

LEGAL NOTICE NO. 11

REPUBLIC OF TRINIDAD AND TOBAGO

THE INCOME TAX ACT, CHAP. 75:01

ORDER

MADE BY THE PRESIDENT UNDER SECTION 93(1) OF THE  
INCOME TAX ACT

THE DOUBLE TAXATION RELIEF (CANADA) ORDER, 1996

WHEREAS it is provided by subsection (1) of section 93 of the Income Tax Act that if the President by Order 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 those arrangements should have effect, the arrangements shall, notwithstanding any written law, have effect in relation to income tax as specified in that section:

And whereas by an Agreement dated September 11, 1995, made between the Government of the Republic of Trinidad and Tobago and the Government of Canada, arrangements were made *inter alia* for the avoidance of double taxation:

Now, therefore, the President in pursuance of the said subsection (1) of section 93 of the Income Tax Act hereby orders as follows:

1. This Order may be cited as the Double Taxation Relief (Canada) Citation Order, 1996.

2. It is hereby declared that—

- (a) the arrangements specified in the Schedule have been made with the Government of Canada; and
- (b) it is expedient that those arrangements should have effect.
- Double  
taxation  
arrangements

SCHEDULE

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

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

## I. SCOPE OF THE CONVENTION

## 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. The existing taxes to which this Convention shall apply are:

(a) in the case of Canada:

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

(b) in the case of Trinidad and Tobago:

- (i) the income tax;
  - (ii) the corporation tax;
  - (iii) the petroleum profits tax; and
  - (iv) the unemployment levy;
- (hereinafter referred to as "Trinidad and Tobago tax").

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

## II. DEFINITIONS

## ARTICLE 3

*General Definitions*

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

(a) the term "Canada" used in a geographical sense, means the territory of Canada, including:

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

(b) the term "Trinidad and Tobago" means the islands of Trinidad and Tobago and, when used in a geographical sense, the term "Trinidad and Tobago" includes:

- (i) the territorial sea thereof;
- (ii) the seabed and subsoil of the adjacent submarine areas beyond the territorial sea over which Trinidad and Tobago exercises sovereign rights, in accordance with Trinidad and Tobago legislation and international law concerning the continental shelf, for the purpose of exploration and exploitation of the natural resources of such areas, but only to the extent that the person, property or activity to which this Convention is being applied is connected with such exploration or exploitation; and

- (iii) the sea and airspace above every area referred to in subparagraph (ii) in respect of any activity carried on in connection with the exploration for or the exploitation of the natural resources referred to therein;
- (c) the terms "a Contracting State" and "the other Contracting State" mean, as the context requires, Canada or Trinidad and Tobago;
- (d) the term "person" includes an individual, an estate, a trust, a company and any other body of persons;
- (e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (g) the term "competent authority" means:
  - (i) in the case of Canada, the Minister of National Revenue or the Minister's authorised representative;
  - (ii) in the case of Trinidad and Tobago, the Minister to whom the responsibility for Finance is assigned or the Minister's authorized representative;
- (h) the term "national" means:
  - (i) any individual possessing the nationality of a Contracting State;
  - (ii) any legal person, partnership and association deriving its status as such from the laws in force in a Contracting State;
- (i) the term "tax" means Canadian tax or Trinidad and Tobago tax, as the context requires;
- (j) the term "international traffic" means any voyage of a ship or aircraft operated by an enterprise of a Contracting State to transport passengers or property except where the principal purpose of the voyage is to transport passengers or property between places within the other Contracting State.

2. As regards the application of this 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 law of that State concerning the taxes to which this Convention applies.

#### ARTICLE 4

##### *Resident*

1. For the purposes of this Convention, the term "resident of a Contracting State" means:
  - (a) any person who, under the laws of the State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature;
  - (b) the Government of that State or a political subdivision or local authority thereof or any agency or instrumentality of any such government, subdivision or authority.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
  - (a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, 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, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;

- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question and to determine the mode of application of this Convention to such person. In the absence of such agreement, such person shall not be considered to be a resident of either Contracting State for the purposes of enjoying benefits under this Convention.

#### ARTICLE 5

##### *Permanent Establishment*

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

2. The term "permanent establishment" includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a store or other sales outlet;
- (g) a warehouse, in relation to a person providing storage facilities for others;
- (h) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
- (i) an installation or structure, including a floating structure, a drilling rig or other drilling vessels used for or in connection with the exploration or exploitation of natural resources.

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts for more than three months.

