

GOVERNMENT NOTICE No. 164

TRINIDAD AND TOBAGO

THE INCOME TAX ORDINANCE, CH. 33 No. 1

ORDER

MADE BY THE GOVERNOR-GENERAL UNDER SECTION 47 (1) OF THE INCOME TAX ORDINANCE, AS ENACTED BY SECTION 32 OF THE FINANCE ACT, 1966

THE DOUBLE TAXATION RELIEF (CANADA) ORDER, 1966

WHEREAS it is provided by subsection (1) of section 47 of the Income Tax Ordinance that if the Governor-General by Order published in the *Gazette* declares that arrangements specified in the Order have been made with the Government of any country with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that country, and that it is expedient that these arrangements shall have effect:

And whereas by an Agreement dated the 28th day of September, 1966 made between the Government of Trinidad and Tobago and the Government of Canada, arrangements were made *inter alia* for the avoidance of double taxation:

Now, therefore, the Governor-General in pursuance of the said subsection (1) of section 47 of the Income Tax Ordinance is pleased to order, and it is hereby ordered as follows:—

1. This Order may be cited as the Double Taxation Relief (Canada) Order, 1966.
2. It is hereby declared:
 - (a) that the arrangements specified in the Schedule have been made with the Government of Canada;
 - (b) that it is expedient that those arrangements should have effect.

 SCHEDULE

AN AGREEMENT BETWEEN THE GOVERNMENT OF TRINIDAD AND TOBAGO AND THE GOVERNMENT OF CANADA WITH RESPECT TO TAXES ON INCOME FOR THE AVOIDANCE OF DOUBLE TAXATION THE PREVENTION OF FISCAL EVASION AND THE ENCOURAGEMENT OF INTERNATIONAL TRADE AND INVESTMENT

The Government of Trinidad and Tobago and the Government of Canada, desiring to conclude an Agreement with respect to taxes on income, for the avoidance of double taxation, the prevention of fiscal evasion, and the encouragement of international trade and investment have agreed as follows:—

ARTICLE I

- (1) The taxes which are the subject of this Agreement are—
 - (a) in Trinidad and Tobago:

the corporation tax and the income tax which are imposed by the Government of Trinidad and Tobago;
 - (b) in Canada:

the income taxes, including the old age security tax on income, which are imposed by the Government of Canada.

(2) This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes by either Government.

ARTICLE II

(1) In this Agreement unless the context otherwise requires:

- (a) the term "Trinidad and Tobago" means the country of Trinidad and Tobago and the territorial waters thereof and when used in a geographical sense means the island of Trinidad and the Island of Tobago and their dependencies;
- (b) the terms "one of the Contracting States" and "the other Contracting State" mean Trinidad and Tobago or Canada as the context requires;
- (c) the term "person" includes individuals, companies and all other entities which are treated as taxable units under the taxation laws in force in either Contracting State;
- (d) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (e) the terms "enterprise of one of the Contracting States" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of one of the Contracting States and an enterprise carried on by a resident of the other Contracting State; the terms "Trinidad and Tobago enterprise" and "Canadian enterprise" mean respectively an enterprise carried on by a resident of Trinidad and Tobago and an enterprise carried on by a resident of Canada;
- (f) the term "nationals" means all individuals possessing the nationality of one of the Contracting States and all legal persons, partnerships and associations deriving their status as such from the law in force in that Contracting State;
- (g) the term "international traffic" includes traffic between places in one country in the course of a voyage which extends over more than one country;
- (h) the term "taxation authorities" means in the case of Trinidad and Tobago the Minister of Finance or his authorised representative and in the case of Canada the Minister of National Revenue or his authorized representative;
- (i) the term "Trinidad and Tobago tax" means tax imposed by Trinidad and Tobago being tax to which this Agreement applies by virtue of Article I; the term "Canadian tax" means tax imposed by Canada being tax to which this Agreement applies by virtue of Article I.

(2) In the application of this Agreement by one of the Contracting States any term which is not defined in this Agreement 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 this Agreement.

ARTICLE III

(1) For the purposes of this Agreement the terms "resident of Trinidad and Tobago" and "resident of Canada" mean respectively any person who is resident in Trinidad and Tobago for the purposes of Trinidad and Tobago tax and any person who is resident in Canada for the purposes of Canadian tax, and the terms "resident of one of the Contracting states" and "resident of the other Contracting State" mean any person who is a resident of Trinidad and Tobago or a resident of Canada as the context requires.

