with paragraph 2.

#### *Article 28 - Termination*

This Convention shall continue in effect indefinitely but either Contracting State may, on or before June 30 in any calendar year after the expiration of the fifth year from that of its ratification, give to the other Contracting State a notice of termination in writing and through diplomatic channels. In such event, the Convention shall cease to have effect:

(a) in Canada:

(i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January in the calendar year following that in which the notice is given; and

(ii) in respect of other Canadian tax for taxation years beginning on or after the first day of January in the calendar year following that in which the notice is given;

(b) in Italy: in respect of income derived during the taxable periods beginning on or after the first day of January in the calendar year following that in which the notice is given.

In witness whereof the plenipotentiaries of both States have signed this Convention and have thereto affixed their seals.

Done at Toronto, this 17th of November, 1977 in duplicate in the English, French and Italian languages, each version being equally authentic.

## *PROTOCOL*

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

It is understood that:

- (a) with reference to subparagraph (d) of paragraph 1 of Article III, the term "person" includes in the case of Canada a partnership, an estate and a trust;
- (b) with reference to paragraph 3 of Article IV, the compromise solution adopted reflects the common desire of both Contracting States to prevent fiscal evasion;
- (c) with reference to Articles V and VIII, ferryboats, 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, not be considered to be operated in international traffic; it is further agreed that the landing site or sites situated in the Contracting State and used regularly in such operation by such boats or vessels shall constitute a permanent establishment in the State of the enterprise operating such boats or vessels;
- (d) with reference to paragraph 1 of Article VII, where an enterprise of a Contracting State which has carried on business in the other Contracting State through a permanent establishment situated therein, receives, after it has ceased to carry on business as aforesaid, profits attributable to that permanent establishment, such profits may be taxed in that other State in accordance with the principles laid down in Article VII;
- (e) with reference to paragraph 3 of Article VII, the term "expenses which are incurred for the purposes of the permanent establishment" means those deductible expenses directly relating to the business of the permanent establishment;
- (f) the provisions of paragraphs 1 and 2 of Article XIII shall also apply to profits from the alienation of property referred to therein;
- (g) with reference to Article XIII, the inclusion of the provisions contained in paragraph 3 of the said Article arises from extensive possibilities of abuses in connection with investment in immovable property in a Contracting State by non-residents and takes into account the fact that one of the Contracting States has ascertained the existence of actual cases of fiscal evasion in this area;
- (h) with reference to paragraph 1 of Article XXIII the term "irrespective of the remedies provided by the national laws" means, in the case of Italy, that the introduction of a mutual agreement procedure does not represent an alternative to the national legal procedures to which, in all cases, recourse must first be had when the conflict relates to an application of Italian taxes which is not in accordance with the Convention;
- (i) this Convention shall not apply to International Organizations, to organs or officials thereof and to persons who are members of a diplomatic, consular or permanent mission of a third State, being present in a Contracting State and who are not liable in either Contracting State to the same obligation in relation to tax on their total world income as are residents thereof;

(j) nothing in this Convention shall be construed to restrict in any manner any tax allowance now or hereafter accorded by the domestic law of a Contracting State or by any other agreement entered into by a Contracting State;

(k) Nothing in this Convention shall be construed as preventing the application of the provisions of the domestic law of each Contracting State concerning fiscal evasion, in particular the taxation of income of persons in respect of their participation in non-resident companies.

In witness whereof the plenipotentiaries of both States have signed this Protocol of Understanding and have thereto affixed their seals.

Done at Toronto, this 17th of November, 1977, in duplicate in the English, French and Italian languages, each version being equally authentic.

## ADDITIONAL PROTOCOL

The Government of Canada and the Government of Italy,

Desiring to conclude a Protocol to amend the Convention between the Contracting States for the avoidance of double taxation with respect to taxes on income and for the prevention of fiscal evasion signed at Toronto on 17 November 1977,

Have agreed as follows:

### Article 1

The following paragraphs are added to Article XVIII of the Convention: "3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, any social security payment arising in one of the Contracting States and paid in a taxable period to an individual who is a resident of the other Contracting State shall be taxable only in the first-mentioned State, provided that the income of the individual for the period that is taxable in the other Contracting State in aggregate, excluding the said social security payments, does not exceed the amount of twenty-four thousand Canadian dollars or twenty-seven million Italian lira, whichever is the greater. For the purposes of this paragraph, the term "social security payment" means:

(a) in the case of Canada, any pension or benefit paid under the Old Age Security Act; and

(b) in the case of Italy, only such portion of any pension or benefit paid under the social security laws of Italy as is certified by the competent authority of Italy as the amount necessary to increase such pension or benefit to the minimum amount for the category of pension payable to that individual under those laws.

The competent authorities of the Contracting States may, if necessary, agree to modify the above-mentioned amounts as a result of monetary or economic developments.

4. Notwithstanding any provision of this Convention, war veterans pensions and allowances arising in a Contracting State and received by a resident of the other Contracting State shall not be taxable in that other State as long as they would not be taxable if received by a resident of the Contracting State in which they arise.

5. Paragraph 1 of this Article shall not apply to pensions dealt with in paragraph 2 hereof.

6. Notwithstanding the provisions of paragraphs 1 and 2, where an individual who is a resident of a Contracting State in a particular taxable period first receives a payment under a pension fund in the other Contracting State that can reasonably be attributed to a pension to which the individual was entitled for any period preceding that particular period, the individual may in each Contracting State elect to treat for the purposes of taxation in each such State such portion as he may elect of the payment relating to all preceding periods as having been paid to and received by him on the last day of the taxable period immediately preceding the particular period and not to have been so paid to and received by him in that particular period.

Article 2

1. This Protocol shall be ratified and the instruments of ratification shall be exchanged in Rome as soon as possible.
2. This Protocol shall enter into force on the date of the exchange of the instruments of ratification and its provisions shall have effect from the first day of January 1988.

In witness whereof the undersigned, duly authorized thereto, have signed this Protocol.

Done in duplicate at Ottawa this 20th day of March 1989, in the English, French and Italian languages, each version being equally authentic.