

Agreement Between the Government of Canada and the Government of the Socialist Republic of Vietnam

The Government of Canada and the Government of the Socialist Republic of Vietnam, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows:

Article 1

Personal Scope

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

Article 2

Taxes Covered

1. This Agreement 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, as well as taxes on capital appreciation.

3. The existing taxes to which the Agreement shall apply are:

(a) in the case of Canada: the income taxes imposed by the Government of Canada under the Income Tax Act, (hereinafter referred to as "Canadian tax"); (b) in the case of Vietnam:

- (i) the personal income tax;
- (ii) the profit tax;
- (iii) the profit remittance tax;

(hereinafter referred to as "Vietnamese tax").

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

Article 3

General Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:

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

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

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

(b) the term "Vietnam" means the Socialist Republic of Vietnam and, when used in a geographical sense, it means the territory of Vietnam, including:

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

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

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

(d) the term "person" includes an individual, a company, a partnership and any other body of persons;

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

(f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(g) the term "national" means:

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

(ii) any legal person, partnership and association deriving its status as such from the laws in force in a Contracting State;

(h) the term "competent authority" means:

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

(ii) in the case of Vietnam, the Minister of Finance or the Minister's authorized representative;

(i) the term "international traffic" means any voyage of a ship or aircraft to transport passengers or property except where the principal purpose of the voyage is to transport passengers or property between places within a Contracting State.

2. As regards the application of the Agreement by a Contracting State at any time, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that State concerning the taxes to which the Agreement applies.

Article 4

Resident

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of registration, place of incorporation or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

(a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

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

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

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

3. Where by reason of the provisions of paragraph 1 a company is a resident of both Contracting States, then its status shall be determined as follows:

(a) it shall be deemed to be a resident of the State of which it is a national;

(b) if it is a national of neither of the States, it shall be deemed to be a resident of the State in which its place of effective management is situated.

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

Article 5

Permanent Establishment

1. For the purposes of this Agreement, 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 relating to the exploration for or the exploitation of natural resources.

3. The term "permanent establishment" shall likewise encompass:

(a) a building site, construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than six months;

(b) the furnishing of services, including consultancy services, by an enterprise of a Contracting State through employees or other personnel in the other Contracting State, but only where activities of that nature continue (for the same or a connected project) within the country for a period or periods aggregating more than six months within any twelve month period.

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 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 of collecting information, for the enterprise;

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

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to

(e) provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 7 applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned State in respect of any activities which that person undertakes for the enterprise, if such person:

(a) has, and habitually exercises, in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or

(b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, 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 therein through a person other than an agent of an independent status to whom paragraph 7 applies.

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

8. 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. For the purposes of this Agreement, the term "immovable property" shall have the meaning which it has under the taxation law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property and to income from the alienation of such property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on or has carried on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deduction expenses which are incurred for the purposes of the business 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. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than as a reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken

in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person in cases where the information available to the competent authority of that State is inadequate to determine the profits to be attributed to a permanent establishment, provided that that law shall be applied, so far as the information available to the competent authority permits, consistently with the principles contained in this Article.

5. Insofar as it has been customary in a Contracting State 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 shall preclude that Contracting State from determining the profits to be taxed by such apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

6. 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.

7. 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.

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

Article 8

Shipping and Air Transport

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

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

3. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

4. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include:

- (a) income from the rental on a bareboat basis of ships or aircraft; and
- (b) profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise,

where such rental, use or maintenance, as the case may be, is incidental to the operation of ships or aircraft in international traffic.

Article 9

Associated Enterprises

1. Where:

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

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

2. Where a Contracting State includes in the income of an enterprise of that State - and taxes accordingly - income on which an enterprise of the other Contracting State has been charged to tax in that other State and the income so included is income which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of tax charged therein on that income. In determining such adjustment, due regard shall be had to the other provisions of this Agreement 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 national laws and, in any case, after five years from the end of the year in which the income which would be subject to such change would, but for the conditions referred to in paragraph 1, have accrued to that enterprise.