(2) Where by reasons of the provisions of paragraph (1) an individual is a resident of both Contracting States his status shall be determined in accordance with the following rules—

- (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 taxation authorities of the Contracting States shall determine 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, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

(4) Nothing in this Agreement shall restrict one of the Contracting States from imposing any of the taxes which are the subject of this Agreement upon a company incorporated in that Contracting State or upon interest, dividends, rents or royalties paid by such a company to a non-resident of that State.

ARTICLE IV

(1) For the purposes of this Agreement, 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) a store;
- (d) an office;
- (e) a warehouse;
- (f) a factory;
- (g) a workshop;
- (h) a mine, quarry or other place of extraction of natural resources;
- (i) a building site or construction or assembly project which exists for more than six 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) An enterprise of one of the Contracting States shall be deemed to have a permanent establishment in the other Contracting State if it carries on the activity of providing the services within that other Contracting State of public entertainers or athletes referred to in paragraph (5) of Article XI.

(5) A person acting in one of the Contracting States on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom paragraph (6) applies—shall be deemed to be a permanent establishment in the first-mentioned State

- (a) if he has, and habitually exercises in that first-mentioned 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, or
- (b) if he maintains that first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he habitually fills orders or makes deliveries on behalf of the enterprise.

(6) An enterprise of one of the Contracting States 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.

(7) The fact that a company which is a resident of one of the Contracting States 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 V

(1) Industrial or commercial profits of a Trinidad and Tobago enterprise shall be exempt from Canadian tax unless the enterprise carries on business in Canada through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, tax may be imposed by Canada on the industrial or commercial profits of the enterprise but only on so much of them as is attributable to that permanent establishment.

(2) Industrial or commercial profits of a Canadian enterprise shall be exempt from Trinidad and Tobago tax unless the enterprise carries on business in Trinidad and Tobago through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, tax may be imposed by Trinidad and Tobago on the industrial or commercial profits of the enterprise but only on so much of them as is attributable to that permanent establishment.

(3) Where an enterprise of one of the Contracting States carries on business in the other Contracting State through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to make if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

(4) In determining the industrial or commercial profits of an enterprise of one of the Contracting States which are taxable in the other Contracting State in accordance with the previous paragraphs of this Article, there shall be allowed as deductions all expenses of the enterprise (including executive and general administrative expenses) which would be deductible if the permanent establishment were an independent enterprise and which are reasonably connected with the profits so taxable, whether such expenses were incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

(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) The term "industrial or commercial profits" means income derived by an enterprise from the conduct of a trade or business but it does not include dividends, interest, royalties or rents other than dividends, interest, royalties or rents effectively connected with a trade or business carried on through a permanent establishment which an enterprise of one of the states has in the other State; nor does the term include remuneration for personal (including professional) services.

ARTICLE VI

A resident of one of the Contracting States shall be exempt from tax in the other Contracting State on profits from the operation of ships or aircraft in international traffic.

ARTICLE VII

Where

- (a) an enterprise of one of the Contracting States 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 one of the Contracting States 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 but for those conditions would 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 VIII

(1) The rate of tax imposed by one of the Contracting States on dividends paid or credited by a company which is a resident of that Contracting State to a resident of the other Contracting State shall not exceed 15 per cent.

(2) The provisions of paragraph (1) shall not apply if the person to whom the dividend is paid or credited has in the Contracting State of which the company paying the dividends is a resident a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provisions of Article V shall apply.

(3) Where a company which is a resident of one of the Contracting States derives profits or income from sources within the other Contracting State, that other State may not impose any tax on the dividends paid by the company to persons who are not residents of that other State or 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.

(4) Subject to the provisions of paragraph (4) of Article IX of this Agreement—

- (a) the term "dividends" in the case of Trinidad and Tobago includes any item which under the law of Trinidad and Tobago is treated as a distribution;
- (b) the term "dividends" in the case of Canada includes any item which under the law of Canada is treated as a dividend.

(5) Notwithstanding paragraphs (3) and (4) where a company which is a resident of one of the Contracting States, having a permanent establishment in the other Contracting State, derives profits or income from that permanent establishment, any remittances of such profits by the permanent establishment to a resident of the first-mentioned State may be taxed in accordance with the laws of the other Contracting State, but in no case shall the rate of such tax exceed 15 per cent.

ARTICLE IX

(1) The rate of tax imposed by one of the Contracting States on interest arising in that Contracting State and paid to a resident of the other Contracting State shall not exceed 15 per cent.

