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**INDONESIA - CANADA
INCOME TAX TREATY
(As Amended by 1998 Protocol)**

**CONVENTION BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF INDONESIA
AND
THE GOVERNMENT OF CANADA**

**FOR
THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT
TO TAXES ON INCOME**

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

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

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

(a) in the case of Indonesia :
the income tax imposed under the Undang-undang Pajak Penghasilan 1984 (Law number 7 of 1983 as amended)

(hereinafter referred to as "Indonesian tax").

(b) in the case of Canada :
the income taxes imposed by the Government of Canada,
(hereinafter referred to as "Canadian tax")

4. The Convention shall also apply to any identical or substantially similar taxes on income which are imposed by either Contracting State 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 substantial changes which have been made to their respective taxation laws.

CHAPTER II DEFINITIONS

Article 3 GENERAL DEFINITIONS

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

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

(A) any area beyond the territorial seas of Canada which, in accordance with international law and the laws of Canada is an area within which Canada may exercise rights with respect to the seabed and subsoil and their natural resources;

(B) the seas and airspace above any area referred to in subparagraph (A) in respect of any activity carried on in connection with the exploration for or the exploitation of the natural resources referred to therein;

(i) the term "Indonesia" comprises the territory of the Republic of Indonesia as defined in its laws and the adjacent areas over which the Republic of Indonesia has sovereign rights or jurisdiction in accordance with international law;

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

(c) the
term
"person"
includes
an
individual,
a
company,
a
partnership,
an
estate, a
trust or
any
other
body of
persons;

(d) the
term
"company"
means
any
body
corporate
or any
other
entity
which
is
treated
as a
body
corporate
for tax
purposes;
in
French,
the
term
"societe"
also
means a
"corporation"
within
the
meaning
of
Canadian
law;

(e) 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;

(f) the term "competent authority" means:

- (i) in the case of Canada, the Minister of National Revenue or his duly authorized representative;

(iii) in
the
case
of
Indonesia,
the
Minister
of
Finance
or
his
duly
authorized
representative;

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

(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
law
in
force
in a
Contracting
State.

(i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except where the operation of the ship or aircraft is solely between places in the other Contracting State.

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

Article 4 FISCAL DOMICILE

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

any
person
who,
under
the
laws
of
that
State,
is
liable
to tax
therein
by
(a) reason
of his
domicile,
residence,
place
of
management
or
any
other
criterion
of a
similar
nature;
and
the
Government
of
that
Contracting
State
or a
political
subpision
or
local
authority
(b) thereof
or
any
agency
or
instrumentality
of
any
such
government,
subpision
or
authority.

However,
the
term
does
not
include
a
permanent
establishment
within
the
meaning
of
subparagraph
c. of
paragraph
(3) of
Article
2 of the
Indonesian
Law
Number
7 of
1983
concerning
income
tax as
amended.

2. Where by reason of
the provisions of
paragraph 1 an
individual is a resident
of both Contracting
States, his status
shall be determined
in accordance with
the following rules:

(a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (hereinafter referred to as his "centre of vital interests");

(b) if the
Contracting
State
in
which
he
has
his
centre
of
vital
interests
cannot
be
determined
or if
he
has
not a
permanent
home
available
to
him
in
either
Contracting
State,
he
shall
be
deemed
to be
a
resident
of the
Contracting
State
in
which
he
has
an
habitual
abode;

(c) if he
has
an
habitual
abode
in
both
Contracting
States
or in
neither
of
them,
he
shall
be
deemed
to be
a
resident
of the
Contracting
State
of
which
he is
a
national;

(d) if he
is a
national
of
both
Contracting
States
or of
neither
of
them,
the
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 the Convention to such person.

Article 5 PERMANENT ESTABLISHMENT

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

2. The term "permanent Establishment" shall include especially :

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil well, a quarry or any other place of extraction of natural resources;
- (g) a farm or a plantation;

(h)
building
site, a
construction,
installation
or
assembly
project
or
supervisory
activities
in
connection
therewith,
where
such
site,
project
or
activity
continues
for a
period
of
more
than
120
days;

(i) the
furnishing
of
services,
including
consultancy
services,
by an
enterprise
through
an
employee
or
other
person
(other
than an
agent
of an
independent
status
within
the
meaning
of
paragraph
6)
where
the
activities
continue
within
a
Contracting
State
for
more
than
120
days
within
any
twelve
month
period.

3. The term
"permanent
establishment" shall
not be deemed to
include :

(a) the use
of
facilities
solely
for the
purpose
of
storage
or
display
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
or
display;

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

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

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

4.A person -- other than an agent of independent status to whom paragraph 6 applies -- acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment in the first-mentioned State if:

- (a) he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
- (b) he maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise.

5. An insurance enterprise of a Contracting State shall, except with regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated there through an employee or through a representative who is not an agent of an independent status within the meaning of paragraph 6.

