

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

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Canada and the Republic of Bulgaria, desiring to further develop and facilitate their mutual economic relationship and desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, have agreed as follows:

I. Scope of the Convention

Personal Scope

Art. 1

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

Taxes Covered

Art. 2

1. This Convention shall apply to taxes on income and on capital imposed on behalf of each Contracting State, irrespective of the manner in which they are levied.

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

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

(a) in the case of Canada:

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

(b) in the case of the Republic of Bulgaria:

(i) the individual income tax,

(ii) the corporate income tax, and

(iii) the real property tax,

(hereinafter referred to as "Bulgarian tax").

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

II. Definitions

General Definitions

Art. 3

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

(a) the terms:

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

(ii) "Bulgaria" means the Republic of Bulgaria and, when used in a geographical sense, means the territory and the territorial sea over which it exercises its State sovereignty, as well as the continental shelf and the exclusive economic zone over which it exercises sovereign rights or jurisdiction in conformity with international law;

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

(c) the term "person" includes an individual and:

(i) in the case of Canada, a trust, a company and any other body of persons;

(ii) in the case of Bulgaria any legal person, including a company and any other body of persons;

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

(e) the term "competent authority" means:

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

(ii) in the case of Bulgaria, the Minister of Finance or his authorized representative;

(f) the term "national" means:

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

(ii) any legal person or body of persons deriving its status from the laws in force in a Contracting State;

(g) the term "tax" means Canadian tax or Bulgarian tax, as the context requires;

(h) the term "international traffic" means any transport by a ship or aircraft operated by a resident of a Contracting State, except where 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 at any time, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the laws of that State concerning the taxes to which the Convention applies.

Resident

Art. 4

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

(a) any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature; but 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;

(b) the Government of that Contracting State or of a political subdivision or local authority or any legal entity owned by that State, subdivision or authority; and

(c) in the case of Bulgaria, any individual who, under the laws of Bulgaria, is liable to tax therein by reason of his nationality and whose personal and economic relations are closer to Bulgaria than to any third 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 only of the State with which his personal and economic relations are closer (centre of vital interests);

(b) if the State in which he has his centre of vital interests cannot be determined, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a company is a resident of both Contracting States, then it shall be deemed to be a resident only of the State under the laws of which it has been created.

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

Permanent Establishment

Art. 5

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

2. The term "permanent establishment" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and

(g) a building site or construction or installation project which exists for more than six months.

3. Notwithstanding the preceding provisions of this Art., the term "permanent establishment" in respect of a resident of a Contracting State shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the resident;

(b) the maintenance of a stock of goods or merchandise belonging to the resident solely for the purpose of storage, display or delivery;

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

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

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

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e) provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

4. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 5 applies - is acting on behalf of a resident of a Contracting State and has, and habitually exercises in the other Contracting State an authority to conclude contracts in the name of the resident, that resident shall be deemed to have a permanent establishment in that other State in respect of any activities which that person undertakes for the resident unless the activities of such person are limited to those mentioned in paragraph 3 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.

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

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.

III. Taxation of Income

Income From Immovable Property

Art. 6

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

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

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

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property used in carrying on a business or in the performance of independent professional services.

Business Profits

Art. 7

1. The business profits of a resident of a Contracting State shall be taxable only in that State unless the resident carries on business in the other Contracting State through a permanent establishment situated therein. If the resident carries on business as aforesaid, the business profits of the resident 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 a resident 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 business profits which it might be expected to make if it were a distinct and separate person engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the resident and with all other persons.

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

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

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

6. Where business profits include items of income which are dealt with separately in other Arts of this Convention, then the provisions of those Arts shall not be affected by the provisions of this Art..

Shipping and Air Transport

Art. 8

1. Profits derived by a resident 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 Art. 7, profits derived from the operation of ships or aircraft used principally to transport passengers or goods exclusively between places in a Contracting State may be taxed in that State.

3. The provisions of paragraphs 1 and 2 shall also apply to profits referred to in those paragraphs derived by a resident of a Contracting State from its participation in a pool, a joint business or an international operating agency.