(2) The provisions of paragraph (1) shall not apply if the person to whom the interest is paid or credited has in the Contracting State in which the interest arises, a permanent establishment with which the debt-claim from which the interest arises is effectively connected. In such a case, the provisions of Article V shall apply.

(3) 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 exceeds the amount which would have been agreed upon by the payer and recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount.

(4) Any provision in the law of either of the Contracting States relating only to interest paid to a non-resident company shall not operate so as to require such interest paid to a company which is a resident of the other Contracting State to be treated as a distribution of the company paying such interest unless the interest is paid

- (i) by a company in which the amount owing in respect of long-term liabilities at any time in the year in which the interest was paid exceeds the amount of the shareholders' equity at that time, or
- (ii) to a company which is a resident of one of the Contracting States and more than 50 per cent. of whose voting power is controlled, directly or indirectly, by a person or persons resident in the other Contracting State, or
- (iii) in a case where the taxation authorities of the Contracting States where the company paying the interest is resident is satisfied that, owing to a special relationship between the payer and the recipient or between both of them and some other person, such interest arises from arrangements made, or conditions imposed, for the avoidance of tax.

ARTICLE X

(1) The rate of tax imposed by one of the Contracting States on royalties arising in that Contracting State and paid or credited to a resident of the other Contracting State shall not exceed 15 per cent.

(2) The term "royalties" as used in this Article means any royalties, rentals or other amounts paid as consideration for the use of, or the right to use copyrights, patents, designs or models, plans, secret processes or formulae, trade marks or other like property or rights, or for industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience, and includes any royalty or like payment in respect of motion picture films and films or video tapes for use in connection with television or tapes for use in connection with radio, but does not include royalties or other amounts paid in respect of the operations of mines or quarries or of the extraction or removal of natural resources.

(3) Notwithstanding paragraph (1) copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or artistic work (excluding royalties and like payments in respect of motion picture films and films

or video tapes for use in connection with television and tapes for use in connection with radio) arising in one of the Contracting States and paid or credited to a resident of the other Contracting State shall be exempt from tax in the first-mentioned State.

(4) The provisions of paragraphs (1) and (3) shall not apply if the person to whom the royalties are paid or credited has in the Contracting State in which the royalties arise a permanent establishment with which the right or property giving rise to the royalties is effectively connected. In such a case, the provisions of Article V shall apply.

(5) 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 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.

ARTICLE XI

(1) Salaries, wages and other similar remuneration (other than remuneration to which Articles XII and XIV apply) derived by a resident of one of the Contracting States 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 one of the Contracting States 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 which the employer has in the other State, and
- (d) the remuneration earned in the other State in the calendar year concerned does not exceed five thousand Canadian dollars (\$5,000) or its equivalent in Trinidad and Tobago dollars.

(3) Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic may be taxed in the Contracting State in which the person operating the ship or aircraft is resident.

(4) In relation to remuneration of a director of a company derived from the company the preceding provisions of this Article shall apply as if the remuneration were remuneration of an employee in respect of an employment and as if references to employers were references to the company.

(5) Notwithstanding the provisions of paragraphs (1) and (2), income derived by public 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.

ARTICLE XII

(1) Remuneration (other than pensions) paid by one of the Contracting States or any political subdivision thereof to any individual for services rendered to it in the discharge of government functions shall be exempt from tax in the other Contracting State if the individual is present in that State solely for the purpose of rendering those services.

(2) This Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Contracting States or any political subdivision thereof for purposes of profit.

ARTICLE XIII

Any pension or annuity derived from sources within one of the Contracting States by an individual who is a resident of the other Contracting State shall be exempt from tax in the first-mentioned State.

ARTICLE XIV

(1) A professor or teacher who visits one of the Contracting States for a period not exceeding two years for the purpose of teaching at a university, college, school or other educational institution in that State and who is, or was, immediately before that visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned State on any remuneration for such teaching.

(2) The provisions of paragraph (1) shall not apply where the services of a professor or teacher are performed under the terms of an agreement or contract, entered into with the Government of the country where the services are performed, which makes special provisions respecting their terms of employment.

ARTICLE XV

A student or business apprentice, who is, or was, immediately before visiting one of the Contracting States a resident of the other Contracting State and is present in the first-mentioned State solely for the purpose of his education or training shall not be taxed in that first-mentioned State on payments which he receives for the purpose of his maintenance, education, or training provided that such payments are made to him from sources outside that first-mentioned State.

