



CONVENTION

BETWEEN

THE REPUBLIC OF POLAND

AND

CANADA

FOR THE AVOIDANCE OF DOUBLE TAXATION

AND THE PREVENTION OF FISCAL EVASION

WITH RESPECT TO TAXES ON INCOME

THE REPUBLIC OF POLAND AND CANADA, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

HAVE AGREED as follows:

ARTICLE 1
Persons Covered

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

ARTICLE 2

Taxes Covered

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which this Convention shall apply are in particular:
 - (a) in the case of Poland:
 - (i) the personal income tax, and
 - (ii) the corporate income tax,(hereinafter referred to as “Polish tax”);
 - (b) in the case of Canada, the taxes imposed by the Government of Canada under the *Income Tax Act*,
(hereinafter referred to as “Canadian tax”).
4. The Convention shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their taxation laws.

ARTICLE 3

General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:
 - (a) the term "Poland" means the Republic of Poland and, when used in a geographical sense, means the territory of the Republic of Poland, and any area adjacent to the territorial sea of the Republic of Poland within which, under the laws of Poland and in accordance with international law, the rights of Poland with respect to the exploration and exploitation of the natural resources of the seabed and its sub-soil may be exercised;
 - (b) the term "Canada", used in a geographical sense, means:
 - (i) the land territory, air space, internal waters and territorial sea of Canada,
 - (ii) the exclusive economic zone of Canada, as determined by its domestic law, consistent with Part V of the United Nations Convention on the Law of the Sea of 10 December 1982, and
 - (iii) the continental shelf of Canada, as determined by its domestic law, consistent with Part VI of the United Nations Convention on the Law of the Sea of 10 December 1982;
 - (c) the term "person" includes an individual, a trust, 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 "enterprise" applies to the carrying on of any business;

- (f) the terms “a Contracting State” and “the other Contracting State” mean, as the context requires, Poland or Canada;
- (g) 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;
- (h) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when such transport is solely between places in the other Contracting State;
- (i) the term “competent authority” means:
 - (i) in the case of Poland, the Minister of Finance or the Minister’s authorized representative, and
 - (ii) in the case of Canada, the Minister of National Revenue or the Minister’s authorized representative;
- (j) the term “national”, in relation to a Contracting State, means:
 - (i) any individual possessing the nationality or citizenship of that Contracting State, and
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State; and
- (k) the term “business” includes the performance of professional services and of other activities of an independent character.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the laws of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4

Resident

1. For the purposes of this Convention, the term “resident of a Contracting State” means:
 - (a) any person who, under the laws of that State, is liable to tax therein by reason of the person’s domicile, residence, place of management or any other criterion of a similar nature, but does not include any person who is liable to tax in that State in respect only of income from sources in that State; and
 - (b) that State or a political subdivision or local authority thereof or any agency or instrumentality of any government of such State, subdivision or authority.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then the individual’s status shall be determined as follows:
 - (a) the individual shall be deemed to be a resident only of the State in which the individual has a permanent home available and if the individual has a permanent home available in both States, the individual shall be deemed to be a resident only of the State with which the individual’s personal and economic relations are closer (centre of vital interests);
 - (b) if the State in which the individual’s centre of vital interests is situated cannot be determined, or if there is not a permanent home available to the individual in either State, the individual shall be deemed to be a resident only of the State in which the individual has an habitual abode;
 - (c) if the individual has an habitual abode in both States or in neither of them, the individual shall be deemed to be a resident only of the State of which the individual is a national; and

(d) if the individual is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where a company is a national of a Contracting State and by reason of paragraph 1 a resident of both Contracting States then it shall be deemed to be a resident only of the first-mentioned State.

4. Where by reason of the provisions of paragraph 1 a person other than an individual or a company referred to in paragraph 3 is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Convention, having regard to its place of effective management, the place where it is constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by 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; and
 - (f) a mine, an oil or gas well, a quarry or any other place of exploration or exploitation of natural resources.
3. A building site, construction, assembly or installation project constitutes a permanent establishment only if it lasts more than twelve months.
4. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:
 - (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 sub-paragraphs (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 on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts on behalf of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

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

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

ARTICLE 6

Income from Immovable Property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term “immovable property” shall have the meaning which it has for the purposes of the relevant tax law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. In the case of Canada, the provisions of paragraph 1 shall also apply to income from the alienation of immovable property.
5. The provisions of paragraphs 1, 3 and 4 shall also apply to the income from immovable property of an enterprise.

ARTICLE 7
Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.
4. 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 or capital gains 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 Article 7, profits derived by an enterprise of a Contracting State from a transport by a ship or aircraft, where such transport is solely between places in the other Contracting State, may be taxed in that other State.
3. The provisions of paragraph 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency, but only to so much of the profits so derived as is attributable to the participant in proportion to its share in such joint operation.