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

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e) provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person—other than an agent of an independent status to whom paragraph 6 applies—is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such person:

- (a) has, and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
- (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

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

### III. TAXATION OF INCOME

#### ARTICLE 6

##### *Income from Immovable Property*

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

2. For the purposes of this Convention, the term “immovable property” shall have the meaning which it has for the purposes of the relevant taxation 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 and to income from the alienation of such property.

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

#### ARTICLE 7

##### *Business Profits*

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on or has carried 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 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 profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

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

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

#### ARTICLE 8

##### *Shipping and Air Transport*

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

2. Notwithstanding the provisions of paragraph 1 and of Article 7, profits derived by an enterprise of a Contracting State from a voyage of a ship or aircraft where the principal purpose of the voyage is to transport passengers or property between places in the other Contracting State may be taxed in that other State.

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

4. In this Article, the term "operation of ships or aircraft in international traffic" by an enterprise, includes:

- (a) the charter or rental of ships or aircraft; and
- (b) the rental of containers and related equipment,

by that enterprise provided that such charter or rental is incidental to the operation by that enterprise of ships or aircraft in international traffic.

ARTICLE 9

*Associated Enterprises*

1. Where—

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

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

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

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

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

ARTICLE 10

*Dividends*

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if a resident of the other Contracting State 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 or by an investment company that is a resident of Trinidad and Tobago, 5 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 Article means income from shares, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income which is, in the case of Canada, subjected to the same taxation treatment as income from shares under the laws of Canada and, in the case of Trinidad and Tobago, treated as a distribution under the laws of Trinidad and Tobago.

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, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 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 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. Nothing in this Convention shall be construed as preventing a Contracting State from imposing on the earnings of a company attributable to a permanent establishment in that State, a tax in addition to the tax which would be chargeable on the earnings of a company which is a national of that State, provided that any additional tax so imposed shall not exceed 5 per cent of the amount of such earnings which have not been subjected to such additional tax in previous taxation years.

#### ARTICLE 11

##### *Interest*

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

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if a resident of the other Contracting State 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 indebtedness of the government of that State or of a political sub-division 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 Trinidad and Tobago and paid to a resident of Canada shall be taxable only in Canada if it is paid in respect of a loan made or a credit extended by the Export Development Corporation;
- (c) interest arising in Canada and paid to a resident of Trinidad and Tobago shall be taxable only in Trinidad and Tobago if it is paid in respect of a loan made or a credit extended by an institution, wholly owned by the government of Trinidad and Tobago, specified and agreed in letters exchanged between the competent authorities of the Contracting States; and

(d) interest arising in a Contracting State and paid to a resident of the other Contracting State which was constituted and is operated exclusively to administer or provide benefits under one or more pension, retirement or other employee benefits plans shall not be taxable in the first-mentioned State provided that:

- (i) the resident is the beneficial owner of the interest and is generally exempt from tax in the other State; and
- (ii) the interest is not derived from carrying on a trade or a business or from a related person.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as income which is subjected to the same taxation treatment as income from money lent by the laws of the State in which the income arises. However, the term "interest" does not include income dealt with in Article 10.

5. The provisions of paragraph 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether 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 State in which the permanent establishment is situated.

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

ARTICLE 12

*Royalties*

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

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if a resident of the other Contracting State 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 literary, dramatic, musical or artistic work (but not including royalties in respect of motion picture films nor royalties in respect of works on film, videotape or audiotape or other means of reproduction for use in connection with television or radio broadcasting) arising in a Contracting State and paid to a resident of the other Contracting State who is the beneficial owner of the royalties, 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, 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, and includes payments of any kind in respect of motion picture films and works on film, videotape, audiotape or other means of reproduction for use in connection with television or radio.

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, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

6. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether 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 such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.

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

#### ARTICLE 13

##### *Management Fees*

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

3. The term "management fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services, including advice, of a technical, managerial or consultancy nature, but it does not include payments for professional services referred to in Article 14.

4. The provisions of paragraph 2 shall not apply if the beneficial owner of the management fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the management fees arise through a permanent establishment situated therein, and the obligation in respect of which the management fees are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Management fees shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the management fees, 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 management fees was incurred, and such management fees are borne by such permanent establishment, then such management fees shall be deemed to arise in the State in which the permanent establishment is situated.

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

ARTICLE 14

*Independent Personal Services*

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character may be taxed in the other Contracting State but only to the extent that such income—

- (a) earned in that other State in the year of income, exceeds a gross amount of eight thousand five hundred Canadian dollars (\$8,500) or its equivalent in Trinidad and Tobago currency; and
- (b) is attributable to his services performed in that other State.