Associated Persons

Art. 9

1. Where

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

(b) the same persons participate directly or indirectly in the management, control or capital of a resident of a Contracting State and a resident of the other Contracting State,

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

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

3. A Contracting State shall not change the income of a person in the circumstances referred to in paragraphs 1 and 2 after the expiry of the time limits provided in its national laws and, in any case, after five years from the end of the year in which the income which would be subject to such change would, but for the conditions referred to in paragraph 1, have accrued to that person.

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

Dividends

Art. 10

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 recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

(a) except in the case of dividends paid by a non-resident owned investment corporation that is a resident of Canada, 10 per cent of the gross amount of the dividends if the beneficial owner is a company which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividends;

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

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

3. The term "dividends" as used in this Art. means income from shares or other rights, not being debt-claims, participating in profits, as well as income which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraph 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on 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 professional 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 Art. 7 or Art. 14, as the case may be, shall apply.

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

Interest

Art. 11

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 recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2:

(a) interest arising in a Contracting State and paid in respect of a bond or other similar obligation of the government of that Contracting State or of a political subdivision or local authority thereof shall, provided that the interest is beneficially owned by a resident of the other Contracting State, be taxable only in that other State;

(b) interest arising in a Contracting State and paid to the government or the central bank of the other Contracting State, provided the central bank is wholly-owned by that other State, shall be taxable only in that other State;

(c) interest arising in Bulgaria and paid to a resident of Canada shall be taxable only in Canada if it is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured

by the Export Development Corporation; and

(d) interest arising in Canada and paid to a resident of Bulgaria shall be taxable only in Bulgaria if it is paid in respect of a loan made, guaranteed or insured by:

(i) the Bulgarian National Bank;

(ii) the Bulgarian Foreign Trade Bank; or

(iii) any other entity as may be specified and agreed in letters exchanged between the competent authorities of the Contracting States.

4. The term "interest" as used in this Art. 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, including premiums attaching to such securities or bonds, 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 Art. 10.

5. The provisions of paragraph 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, or performs in that other State independent 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 provisions of Art. 7 or Art. 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political 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 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 of the interest 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 Art. 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.

Royalties

Art. 12

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 recipient is the beneficial owner of the royalties the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. Notwithstanding the provisions of paragraph 2, copyright royalties and other like payments in respect of the production or reproduction of any cultural, dramatic, musical or other artistic work (but not including royalties in respect of motion picture films and works on film or videotape or other means of reproduction for use in connection with television), arising in a Contracting State and paid to a resident of the other Contracting State who is subject to tax thereon shall be taxable only in that other State.

4. The term "royalties" as used in this Art. means payments of any kind received as a consideration for the use of, or the right to use, any copyright, patent, certificate of invention, trade

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

5. The provisions of paragraphs 2 and 3 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, or performs in that other State independent 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 provisions of Art. 7 or Art. 14, as the case may be, shall apply.

6. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political 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 or a fixed base in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner of the royalties 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 Art. 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.

Capital Gains

Art. 13

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

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which a resident of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent professional services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise carried on by such resident) or of such a fixed base may be taxed in that other State.

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

4. Gains from the alienation of any property, other than that referred to 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 either of the Contracting States to levy, according to its law, a tax on gains from the alienation of any property derived by an individual who is a resident of the other Contracting State and has been a resident of the first-mentioned State at any time during the six years immediately preceding the alienation of the property.

Independent Professional Services

Art. 14

1. Income derived by an individual who is a resident of a Contracting State in respect of

professional services 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 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, independent activities of physicians, lawyers, engineers, architects, dentists and accountants as well as other activities of an independent character.

Dependent Personal Services

Art. 15

1. Subject to the provisions of Arts 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:

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

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

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

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

Directors' Fees

Art. 16

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

Artistes and Sportsmen

Art. 17

1. Notwithstanding the provisions of Arts 7, 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 sportsman, from his 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 sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Arts 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. The provisions of paragraph 2 shall not apply if it is established that neither the entertainer or

the sportsman nor persons related thereto, participate directly or indirectly in the profits of the person referred to in that paragraph.

4. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting State by a resident of the other Contracting State if these activities are performed:

(a) in the context of a visit in the first-mentioned State of a non-profit organization of the other State, provided that the visit is wholly supported by public funds; or

(b) in the context of the visit of a cultural group in the first-mentioned State within the framework of a cultural agreement between the Contracting States.

Pensions and Annuities

Art. 18

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

2. Pensions arising in a Contracting State and paid to a resident of the other Contracting State may also be taxed in the State in which they arise, and according to the law of that State. However, in the case of periodic pension payments, the tax so charged shall not exceed 15 per cent of the gross amount of the payment.

3. Annuities arising in a Contracting State and paid to a resident of the other Contracting State may also be taxed in the State in which they arise, and according to the law of that State; but the tax so charged shall not exceed 10 per cent of the portion thereof that is subject to tax in that State. However, this limitation does not apply to lump-sum payments arising on the surrender, cancellation, redemption, sale or other alienation of an annuity, or to payments of any kind under an annuity contract the cost of which was deductible, in whole or in part, in computing the income of any person who acquired the contract.

4. For the purposes of this Convention, the term "annuity" means a stated sum payable to an individual periodically at stated times during his life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or in money's worth, but does not include a pension or a payment that is not a periodic payment or any annuity the cost of which was deductible for the purposes of taxation in the Contracting State in which it was acquired.

5. Notwithstanding anything in this Convention:

(a) alimony, maintenance and child support payments in respect of a divorce or a separation, arising in a Contracting State and paid to a resident of the other Contracting State who is subject to tax therein in respect thereof, shall be taxable only in that other State; and

(b) payments under the social security legislation in a Contracting State made to a resident of the other Contracting State shall be taxable only in the first-mentioned State.

Government Service

Art. 19

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

(a) is a national of that other State; or

(b) became a resident of that other State not solely for the purpose of rendering the services.

2. The provisions of paragraph 1 shall not apply to 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.

Students

Art. 20

1. Payments which a student, business apprentice or 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 his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

2. A student, business apprentice or trainee referred to in paragraph 1 shall be entitled, in the Contracting State that he visits, to the same exemptions, reliefs or reductions in respect of taxes as are available to residents of a third State in the same circumstances.

Other Income

Art. 21

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 Art.s of this Convention shall be taxable only in that State.

2. However, if such income is derived by a resident of a Contracting State from sources in the other Contracting State, such income may also be taxed in the State in which it arises, and according to the law of that State. However, in the case of income arising in Canada from a trust, other than a trust to which contributions were deductible, the tax so charged shall, provided that the income is taxable in Bulgaria, not exceed 15 per cent of the gross amount of the income.

3. The provisions of paragraph 1 shall not apply to income, other than income from immovable property, if the recipient of the income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent professional services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Art. 7 or Art. 14, as the case may be, shall apply.

IV. Taxation of Capital

Capital

Art. 22

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 a resident 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 professional services, may be taxed in that other State.

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

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

V. Methods for Prevention of Double Taxation

Elimination of Double Taxation

Art. 23

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 Bulgaria on profits, income or capital gains arising in Bulgaria shall be deducted from any Canadian tax payable in respect of such profits, income or capital gains.

(b) Subject to the existing provisions of the law of Canada regarding the taxation of income from 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 which is a resident of 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 which is a resident of Bulgaria.

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

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

(a) Where a resident of Bulgaria derives income or owns capital which in accordance with the provisions of this Convention may be taxed in Canada, Bulgaria shall, subject to the provisions of subparagraphs (b) and (c) of this paragraph, exempt such income or capital from tax.

(b) Where a resident of Bulgaria derives dividends, interest, royalties or capital gains which in accordance with the provisions of Art.s 10, 11, 12 and paragraph 5 of Art. 13 of this Convention may be taxed in Canada, Bulgaria shall allow as a deduction from the tax on the dividends, interest, royalties or capital gains of that resident an amount equal to the tax paid in Canada. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such dividends, interest, royalties or capital gains derived from Canada.