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 by a Contracting State in the profits of that enterprise and taxed accordingly.

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

3. A Contracting State shall not change the income of an enterprise in the circumstances referred to in paragraph 1 after the expiry of the time limits provided in its domestic laws and, in any case, after nine years from the end of the taxable year in which the income which

would be subject to such change would, but for the conditions referred to in paragraph 1, have been attributed to that enterprise.

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

ARTICLE 10

Dividends

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

(a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company that holds directly at least 10 per cent of the capital in the company paying the dividends; and

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

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

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

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, 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 company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

6. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 11

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.
3. Notwithstanding the provisions of paragraph 2:
 - (a) interest arising in Poland 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 by Export Development Canada, or a credit extended, guaranteed or insured by Export Development Canada;
 - (b) interest arising in Canada and paid to a resident of Poland shall be taxable only in Poland if it is paid in respect of a loan made, guaranteed or insured by an export financing organization that is wholly owned by the State of Poland, or a credit extended, guaranteed or insured by an export financing organization that is wholly owned by the State of Poland;
 - (c) interest arising in a Contracting State and paid to a resident of the other Contracting State shall not be taxable in the first mentioned State if it is paid in respect to indebtedness arising as a consequence of the sale by a resident of the other State of any equipment, merchandise or services, except where the sale or indebtedness was between related persons or where the beneficial owner of the interest is other than the vendor or a person related to the vendor.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as income which is subjected to the same taxation treatment as income from money lent by the laws of the State in which the income arises. However, the term "interest" does not include income dealt with in Article 8 or Article 10.

5. The provisions of paragraphs 1, 2 and 3 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 the payer 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.

8. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 12

Royalties

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

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

3. Notwithstanding the provisions of paragraph 2:

(a) 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 other means of reproduction for use in connection with television broadcasting), and

(b) royalties for the use of, or the right to use, any patent or for information concerning industrial, commercial or scientific experience (but not including any such royalty provided in connection with a rental or franchise agreement),

arising in a Contracting State and paid to a resident of the other Contracting State, may also be taxed in the first-mentioned State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.

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 or tape for use in connection with television or radio broadcasting. However, the term "royalties" does not include income dealt with in Article 8.

5. The provisions of paragraphs 1, 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 the payer 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 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.

8. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 13

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.
3. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that State.
4. Gains derived by a resident of a Contracting State from the alienation of shares, or of an interest in a partnership, trust or other entity, the value of which is derived principally (more than 50 per cent) from immovable property situated in the other State, may be taxed in that other State.
5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 shall be taxable only in the Contracting State of which the alienator is a resident.
6. The provisions of paragraph 5 shall not affect the right of a Contracting State to levy, according to its law, a tax on gains from the alienation of any property, other than property to which the provisions of paragraph 7 apply, 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 five years immediately preceding the alienation of the property.

7. Where an individual who ceases to be a resident of a Contracting State, and immediately thereafter becomes a resident of the other Contracting State, is treated for the purposes of taxation in the first-mentioned State as having alienated a property and is taxed in that State by reason thereof, the individual may elect to be treated for purposes of taxation in the other State as if the individual had, immediately before becoming a resident of that State, sold and repurchased the property for an amount equal to the lesser of its fair market value at that time and the proceeds of disposition considered to have been realized by the individual in the first-mentioned State in respect of that alienation. However, this provision shall not apply to property any gain from which, arising immediately before the individual became a resident of that other State, may be taxed in that other State nor to immovable property situated in a third State.

ARTICLE 14
Income from Employment

1. Subject to the provisions of Articles 15, 17 and 18, 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:

(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 fiscal 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.

3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft operated by an enterprise of a Contracting State in international traffic shall be taxable only in the first-mentioned State.

ARTICLE 15

Directors' Fees

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

ARTICLE 16
Artistes and Sportspersons

1. Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that resident's personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in that individual's capacity as such accrues not to the entertainer or sportsperson personally but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.
3. The provisions of paragraph 2 shall not apply if it is established that neither the entertainer or the sportsperson nor persons related thereto participate directly or indirectly in the profits of the person referred to in that paragraph.
4. Notwithstanding the provisions of paragraphs 1 and 2, income derived from such activities as defined in paragraph 1 performed within the framework of a cultural exchange arrangement concluded between the Contracting States, shall be exempt from tax in the Contracting State in which these activities are exercised.