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

Article 10

Dividends

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends 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 controls at least 70 per cent of the voting power in the company paying the dividends;

(b) 10 per cent of the gross amount of the dividends if the beneficial owner is a company that controls at least 25 per cent but less than 70 per cent of the voting power in the company paying the dividends; and

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

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

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

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

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

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

3. Notwithstanding the provisions of paragraph 2:

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

(b) interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if it is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by any institution, the capital of which is wholly owned by the Government of that other State, which is specified and agreed in letters exchanged between the competent authorities of the Contracting States.

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 10.

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

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

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

Article 12

Royalties and Fees for Technical Services

1. Royalties and fees for technical services 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 and fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties or of the fees for technical services the tax so charged shall not exceed:

(a) in the case of royalties 10 per cent of the gross amount of such royalties,

(b) in the case of fees for technical services 7.5 per cent of the gross amount of such fees.

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 payments of any kind in respect of motion picture films and works on film, tape or other means of reproduction for radio or television broadcasting), any 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.

4. The term "fees for technical services" as used in this Article means payments of any kind to any person, other than payments to an employee of the person making the payments, in consideration for any services of a managerial, technical or consultancy nature rendered in the Contracting State of which the payer is a resident.

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

6. Royalties or fees for technical services 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 or fees for technical services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to make the payment was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties or fees for technical services paid exceeds, for whatever reason, 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 Agreement.

Article 13

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which 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 independent personal 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.
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 from the alienation of shares of a company that is a resident of a Contracting State may be taxed in that State.
5. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3 and 4 may be taxed in both Contracting States in accordance with the respective laws of those States.

Article 14

Independent Personal Services

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has or had such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15

Dependent Personal Services

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only

in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

(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 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 other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State, may be taxed in that other State.

Article 17

Artistes and Sportsmen

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. The provisions of paragraph 2 shall not apply if it is established that neither the entertainer or the sportsman nor persons related thereto, participate directly or indirectly in the profits of the person referred to in that paragraph.

4. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting State by a resident of the other Contracting State in the context of a visit in the first-mentioned State of a non-profit organisation of the other State, provided the visit is substantially supported by public funds.

Article 18

Pensions and Annuities

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

2. Pensions arising in a Contracting State and paid to a resident of the other Contracting State may also be taxed in the State in which they arise and according to the law of that State. However, in the case of periodic pension payments, 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 also be taxed in the State in which they arise and according to the law of that State.

4. Notwithstanding anything in this Agreement, alimony and other similar payments arising in a Contracting State and paid to a resident of the other Contracting State who is subject to tax therein in respect thereof, shall be taxable only in that other State.

Article 19

Government Service

1. (a) Salaries, wages and similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority in any other State shall be taxable only in the first-mentioned State.

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

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. The provisions of paragraph 1 shall not apply to remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 20

Students

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

Article 21

Other Income

1. Subject to the provisions of paragraph 2, items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

2. However, if such income is derived by a resident of a Contracting State from sources in the other Contracting State, such income may also be taxed in the State in which it arises, and according to the law of that State. Where such income is income from an estate or a trust, other than a trust to which contributions were deductible, the tax so charged shall, provided that 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 22

Elimination of Double Taxation

1. In the case of Canada, double taxation shall be avoided as follows:

(a) subject to the existing provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada and to any subsequent modification of those provisions -- which shall not affect the general principle hereof -- and unless a greater deduction or relief is provided under the laws of Canada, tax payable in Vietnam on profits, income or gains arising in Vietnam shall be deducted from any Canadian tax payable in respect of such profits, income or gains;

(b) subject to the existing provisions of the law of Canada regarding the taxation of income from a foreign affiliate and to any subsequent modification of those provisions -- which shall not affect the general principle hereof -- for the purpose of computing Canadian tax, a company which is a resident of Canada shall be allowed to deduct in computing its taxable income any dividend received by it out of the exempt surplus of a foreign affiliate which is a resident of Vietnam; and

(c) where, in accordance with any provision of the Agreement, 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.