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

3. For the purposes of this Art., profits, income or capital 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.

4. For the purposes of subparagraph (a) of paragraph 1, tax payable under the law of Bulgaria by a company which is a resident of Canada in respect of profits attributable to manufacturing, tourism and agricultural activities, exploration or exploitation of natural resources and construction or telecommunication projects carried on by it in Bulgaria shall be deemed to include any amount which would have been payable thereon as Bulgarian tax for any year but for an exemption from, or reduction of, tax granted for that year or any part thereof under specific Bulgarian legislation to promote economic development to the extent that the exemption or reduction is for a period not in excess of ten years.

VI. Special Provisions

Non-Discrimination

Art. 24

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. The taxation on a permanent establishment which a resident 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 residents of that other State carrying on the same activities.

3. Nothing in this Art. 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. Except where the provisions of paragraph 1 of Art. 9 or paragraph 7 of Art. 12 apply, royalties and other disbursements, other than interest, paid by a resident of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such resident, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of a resident of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such resident, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

5. Except where the provisions of paragraph 1 of Art. 9 or paragraph 7 of Art. 11 apply, interest paid by a resident of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such resident, be deductible under the same conditions as if they had been paid to a resident of a third State.

6. Companies which are residents 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 more burdensome than the taxation and connected requirements to which other similar companies which are residents of the first-mentioned State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State, are or may be subjected.

7. In this Art., the term "taxation" means taxes which are the subject of this Convention.

8. The provisions of paragraphs 4 and 5 shall not affect the ability of a Contracting State to provide that a person which is not a resident of that State does not enjoy, under the laws of that State, a tax treatment that is more favourable than that enjoyed by residents of that State.

Mutual Agreement Procedure

Art. 25

1. Where a person 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 domestic law of those States, address to the competent authority of the Contracting State of which he is a resident an application in writing stating the grounds for claiming the revision of such taxation. To be admissible, the said application must be submitted within two years from the first notification of the action which gives rise to taxation not in accordance with the Convention.

2. The competent authority referred to in paragraph 1 shall endeavour, if the objection appears

to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Convention.

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

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

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

Exchange of Information

Art. 26

1. The competent authorities of the Contracting States shall exchange such information as is relevant for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Art. 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement in respect of, or the determination of appeals in relation to taxes. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. If information is requested by a Contracting State in accordance with this Art., the other Contracting State shall endeavour to obtain the information to which the request relates in the same way as if its own taxation were involved notwithstanding the fact that the other State does not, at that time, need such information.

3. Nothing in paragraphs 1 and 2 shall be construed so as to impose on a Contracting State 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).

Diplomatic Agents and Consular Officers

Art. 27

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

2. Notwithstanding Art. 4, an individual who is a member of a diplomatic mission, consular post or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed for the purposes of the Convention to be a resident of the sending State if he

is liable in the sending State to the same obligations in relation to tax on his total income as are residents of that sending State.

3. The Convention shall not apply to international organizations, to organs or officials thereof and to persons who are members of a diplomatic mission, consular post or permanent mission of a third State or group of States, being present in a Contracting State and who are not liable in either Contracting State to the same obligations in relation to tax on their total income as are residents thereof.

Miscellaneous Rules

Art. 28

1. The provisions of this Convention shall not be construed to restrict in any manner any exemption, allowance, credit or other deduction accorded:

- (a) by the laws of a Contracting State in the determination of the tax imposed by that State; or
- (b) by any other agreement entered into by a Contracting State.

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

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 which 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. For purposes of paragraph 3 of Art. XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that, notwithstanding that paragraph, any dispute between them as to whether a measure falls within the scope of this Convention may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph 4 of Art. 25 or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.

VII. Final Provisions

Entry Into Force

Art. 29

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at _____.

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

(a) 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 exchange of instruments of ratification takes place; and

(b) in respect of other tax for taxation years beginning on or after the first day of January in the calendar year next following that in which the exchange of instruments of ratification takes place.