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State through a broker, general commission agent or any other agent of an independent status, or merely because it maintains in that other State a stock of goods with an agent of an independent status from which deliveries are made by that agent, where such broker or agent is acting in the ordinary course of his business. However, when the activities of such an agent are devoted wholly or almost wholly to the business of that enterprise, he shall 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.

CHAPTER III TAXATION OF INCOME

Article 6 INCOME FROM IMMOVABLE PROPERTY

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

2. For the purposes of this Convention, the term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, 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, boats and aircraft shall not be regarded as immovable property.

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

Article 7 BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on 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 or are derived within such other State from sales of goods or merchandise of the same kind as those sold or from other business transactions of the same kind as those effected, through the 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 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. Insofar as it has been customary in a Contracting State, according to its law, to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles laid down in this Article.

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

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

Where profits include items of income which are dealt with separately in other Articles of this

7. 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 from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State of which the enterprise is a resident.

2. Notwithstanding the provisions of paragraph 1 and of Article 7, profits derived from the operation of ships or aircraft used principally to transport passengers or goods between places in a Contracting State may be taxed in that State.

The provisions of paragraph 1 shall also apply to profits derived by an enterprise from its participation in a pool, a joint business or in an international operating

3. agency but only to so much of the profits so derived as is allocable to the participant in an international joint venture in proportion to its share in the 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

2.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 five years from the end of the year in which the profits which would be subject to such change would have accrued to an enterprise of that State. This paragraph shall not apply in 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 the beneficial owner of the dividends is a resident of the other State, the tax so charged shall not exceed:

- 10 per cent of the gross amount of the dividends if the beneficial owner is a company which
- (a) holds directly at least 25 per cent of the capital of the company paying the dividends;
- 15 per cent of the gross amount
- (b) 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, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income assimilated to income from shares or treated in the same way as dividends by the taxation law of the State of which the company making the distribution is a resident.

4. The provisions of paragraph 2 shall not apply if the recipient of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, a trade or business through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the holding by virtue of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a company is a resident of only one Contracting State, the other Contracting State may not impose any tax on the dividends paid by the company except insofar as such dividends are paid to a resident of that other State, or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the 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. Where a company which is a resident of a Contracting State has a permanent establishment in the other Contracting State, the profits attributable to the permanent establishment may be subject to an additional tax in that other State in accordance with its law but the additional tax so charged shall not exceed 15 percent of the amount of such profits after deducting therefrom the company tax and other taxes on income imposed thereon in that other State.

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 State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. 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 assimilated to income from money lent by the taxation law of the State in which the income arises. However, the term "interest" does not include income dealt with in Article 10.

4. The provisions of paragraph 2 shall not apply if the recipient of the interest, being a resident of a Contracting State, carries on in the other Contracting State in which the interest arises, a trade or business through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and that interest is borne by that permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

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

7. Notwithstanding the provisions of paragraph 2, interest arising in Canada shall be taxable only in Indonesia if it is paid to :

- (a) the government of Indonesia or a political subdivision thereof;
- (b) a statutory body of the government of Canada performing functions of a governmental nature;

(c) such
financial
public
institution
of
Indonesia
as is
specified
and
agreed
in
letters
exchanged
between
the
competent
authorities
of the
two
Contracting
States;

(d) an
enterprise
of
Indonesia
on
loans or
credits
granted
with the
participation
of a
financing
public
institution
of
Indonesia
with the
approval
of the
competent
authority
of
Canada.

8. Notwithstanding the
provisions of
paragraph 2, interest
arising in Indonesia
shall be taxable only
in Canada if it is paid
to :

(a) the
government
of Canada or
a political
subsidiary
thereof;

(b)
statutory
body of
the
government
of
Canada
performing
functions
of a
governmental
nature;

(c)
the
Export
Development
Corporation;
or

(dan
enterprise
of
Canada
on
loans or
credit
granted
with the
participation
of the
Export
Development
Corporation
with the
consent
of the
Minister
in
charge
of
financial
affairs
or of
planning
in
Indonesia,
in
connection
with the
sale of
any
industrial
or
scientific
equipment
or with
the
survey,
the
installation
or the
supply
of
industrial
or
scientific
premises
or of
public
works.

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 State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trademark, 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. However, the term does not include payments for the furnishing of technical services (such as studies or surveys of a scientific, geological or technical nature, engineering contracts including blueprints related thereto, and consultancy and supervisory services).

4. The provisions of paragraph 2 shall not apply if the recipient of the royalties, being a resident of a Contracting State, carries on in the other Contracting State in which the royalties arise a trade or business through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

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

Article 13 **GAINS FROM THE ALIENATION OF PROPERTY**

1. Gains from the alienation of immovable property may be taxed in the Contracting State in which such property is situated.