ARTICLE XVI

(1) Subject to the provisions of the law of Trinidad and Tobago regarding the allowance as a credit against Trinidad and Tobago tax of tax payable in a territory outside Trinidad and Tobago (which shall not affect the general principle hereof) Canada tax payable in respect of income from sources within Canada shall be deducted from any Trinidad and Tobago tax payable in respect of that income.

(2) Subject to the provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada (which shall not affect the general principle hereof), Trinidad and Tobago tax payable in respect of income from sources within Trinidad and Tobago shall be deducted from any Canadian tax payable in respect of that income.

(3) For the purposes of this Article profits or remuneration for personal (including professional) services performed in one of the Contracting States shall be deemed to be income from sources within that State, and the services of an individual whose services are wholly or mainly performed in ships or aircraft operated in international traffic by a resident of one of the Contracting States shall be deemed to be performed in that State.

ARTICLE XVII

(1) The nationals 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 the nationals of the last-mentioned State in the same circumstances are or may be subjected.

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

(3) Nothing in this Article shall be construed—

- (a) as obliging one of the Contracting States to grant to residents of the other Contracting State those personal allowances and reliefs for tax purposes which are by law available only to residents of the first-mentioned State;
- (b) as preventing one of the Contracting States from imposing on the profits attributable to a permanent establishment in that State of a company which is a resident of the other Contracting State, tax in addition to the tax which would be chargeable on those profits if they were the profits of a company which was a resident of that State, provided that any additional tax so imposed shall not be at a rate exceeding 15 per cent. of the amount of those profits after deducting therefrom all other taxes chargeable on income or profits in that State, and an allowance in respect of net annual increases in its capital investment in property in that State.

(4) In this Article the term taxation means taxes which are the subject of this Agreement.

ARTICLE XVIII

(1) Where a resident of one of the Contracting States considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, notwithstanding the remedies provided by the laws of those States, present his case to the taxation authorities of the Contracting State of which he is a resident.

(2) The taxation authorities shall endeavour, if the objection appears to them to be justified and if they are not themselves able to arrive at an appropriate solution, to resolve that case by mutual agreement with the taxation authorities of the other Contracting State, with a view to the avoidance of taxation not in accordance with this Agreement.

(3) The taxation authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also consult together for the purpose of endeavouring to eliminate double taxation in cases not provided for in this Agreement.

(4) The taxation authorities of the Contracting States may communicate directly with each other for the purposes of this Article.

ARTICLE XIX

The taxation authorities of the Contracting States shall, upon request, exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of this Agreement or for the prevention of fraud or for the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to persons other than persons (including a court or administrative tribunal) concerned with the assessment, collection, enforcement or prosecution in respect of the taxes which are the subject of this Agreement. No information as aforesaid shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.

ARTICLE XX

(1) This Agreement shall come into force on the date when the last of all such things shall have been done in Trinidad and Tobago and Canada as are necessary to give the agreement the force of law in Trinidad and Tobago and Canada respectively, and shall thereupon have effect—

(a) in Trinidad and Tobago—

- (i) in respect of tax withheld at the source on amounts paid, credited or remitted to non-residents on or after January 1, 1966;
- (ii) in respect of other Trinidad and Tobago tax for the year of income commencing January 1, 1966 and subsequent years of income;

(b) in Canada—

- (i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after January 1, 1966;
- (ii) in respect of other Canadian tax, for the 1967 taxation year and subsequent taxation years.

ARTICLE XXI

(1) This Agreement shall continue in effect indefinitely but either of the Contracting Governments may, on or before June 30, in any calendar year after the year 1967 give notice of termination to the other Contracting Government and, in such event, this Agreement shall not be effective—

(a) in Trinidad and Tobago—

- (i) in respect of tax withheld at the source on amounts paid, credited or remitted to non-residents on or after January 1 in the calendar year next following that in which the notice is given; and
- (ii) in respect of other Trinidad and Tobago tax for any year of income commencing in or after the calendar year next following that in which notice is given;

(b) in Canada—

- (i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after January 1 in the calendar year next following that in which the notice is given; and
- (ii) in respect of other Canadian tax for any taxation year commencing in or after the calendar year next following that in which the notice is given.

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

Done at Washington this 28th day of September, 1966, in two copies in the English and French languages, both versions being equally authentic.

ARTHUR N. R. ROBINSON
FOR THE GOVERNMENT OF TRINIDAD AND TOBAGO

MITCHELL W. SHARP
FOR THE GOVERNMENT OF CANADA

Dated this 24th day of November, 1966.

G. L. BOWEN
Secretary to the Cabinet