Termination

Art. 30

This Convention shall continue in effect indefinitely but either Contracting State may, on or

before June 30 of any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting State a notice of termination in writing through diplomatic channels; in such event, the Convention shall cease to have effect:

(a) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January of the next following calendar year; and

(b) in respect of other tax for taxation years beginning on or after the first day of January of the next following calendar year.

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

Done in duplicate at Ottawa, this 3rd day of March 1999, in the English, French and Bulgarian languages, each version being equally authentic.

FOR CANADA:

Robert Wright

FOR THE REPUBLIC OF BULGARIA:

Slav Danev

PROTOCOL

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

1. With reference to subparagraph (a) of paragraph 1 of Art. 4 of the Convention it is understood that for the purposes of the application of the Convention to,

(a) income taxes, the term "liable to tax" refers to liability to taxes on income and not to taxes on capital;

(b) capital taxes, the term "liable to tax" refers to liability to taxes on capital and not to taxes on income.

2. It is understood that the provisions of paragraph 1 of Art. 6 of the Convention shall apply to income from the alienation of immovable property.

3. With reference to Art. 7 of the Convention, it is understood that where a resident of a Contracting State has carried on business in the other Contracting State through a permanent establishment situated therein, the business profits of the resident that are attributable to that permanent establishment and that are received by the resident after it has ceased to carry on business as aforesaid, may be taxed in that other State in accordance with the principles laid down in Art. 7.

4. It is understood that, notwithstanding any provision of the Convention, a company or a legal person which is a resident of Bulgaria 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 10 per cent.

5. It is understood that, notwithstanding the provisions of paragraph 4 of Art. 13 of the Convention, gains derived by a resident of a Contracting State from the alienation of:

(a) shares (other than shares quoted on an approved stock exchange in the other State) forming part of a substantial interest in the capital stock of a company which is a resident of that other State the value of which shares is derived principally from immovable property situated in that other State; or

(b) a substantial interest in a partnership or trust, established under the law in the other State, the value of which is derived principally from immovable property situated in that other State,

may be taxed in that other State. For the purposes of this paragraph, the term "immovable property" includes the shares of a company referred to in subparagraph (a) or an interest in a partnership or trust referred to in subparagraph (b) but does not include any property, other than rental property, in

which the business of the company, partnership or trust is carried on; and a substantial interest exists when the resident or persons related thereto own 25 per cent or more of the shares of any class of the capital stock of a company or have an interest of 25 per cent or more in a partnership or trust.

6. With reference to Art. 14 of the Convention, it is understood that where a resident of a Contracting State has exercised independent professional services in the other Contracting State through a fixed base situated therein, the income of the resident that is attributable to that fixed base and that is received by the resident after the resident has ceased to exercise services as aforesaid, may be taxed in that other State in accordance with the principles laid down in Art. 14.

7. In the event that pursuant to an Agreement or Convention concluded with a country that is a member country of the Organisation for Economic Co-operation and Development after the date of signature of this Convention, Bulgaria agrees to a rate of tax on dividends or royalties that is lower than 10 per cent, then such lower rate (but not in any event a rate below 5 per cent for dividends) shall apply for the purpose of subparagraph (a) of paragraph 2 of Art. 10 of the Convention with respect to dividends or paragraph 2 of Art. 12 of the Convention with respect to royalties for the use of, or the right to use, computer software or any patent or for information concerning industrial, commercial or scientific experience (but not including any such information provided in connection with a rental or franchise agreement), as the case may be.

8. Notwithstanding anything in the Convention, the provisions of paragraph 4 of Art. 23 of the Convention shall apply only for the first five years for which the Convention is effective, but the competent authorities of the Contracting States may consult with each other to determine whether this period shall be extended for a further period of five years.

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

Done in duplicate at Ottawa, this 3rd day of March 1999, in the English, French and Bulgarian languages, each version being equally authentic.

FOR CANADA:

Robert Wright

FOR THE REPUBLIC OF BULGARIA:

Slav Danev