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

3. Gains derived
by a resident
of a
Contracting
State from the
alienation of:

shares of a
company
which is a
resident of
the other
State the
value of
which

(a) shares is
derived
principally
from
immovable
property
situated in
that other
State; or
an interest
in a
partnership,
trust or
estate,
established
under the
law in the
other State,

(b) the value of
which is
derived
principally
from
immovable
property
situated in
that other
State,

may be taxed
in that other
State.

For
the
purposes
of
this
paragraph,
the
term
"immovable
property"
includes
the
shares
of
a
company
referred
to
in
subparagraph
(a)
or
an
interest
in
a
partnership,
trust
or
estate
referred
to
in
subparagraph
(b).

4. Gains from
the alienation
of any
property,
other than
those
mentioned in
paragraphs 1,
2 and 3 shall
be taxable
only in the
Contracting
State of which
the alienator is
a resident.

5. The provisions of paragraph 4 shall not affect the right of either of the Contracting States to levy, according to its domestic law, a tax on gains from the alienation of any property derived by an individual who is a resident of the other Contracting State and has been a resident of the first-mentioned State at any time during the six years immediately preceding the alienation of the property.

Article 14 PROFESSIONAL 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 shall be taxable only in that Contracting State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities or he is present in that other Contracting State for a period or periods exceeding in the aggregate 120 days in any twelve month period. If he has or had such a fixed base or remains in that other Contracting State for the aforesaid period or periods, the income may be taxed in that other Contracting State but only so much of it as

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

Article 15 DEPENDENT PERSONAL SERVICES

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

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 120 days within any twelve month period, and either:

- (a) the remuneration earned in the other Contracting State within the twelve month period does not exceed five thousand Canadian dollars (\$5,000) or its equivalent in rupiah, or such other amount as is 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 derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State, shall be taxable only in that State unless the remuneration is derived by a resident of the other Contracting State.

Article 16 DIRECTORS' FEES

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

Article 17 ARTISTES AND ATHLETES

1. Notwithstanding the provisions of Articles 7, 14 and 15, income derived by entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.
2. Where income in respect of personal activities as such of an entertainer or athlete accrues not to that entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.
3. The provisions of paragraphs 1 and 2 shall apply :

(a) income derived from activities performed in a Contracting State by entertainers or athletes if the visit to that Contracting State is substantially supported by public funds of the other Contracting State, including any political subpision, local authority or statutory body thereof;

(b) income derived in a Contracting State by a non-profit organization of the other Contracting State which is substantially supported by public funds of that other State, including any political subpision, local authority or statutory body 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 State.

2. Pensions arising in a Contracting State and paid to a resident of the other Contracting State may 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, other than payments under the social security legislation in a Contracting State, the tax so charged shall not exceed 15 per cent of the gross amount of the payment.

3. Annuities arising in a Contracting State and paid to a resident of the other Contracting State may 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 percent of the gross amount of the payment. However, this limitation does not apply to lumpsum payments arising on the surrender, cancellation, redemption, sale or other alienation of an annuity, or to payments of any kind under an income-averaging annuity contract.

4. Notwithstanding anything in this Convention :

(a) pensions
and
allowances
received
from
Canada
under
the
Pension
Act, the
Civilian
War
Pensions
and
Allowances
Act or
the War
Veterans
Allowances
Act and
compensation
received
under
section
7 of the
Aeronautics
Act
shall
not be
taxable
in
Indonesia
so long
as they
are not
subject
to
Canadian
tax;

(b) pensions
and
allowances
paid by,
or out
of funds
created
by
Indonesia
or a
political
subpision
or a
local
authority
thereof,
shall be
taxable
only in
Indonesia;

(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. Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof shall be taxable only in that State.

However, such remuneration shall be taxable only in the other Contracting State if the recipient did not become a resident of that other State solely for the purpose of performing the services therein.

2. The provisions of paragraph 1 shall not apply to the remuneration in respect of services rendered in connection with any trade or business carried on by one of the Contracting States 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 one of the Contracting States, a resident of the other Contracting State and who is present in the first-mentioned Contracting 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 first-mentioned State, provided that such payments are made to him from sources outside that State.

Article 21 INCOME NOT EXPRESSLY MENTIONED

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Convention shall be taxable only in that Contracting State except that, if such income is derived from sources within the other Contracting State, it may also be taxed in that other State.

CHAPTER 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 under the law of Indonesia and in accordance with this Convention on profits, income or gains arising in Indonesia shall be deducted from any Canadian tax payable

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

(c) Where in accordance with any provision of this 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.

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

(a) Indonesia, when imposing tax on residents of Indonesia, may include in the basis upon which such taxes are imposed the items of income which according to the provisions of this Convention may be taxed in Canada.