The term "exempt surplus" shall have the meaning that it has under the Income Tax Act of Canada.

2. For the purpose of subparagraph (a) of paragraph 1, tax payable in Vietnam by a company engaged primarily in the manufacturing or natural resources sector which is a resident of Canada in respect of:

(a) interest, other than interest which is exempted in Vietnam in accordance with paragraph 3 of Article 11, or

(b) payments of any kind received as a consideration for the use of, or the right to use, any patent, design or model, plan, secret formula or process, or for information concerning industrial or scientific experience,

paid by a company engaged primarily in the same sector which is a resident of Vietnam shall be deemed to have been paid at the rate of 10 per cent of the gross amount of the payment. The provisions of this paragraph shall apply for the first five years for which the Agreement is effective, but the competent authorities of the Contracting States may consult with each other to determine whether this period shall be extended.

3. For the purposes of subparagraph (a) of paragraph 1, tax payable in Vietnam by a company which is a resident of Canada in respect of profits attributable to manufacturing activities or to the exploration or exploitation of natural resources carried on by it in Vietnam shall be deemed to include any amount which would have been payable thereon as Vietnamese tax for any year but for an exemption from, or reduction of, tax granted for that year or any part thereof under specific provisions of Vietnamese legislation and provided always that the competent authority of Vietnam has certified that any such exemption from or reduction of Vietnamese tax given under these provisions has been granted in order to promote economic development in Vietnam. Relief from Canadian tax by virtue of this paragraph shall be given for a period of ten years only, beginning with the date on which the Agreement entered into force.

4. In the case of Vietnam, double taxation shall be avoided as follows: where a resident of Vietnam derives income which, in accordance with the provisions of this Agreement, may be taxed in Canada, Vietnam shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in Canada. Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Canada.

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

Article 23

Non-Discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the

taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

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

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

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

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

Article 24

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, address to the competent authority of the Contracting State of which he is a resident an application in writing stating the grounds for claiming the revision of such taxation. To be admissible, the said application must be submitted within two years from the first notification of the action which gives rise to taxation not in accordance with the Agreement.

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 Agreement.

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

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

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

Article 25

Exchange of Information

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

2. Nothing in paragraph 1 shall be construed so as to impose on a Contracting State the obligation:

(a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

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

3. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall endeavour to obtain the information to which the request relates in the same way as if its own taxation were involved notwithstanding the fact that the other State does not, at that time, need such information. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall endeavour to provide information under this Article in the form requested, such as depositions of witnesses and copies of unedited original documents (including books, papers, statements, records, accounts or writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of that other State with respect to its own taxes.

Article 26

Diplomatic Agents and Consular Officers

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

2. Notwithstanding Article 4, an individual who is a member of a diplomatic mission, consular post or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed for the purposes of the Agreement to be a resident of the sending State if he is liable in the sending State to the same obligations in relation to tax on his total income as are residents of that sending State.

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

Article 27

Entry into Force

1. Each of the Contracting States shall notify the other Contracting State of the completion of the procedures required by the laws of the respective Contracting State for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the later of these notifications.

2. The provisions of the Agreement 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 following that in which the Agreement enters into force; and

(b) in respect of other taxes for taxation years beginning on or after the first day of January in the calendar year following that in which the Agreement enters into force.

Article 28

Termination

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through the diplomatic channel, by giving to the other Contracting State a written notice of termination on or before June 30 in any calendar year from the fifth year after the year in which the Agreement entered into force. In such event, the Agreement shall cease to have effect:

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

(b) in respect of other taxes for taxation years beginning on or after the first day of January of the calendar year following that in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Hanoi, this 14th day of November of the year one thousand nine hundred and ninety-seven, in the English, French and Vietnamese languages, each version being equally authentic.