ARTICLE 17

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 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 laws of that State. However, in the case of periodic pension payments, the tax so charged shall not exceed the lesser of:
 - (a) 15 per cent of the gross amount of the payment; and
 - (b) the amount of tax that the recipient of the payment would otherwise be required to pay for the year on the total amount of the periodic pension payments received by the individual in the year, if the individual were resident in the Contracting State in which the payment arises.
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 15 per cent of the portion thereof that is subject to tax in that State.
4. The term "annuity" means a stated sum paid periodically at stated times during life or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered), but does not include a payment that is not a periodic payment or any annuity the cost of which was deductible in whole or in part for the purposes of taxation in the Contracting State in which it was acquired.

5. 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) arising in a Contracting State and paid to a resident of the other Contracting State shall be exempt from tax in that other State so long as they would be exempt from tax if received by a resident of the first-mentioned State; and
- (b) 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 18
Government Service

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State;
- (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
 - (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 salaries, wages and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

ARTICLE 19

Students

Payments which a student, pupil or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of that individual's education or training receives for the purpose of that individual's maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

ARTICLE 20

Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.
3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may also be taxed in that other State.
4. However, where income referred to in paragraph 3 is income from a trust, other than a trust to which contributions were deductible, the tax so charged shall, if the income is taxable in the Contracting State in which the beneficial owner is a resident, not exceed 15 per cent of the gross amount of the income.

ARTICLE 21

Elimination of Double Taxation

1. In the case of Poland, double taxation shall be avoided as follows:
 - (a) where a resident of Poland derives income which, in accordance with the provisions of this Convention may be taxed in Canada, Poland shall, subject to the provisions of sub-paragraph (b) exempt such income from tax;
 - (b) where a resident of Poland derives income or capital gains which, in accordance with the provisions of paragraph 4 of Article 6, Articles 10, 11, 12 or 13 or paragraph 4 of Article 20, may be taxed in Canada, Poland shall allow as a deduction from the tax on the income 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 income or capital gains derived from Canada;
 - (c) where in accordance with any provision of this Convention, income derived by a resident of Poland is exempt from tax in Poland, Poland may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income;
 - (d) where in accordance with paragraph 6 of Article 10, paragraph 8 of Article 11 or paragraph 8 of Article 12, income derived by a resident of Poland may be taxed in Canada without limitation, subparagraphs (a) and (b) shall not apply.
2. 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 Poland on profits, income or gains arising in Poland shall

be deducted from any Canadian tax payable in respect of such profits, income or gains; and

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

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

ARTICLE 22

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 that is more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. 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 more burdensome than the taxation and connected requirements to which other similar enterprises 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.
5. In this Article, the term "taxation" means taxes which are the subject of this Convention.

ARTICLE 23

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with the provisions of this Convention, that person may, irrespective of the remedies provided by the domestic law of those States, address to the competent authority of the Contracting State of which that person is a resident or, if that person's case comes under paragraph 1 of Article 22, to that of the Contracting State of which that person is a national, an application in writing stating the grounds for claiming the revision of such taxation. To be admissible, the said application must be submitted within three years from the first notification of the action resulting in taxation not in accordance with the provisions of 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. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. A Contracting State shall not, after the expiry of the time limits provided in its domestic laws and, in any case, after nine years from the end of the taxable period to which the income concerned was attributed, change the income of a resident of either of the Contracting States by including therein items of income which have also been included in income in the other Contracting State. This paragraph shall not apply in the case of fraud or wilful default.
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.

ARTICLE 24
Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.
2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to taxes, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
 - (a) to carry out administrative measures at variance with the laws and 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; or
 - (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*).

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

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because the information relates to ownership interests in a person.

ARTICLE 25

Members of Diplomatic or Permanent Missions and Consular Posts

1. Nothing in this Convention shall affect the fiscal privileges of members of diplomatic or permanent missions and consular posts under the general rules of international law or under the provisions of special agreements.
2. Notwithstanding the provisions of Article 4, an individual who is a member of a diplomatic mission, consular post or permanent mission of a Contracting State 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 only of the sending State if that individual is liable in the sending State to the same obligations in relation to tax on 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.

ARTICLE 26

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 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 partnership, trust, company, or other entity in which that resident has an interest.
3. The Convention shall not apply to any company, trust or other entity 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 other entity by that State is substantially lower than the amount that would be imposed by that State (after taking into account any reduction or offset of the amount of tax in any manner, including a refund, reimbursement, contribution, credit, or allowance to the company, trust or partnership, or to any other person) if all of the shares of the capital stock of the company or all of the interests in the trust or other entity, as the case may be, were beneficially owned by one or more individuals who were residents of that State.
4. For the purposes of paragraph 3 of Article 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 the convention may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph 4 of Article 23 or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.