2. Where the income may be taxed in the other Contracting State under paragraph 1, there shall be allowed as a deduction expenses incurred in the performance of those services including reasonable administrative and general expenses so incurred, whether in the Contracting State in which the services are performed or elsewhere.

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

ARTICLE 15

*Dependent Personal Services*

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

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

- (a) the remuneration earned in the other Contracting State in the calendar year concerned does not exceed eight thousand five hundred Canadian dollars (\$8,500) or its equivalent in Trinidad and Tobago currency or such amounts as may be specified and agreed in letters exchanged between the competent authorities of the Contracting States; or
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and such remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

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

ARTICLE 16

*Directors' Fees*

Directors' fees and other similar payments derived by a resident of a Contracting State in 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 Sportsmen*

1. Notwithstanding the provisions of Articles 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 Articles 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 paragraphs 1 and 2 shall not apply:

- (a) to income derived from activities performed in a Contracting State by entertainers or sportsmen if the visit to that Contracting State is substantially supported by public funds of the other Contracting State, including any political subdivision, local authority or statutory body thereof; or
- (b) to a non-profit organization no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof.

ARTICLE 18

*Pensions and Annuities*

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

2. Pensions and 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. 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. Notwithstanding anything in this Convention:

- (a) war pensions and allowances (including pensions and allowances paid to war veterans or paid as a consequence of damages or injuries suffered as a consequence of a war or paid to members, or former members, of the armed forces as a consequence of damages or injuries suffered as a consequence of their duties) arising in a Contracting State and paid to a resident of the other Contracting State shall be exempt from tax in that other State to the extent that they would be exempt from tax if received by a resident of the first-mentioned State;
- (b) pensions and other payments made under the social security legislation in a Contracting State shall be taxable only in that State; and

- (c) alimony and other similar payments arising in a Contracting State and paid to a resident of the other Contracting State who is subject to tax therein in respect thereof, shall be taxable only in that other State.

ARTICLE 19

*Government Service*

1. (a) Salaries, wages and 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.
- (b) However, such salaries, wages or similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
  - (i) is a national of that State; or
  - (ii) did not become a resident of that State solely for the purpose of rendering the services.

2. The provisions of 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.

ARTICLE 20

*Students*

Payments which a student, apprentice or business trainee who is, or was immediately before visiting a Contracting State, a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of 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.

ARTICLE 21

*Other Income*

Notwithstanding the provisions of any other Article of this Convention, items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention may be taxed by each Contracting State in accordance with the provision of its domestic law.

IV. METHODS FOR PREVENTION OF DOUBLE TAXATION

ARTICLE 22

*Elimination of Double Taxation*

1. In the case of Canada, double taxation shall be avoided as follows:
  - (a) subject to the existing provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada and to any subsequent modification of those provisions—which shall not affect the general principle hereof—and unless a greater deduction or relief is provided under the laws of Canada, tax payable in Trinidad and Tobago on profits, income or gains arising in Trinidad and Tobago 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 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 Trinidad and Tobago.

2. For the purposes of subparagraph (a) of paragraph 1, tax payable in Trinidad and Tobago by a company which is a resident of Canada in respect of profits attributable to manufacturing and agricultural activities, exploration or exploitation of natural resources and construction, telecommunications, data processing, engineering or tourism projects or services carried on or provided as part of an active business carried on by it in Trinidad and Tobago shall be deemed to include any amount which would have been payable thereon as Trinidad and Tobago tax for any year but for an exemption from or reduction of tax granted for that year or any part thereof under specific Trinidad and Tobago legislation to promote economic development, provided that relief from Canadian tax shall not be given by virtue of this paragraph in respect of income from any source if the income arises in a period starting more than ten years after the exemption from, or reduction of, Trinidad and Tobago tax was first granted in respect of that source.

3. In the case of Trinidad and Tobago, double taxation shall be avoided as follows:

(a) subject to the provisions of the law of Trinidad and Tobago regarding the allowance of 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):

(i) Canadian tax payable under the law of Canada and in accordance with this Convention, whether directly or by deduction, on profits or income from sources within Canada (excluding, in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any Trinidad and Tobago tax computed by reference to the same profits or income by reference to which the Canadian tax is computed;

(ii) in the case of a dividend paid by a company which is a resident of Canada to a company which is a resident of Trinidad and Tobago and which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend the credit shall take into account, in addition to any Canadian tax creditable under (i), the Canadian tax payable by the company paying the dividend in respect of the profits out of which such dividend is paid;

(b) the credit, however, shall in no case exceed that part of the tax, as computed before the credit is given, which is appropriate to the income which may be taxed in Canada.