(b) Subject to the provisions of subparagraph (c), Indonesia shall allow as a deduction from the tax computed in conformity with subparagraph (a) an amount equal to such proportion of that tax that the income which is included in the basis of that tax and may be taxed in Canada according to the provisions of this Convention bears to the total income which forms the basis for Indonesian tax.

(c) Where a resident of Indonesia derives income which, in accordance with paragraph 2 of Article 10, paragraph 2 of Article 11, and paragraph 2 of Article 12 may be taxed in Canada, Indonesia shall allow as a deduction from the Indonesian tax on the income of that person an amount equal to the tax paid in Canada on that income. Such deduction shall not, however, exceed that part of the Indonesian tax computed in conformity with subparagraph (a) which is appropriate to the income

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

CHAPTER V SPECIAL PROVISIONS

Article 23 NON-DISCRIMINATION

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is 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.

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 under the law of 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, in substantially similar circumstances, 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.Nothing in this Article shall be construed so as to prevent Indonesia from limiting to its nationals the enjoyment of tax incentives granted under the Law of 1968 regarding Domestic Capital Investment, so far as it was in force on, and has not been modified since, the date of signature of this Convention, or has been modified only in minor respects so as not to affect its general character.

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

Article 24 MUTUAL AGREEMENT PROCEDURE

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, without prejudice to the remedies provided by the national laws of those States, address to the competent authority of the Contracting State of which he is a resident an application in writing stating the grounds for claiming the revision of such taxation. To be admissible, the said application must be submitted within two years from the first notification of the action which gives rise to taxation not in accordance with the Convention.

2. The competent authority referred to in paragraph 1 shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Convention.

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

4.The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. In particular, the competent authorities of the Contracting States may consult together to endeavour to agree:

- (a) to the same attribution of profits to a resident of a Contracting State and its permanent establishment situated in the other Contracting State;

(b) the same allocation of income between a resident of a Contracting State and any associated person provided for in Article 9.

Article 25 EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention or of the domestic laws of the Contracting States, and for the prevention of fiscal evasion, concerning taxes covered by this Convention insofar as the taxation thereunder is in accordance with this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes which are the subject of this Convention.

2. The exchange of information may be either on a routine basis or on request with reference to particular cases. The competent authorities of the Contracting States may agree on the list of information which shall be furnished on a routine basis.

3. In no case shall the provisions of paragraph 1 be construed so as to impose on one of the Contracting States the obligation :

- (a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;
- (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) to
supply
information
which
would
disclose
any
trade,
business,
industrial,
commercial
or
professional
secret
or
trade
process,
or
information,
the
disclosure
of
which
would
be
contrary
to
public
policy
(ordre
public).

Article 26 DIPLOMATIC AND CONSULAR OFFICIALS

1. Nothing in this
Convention
shall affect the
fiscal privileges
of members of
diplomatic or
consular
missions 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, consular 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 world income as are residents of that sending State.

3.This

Convention shall not apply to International Organizations, to officials or organs thereof and to persons who are members of a diplomatic, consular or permanent mission of a third State, being present in a Contracting State and who are not liable in either Contracting State to the same obligations in relation to tax on their total world 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 exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded:

(a) by the laws of one of the Contracting States in the determination of the tax imposed by that Contracting State, or

(b) by
any
other
agreement
entered
into
by
one
of the
Contracting
States.

2. The competent
authorities of the
Contracting States
may communicate
with each other
directly for the
purpose of
applying this
Convention.

3. The provisions of
paragraph 6 of
Article 10 shall not
affect the
provisions
contained in any
Contracts of Work
and Production
Sharing Contracts
relating to the oil
and gas sector or
other mining sector
negotiated by the
Government of
Indonesia, its
instrumentality, its
relevant state oil
company or any
other entity thereof
with a person who
is a resident of
Canada.

4.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 Contracting State with respect to a partnership, trust or controlled foreign affiliate in which the resident has an interest.

5.The 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 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.

CHAPTER VI FINAL PROVISIONS

Article 28 ENTRY INTO FORCE

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

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

- (a) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January in the calendar year in which the exchange of instruments of ratification takes place; and

(b) in respect of other taxes for taxable periods beginning on or after the first day of January in the calendar year in which the exchange of instruments of ratification takes place.

Article 29 TERMINATION

This Convention shall continue in effect indefinitely but either Contracting State may, on or before June 30 in any calendar year after the year 1980, give notice of termination to the other Contracting State and in such event the Convention shall cease to have effect:

- (a) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January in the calendar year next following that in which the notice is given; and
- (b) in respect of other taxes for taxable periods beginning on or after the first day of January in the calendar year next following that in which the notice is given.

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

Done in duplicate at Jakarta, this sixteenth day of January, 1979, in the English, French and Indonesian languages, each version being equally authentic.

FOR THE GOVERNMENT OF
REPUBLIC OF INDONESIA

FOR THE GOVERNMENT
OF CANADA

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