5. Nothing in this Convention shall be construed as preventing a Contracting State from imposing on the earnings of a company attributable to a permanent establishment in that State, or the earnings attributable to the alienation of immovable property situated in that State by a company carrying on a trade in immovable property, a tax in addition to the tax that would be chargeable on the earnings of a company that is a national of that State, except that any additional tax so imposed shall not exceed 5 per cent of the amount of such earnings that have not been subjected to such additional tax in previous taxation years. For the purpose of this provision, the term "earnings" means the earnings attributable to the alienation of such immovable property situated in a Contracting State as may be taxed by that State under the provisions of Article 6 or of paragraph 1 of Article 13, and the profits, including any gains, attributable to a permanent establishment in a Contracting State in a year and previous years, after deducting therefrom all taxes, other than the additional tax referred to herein, imposed on such profits in that State.

ARTICLE 27
Entry into Force

1. Each of the Contracting States shall notify in writing through diplomatic channels to the other the completion of the procedures required by its law for the bringing into force of this Convention.

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

(a) in Poland:

(i) in respect of taxes withheld at source, on income derived on or after 1 January in the calendar year next following the year in which the Convention enters into force, and

(ii) in respect of other taxes, on income derived in any tax year beginning on or after 1 January in the calendar year next following the year in which the Convention enters into force;

(b) in Canada:

(i) in respect of tax withheld at the source on amounts paid or credited to non-residents, on or after the first day of January in the calendar year following that in which the Convention enters into force, and

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

3. The *Convention between the Government of Canada and the Government of the Polish People's Republic for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital* signed at Warsaw on 4 May 1987 (hereinafter referred to as "the 1987 Convention") shall cease to have effect from the date upon which this Convention has effect in accordance with the provisions of paragraph 2 of this Article.

4. The 1987 Convention shall terminate on the last date on which it has effect in accordance with paragraph 3.

5. Notwithstanding the provisions of this Article, the provisions of paragraph 3 of Article 9 and Articles 23 and 24 of this Convention shall have effect from the date of entry into force of this Convention, without regard to the taxable period to which the matter relates.

ARTICLE 28

Termination

This Convention shall continue in effect indefinitely but either Contracting State may, on or before June 30 of any calendar year after the year of the entry into force, give to the other Contracting State a notice of termination in writing through the diplomatic channel. In such event, the Convention shall cease to have effect:

(a) in Poland:

- (i) in respect of taxes withheld at source, on income derived on or after 1 January in the calendar year next following the year in which the notice is given, and
- (ii) in respect of other taxes, on income derived in any tax year beginning on or after 1 January in the calendar year next following the year in which the notice is given;

(b) in Canada:

- (i) in respect of tax withheld at the source on amounts paid or credited to non-residents, after the end of that calendar year, and
- (ii) in respect of other Canadian tax, for taxation years beginning after the end of that calendar year.

IN WITNESS WHEREOF the undersigned, duly authorised thereto by their respective Governments, have signed this Convention.

DONE in duplicate at *Ottawa*, this *14* day of *May* 2012, in the Polish, English and French languages, all three texts being equally authentic.

**FOR THE REPUBLIC
OF POLAND**

FOR CANADA

Zenon Kosiński-Kanig



PROTOCOL

At the moment of signing the *Convention between Canada and the Republic of Poland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income* (the “Convention”) the signatories have agreed that the following provisions shall form an integral part of the Convention:

1. For the purposes of subparagraph 1(h) of Article 3 and paragraph 2 of Article 8 of the Convention, it is understood that a navigation or an incidental stop outside the other Contracting State does not, in and of itself, render a transport not “solely” between places in the other Contracting State.
2. With reference to paragraph 4 of Article 6 of the Convention, that paragraph is included given that, in the case of Canada, certain alienations of immovable property, in particular in connection with trading activities, give rise to “income” rather than “capital gains” for tax purposes.
3. With reference to paragraph 4 of Article 9 and paragraph 3 of Article 23 of the Convention, in the case of Poland, the expression “in the case of fraud or wilful default” also includes all cases where a person has been notified that administrative proceedings concerning fraud or wilful default have been initiated against that person.
4. With reference to Article 17 of the Convention, in the case of Poland, the term “pensions” also includes disability benefits (*renty*) and other similar payments under the social security law of Poland.

IN WITNESS WHEREOF the undersigned, duly authorised thereto by their respective Governments, have signed this Protocol.

DONE in duplicate at *Ottawa*, this *14* day of *May* 2012, in the English, French and Polish languages, all three texts being equally authentic.

**FOR THE REPUBLIC
OF POLAND**

FOR CANADA

Zenon Kosiński-Kayser