FOR THE GOVERNMENT OF CANADA

**FOR THE GOVERNMENT OF THE
SOCIALIST REPUBLIC OF VIETNAM**

Diane Marleau

Nguyen Sinh Hung

Protocol

At the moment of signing the Agreement between the Government of Canada and the Government of the Socialist Republic of Vietnam for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed that the following provisions shall form an integral part of the Agreement.

1. It is understood that the term "person" also includes an estate and a trust.
2. It is understood that the term "resident of a Contracting State" also includes the Government of that State or a political subdivision or local authority thereof or any agency or instrumentality of any such government, subdivision or authority.
3. Nothing in the Agreement shall be construed as preventing:
 - (a) Canada State from imposing on the earnings of a company attributable to a permanent establishment in Canada, a tax in addition to the tax which would be chargeable on the earnings of a company which is a national of Canada, provided that any additional tax so imposed shall not exceed 5 per cent of the amount of such earnings which have not been subjected to such additional tax in previous taxation years. This provision shall also apply with respect to earnings derived from the alienation of immovable property in Canada by a company carrying on a trade in immovable property, whether or not it has a permanent establishment in Canada, but only insofar as these earnings may be taxed in Canada under the provisions of Article 6 or paragraph 1 of Article 13;
 - (b) Vietnam from imposing the Vietnamese profit remittance tax, provided that the tax so imposed shall not exceed 10 per cent of the gross amount of the profits remitted.
4. The provisions of the Agreement shall not be construed to restrict in any manner any exemption, allowance, credit or other deduction accorded:
 - (a) by the laws of a Contracting State in the determination of the tax imposed by that State; or
 - (b) by any other agreement entered into by a Contracting State.
5. Nothing in the Agreement shall be construed as preventing a Contracting State from imposing a tax on amounts included in the income of a resident of that State with respect to a partnership, trust, or controlled foreign affiliate, in which he has an interest. For the purposes of this paragraph, the term "controlled foreign affiliate", at any time, of a person that is a resident of a Contracting State, means a foreign affiliate of that resident that was, at that time controlled by
 - (a) that resident;
 - (b) that resident and not more than four persons resident in that Contracting State;

(c) not more than four persons resident in that Contracting State, other than that resident;

(d) a person or persons with whom that resident does not deal at arm's length, or

(e) that resident and a person or persons with whom the resident does not deal at arm's length.

6. The Agreement shall not apply to any company nor to income derived from such company by a shareholder thereof, trust or partnership that is a resident of a Contracting State and is beneficially owned or controlled directly or indirectly by one or more persons who are not residents of that State, if the amount of the tax imposed on the income or capital of the company, trust or partnership by that State is substantially lower than the amount that would be imposed by that State if all of the shares of the capital stock of the company or all of the interests in the trust or partnership, as the case may be, were beneficially owned by one or more individuals who were residents of that State.

7. It is understood that the provisions of Article 23 of the Agreement shall not apply to the Vietnamese taxation of natural resources and agricultural production activities.

8. Irrespective of the participation of the Contracting States in international agreements, the Contracting States in their tax relations will be governed by the provisions of this Agreement.

9. If, after the date of signature of this Agreement, Vietnam concludes a bilateral Agreement for the avoidance of double taxation with any other member State of the Organisation for Economic Co-operation and Development and, under the provisions of that Agreement, Vietnam may tax royalties arising in Vietnam and paid to a resident of that State but the tax charged is not to exceed a percentage of the gross amount of the royalties which is lesser than the percentage specified in subparagraph (a) of paragraph 2 of Article 12, then the lower percentage shall apply from the date of entry into force of that Agreement; however, such lower percentage shall apply only to royalties to which it applies in that Agreement and only where the payments are for the use of, or the right to use, computer software or, where the payer and the beneficial owner of the royalties are not related persons, 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 information provided in connection with a rental or franchise agreement).

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

DONE in duplicate at Hanoi, this 14th day of November of the year one thousand nine hundred and ninety-seven, in the English, French and Vietnamese languages, each version being equally authentic.

FOR THE GOVERNMENT OF CANADA

**FOR THE GOVERNMENT OF THE
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