4. 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.

## V. SPECIAL PROVISIONS

### ARTICLE 23

#### *Non-Discrimination*

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

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

3. Nothing in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

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

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

#### ARTICLE 24

##### *Mutual Agreement Procedure*

1. Where a person considers that the actions of one or both of the Contracting States result or will result for 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 or, if his case comes under paragraph 1 of Article 23, to that of the Contracting State of which he is a national, an application in writing stating the grounds for claiming the revision of such taxation. To be admissible, the said application must be submitted within two years from the first notification of the action which gives rise to taxation not in accordance with this Convention.

2. The competent authority referred to in paragraph 1 shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at 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 this Convention.

3. A Contracting State shall not, after the expiry of the time limits provided in its national laws and, in any case, after six 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 this Convention.

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

## ARTICLE 25

*Exchange of Information*

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 this Convention insofar as the taxation thereunder is not contrary to this Convention. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement in respect of, or the determination of appeals in relation to, taxes covered by this Convention. 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. Nothing in paragraph 1 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 (order public).

## ARTICLE 26

*Diplomatic Agents and Consular Officers*

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 Article 4, an individual who is a member of a diplomatic mission, consular post or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed for the purposes of this 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. This Convention shall not apply to international organizations, to organs or officials thereof and to persons who are members of a diplomatic mission, consular post or permanent mission of a third State or group of States, being present in a Contracting State and who are not liable in either Contracting State to the same obligations in relation to tax on their total income as are residents thereof.

## ARTICLE 27

*Miscellaneous Rules*

1. The provisions of this Convention shall not be construed to restrict in any manner any exemption, allowance, credit or other deduction accorded by the laws of a Contracting State in the determination of the tax imposed by that State.

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

3. This Convention shall not apply to any company, trust or partnership that is a resident of a Contracting State and is beneficially owned or controlled directly or indirectly by one or more persons who are not residents of that State, if the amount of the tax imposed on the income or capital of the company, trust or partnership by that State is substantially lower than the amount that would be imposed by that State if all of the shares of the capital stock of the company or all of the interests in the trust or partnership, as the case may be, were beneficially owned by one or more individuals who were residents of that State.

4. With respect to paragraph 3 of Article XXII 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 relating to a tax to which any provision of this Convention applies 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.

5. Where in accordance with any provision of this Convention income derived by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on other income, take into account the exempted income.

## VI. FINAL PROVISIONS

### ARTICLE 28

#### *Entry into Force*

1. Each of the Contracting States shall take all measures necessary to give this Convention the force of law within its jurisdiction and each shall notify the other of the completion of such measures. This Convention shall enter into force on the date on which the later notification is made and shall thereupon 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 the second month following the date on which this Convention enters into force; and
- (b) in respect of other taxes for taxation years or years of income beginning on or after the first day of January in the calendar year in which this Convention enters into force.

2. The provisions of the Agreement between the Government of Canada and the Government of Trinidad and Tobago with respect to taxes on income, for the avoidance of double taxation, the prevention of fiscal evasion, and encouragement of international trade and investment signed at Washington on September 28, 1966, shall cease to have effect with respect to taxes to which this Convention applies in accordance with the provisions of paragraph 1. Where, however, any greater relief from tax would have been afforded by any provision of that Agreement than is due under this Convention, any such provision as aforesaid shall continue to have effect with respect to taxes referred to in subparagraph (b) of paragraph 1:

- (a) in Canada, for any taxation year;
- (b) in Trinidad and Tobago, for any year of income;

beginning before the entry into force of this Convention.

### ARTICLE 29

#### *Termination*

This Convention shall continue in effect indefinitely but either Contracting State may terminate this Convention by giving to the other Contracting State at least six months prior notice of termination in writing through diplomatic channels; in such event, this 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 in the calendar year next following the expiration of the six-month period referred to above; and

(b) in respect of other taxes for taxation years or income years beginning on or after the first day of January in the calendar year next following the expiration of the six-month notice referred to above.

IN WITNESS WHEREOF the undersigned, duly authorized to that effect, have signed this Convention.

DONE in duplicate at Toronto, this 11th day of September 1995, in the English and French languages, each version being equally authentic.

G. DRAPER  
*for the Government of  
The Republic of Trinidad  
and Tobago*

R. MACLAREN  
*for the Government of  
Canada*

Dated this 17th day of January, 1996.

A. LEUNG WOO-GABRIEL  
*Acting Secretary to Cabinet*