

**SYNTHESISED TEXT
OF THE MLI AND THE CONVENTION BETWEEN
THE GOVERNMENT OF JAPAN AND
THE GOVERNMENT OF CANADA
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME**

This document presents the synthesised text for the application of the Convention between the Government of Japan and the Government of Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on May 7, 1986, as amended by the Protocol signed on February 19, 1999 (hereinafter referred to as “the Convention”), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by Japan and Canada on June 7, 2017 (hereinafter referred to as “the MLI”).

This document was prepared on the basis of the reservations and notifications submitted to the Depositary (the Secretary-General of the Organisation for Economic Co-operation and Development) by Japan on September 26, 2018 and by Canada on August 29, 2019 respectively.

The sole purpose of this document is to facilitate the understanding of the application of the MLI to the Convention and the document does not constitute a source of law. The authentic texts of the Convention and the MLI are the only legal texts applicable.

The provisions of the MLI that are applicable with respect to the provisions of the Convention are included in boxes throughout this document in the context of the relevant provisions of the Convention.

In this document, changes to the text of the provisions of the MLI have been made to conform the terminology used in the MLI to the terminology used in the Convention (such as changes from “Covered Tax Agreement” to “Convention” and changes from “Contracting Jurisdiction” to “Contracting State”). Similarly, changes have been made to parts of provisions of the MLI that describe existing provisions of the Convention by replacing such descriptive language with the article and paragraph numbers of the existing provisions. These changes are intended to increase the readability of the document and are not intended to change the substance of the provisions of the MLI.

Unless the context otherwise requires, references made to the provisions of the Convention will be understood as referring to the provisions of the Convention as modified by the provisions of the MLI.

Entry into force and entry into effect of the MLI

The MLI enters into force for Japan on January 1, 2019 and for Canada on December 1, 2019 and has effect as follows:

- (a) The provisions of the MLI shall have effect in each Contracting State with respect to the Convention:
 - (i) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after January 1, 2020; and
 - (ii) with respect to all other taxes levied by that Contracting State, for taxes levied with respect to taxable periods beginning on or after June 1, 2020.
- (b) Notwithstanding (a), Article 16 (Mutual Agreement Procedure) of the MLI shall have effect with respect to the Convention for a case presented to the competent authority of a Contracting State on or after December 1, 2019, except for cases that were not eligible to be presented as of that date under the Convention prior to its modification by the MLI, without regard to the taxable period to which the case relates.
- (c) Notwithstanding (a) and (b), the provisions of Part VI (Arbitration) of the MLI shall have effect:
 - (i) with respect to cases presented to the competent authority of a Contracting State (as described in subparagraph a) of paragraph 1 of Article 19 (Mandatory Binding Arbitration) of the MLI), on or after December 1, 2019; and
 - (ii) with respect to cases presented to the competent authority of a Contracting State prior to December 1, 2019, on the date when both Contracting States have notified the Depositary that they have reached mutual agreement pursuant to paragraph 10 of Article 19 of the MLI, along with information regarding the date or dates on which such cases shall be considered to have been presented to the competent authority of a Contracting State (as described in subparagraph a) of paragraph 1 of Article 19 of the MLI) according to the terms of that mutual agreement.

Note that the application of consolidated parts of the texts of the Convention and its amending Protocol contained in this document is subject to the provisions regarding entry into effect provided for in the amending Protocol.

CONVENTION
BETWEEN THE GOVERNMENT OF JAPAN AND
THE GOVERNMENT OF CANADA
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME

The Government of Japan and the Government of Canada,

Desiring to conclude a new convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

The following preamble text described in paragraph 1 of Article 6 of the MLI is included in the preamble of the Convention:

Article 6 – Purpose of a Covered Tax Agreement

Intending to eliminate double taxation with respect to the taxes covered by the Convention without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in the Convention for the indirect benefit of residents of third jurisdictions),

Have agreed as follows:

Article 1

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

Article 2

1. The taxes which are the subject of this Convention are:

(a) in Canada:

the income taxes imposed by the Government of Canada

(hereinafter referred to as "Canadian tax");

(b) in Japan:

(i) the income tax; and

(ii) the corporation tax

(hereinafter referred to as "Japanese tax").

2. This Convention shall also apply to any identical or substantially similar taxes, which are imposed after the date of signature of this Convention in addition to, or in place of, those referred to in paragraph 1. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

Article 3

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

- (a) the term "Canada" used in a geographical sense, means the territory of Canada, and includes
 - (i) every area beyond the territorial seas of Canada that, in accordance with international law and the laws of Canada, is an area in respect of which Canada may exercise rights with respect to the sea-bed and subsoil and their natural resources; and
 - (ii) the seas above every area described in subparagraph (i) to the extent that the rights of Canada in these seas are recognized in international law;
- (b) the term "Japan", when used in a geographical sense, means all the territory of Japan, including its territorial sea, in which the laws relating to Japanese tax are in force, and all the area beyond its territorial sea, including the sea-bed and subsoil thereof, over which Japan has jurisdiction in accordance with international law and in which the laws relating to Japanese tax are in force;
- (c) the terms "a Contracting State" and "the other Contracting State" mean Japan or Canada, as the context requires;
- (d) the term "tax" means Japanese tax or Canadian tax, as the context requires;
- (e) the term "person" includes an individual, a company and any other body of persons;

- (f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (h) the term "nationals" means all individuals possessing the nationality of either Contracting State and all juridical persons created or organized under the laws of that Contracting State and all organizations without juridical personality treated for the purposes of tax of that Contracting State as juridical persons created or organized under the laws of that Contracting State;
- (i) the term "international traffic" means any voyage of a ship or aircraft operated by an enterprise of a Contracting State except where the principal purpose of the voyage is to transport passengers or goods between places in the other Contracting State;
- (j) the term "competent authority" means, in the case of Japan, the Minister of Finance or his authorized representative and, in the case of Canada, the Minister of National Revenue or his authorized representative.

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

Article 4

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

2. Where by reason of the provisions of paragraph 1 a person is a resident of both Contracting States, then the competent authorities of the Contracting States shall

determine by mutual agreement the Contracting State of which that person shall be deemed to be a resident for the purposes of this Convention.

The following paragraph 1 (as modified by subparagraph e) of paragraph 3) of Article 4 of the MLI replaces paragraph 2 of Article 4 of the Convention and subparagraph (b) of paragraph 2 of the Protocol to the Convention (in the case of paragraph 2 of Article 4 of the Convention, only to the extent that the provisions of that paragraph relate to a person other than an individual):

Article 4 – Dual Resident Entities

1. Where by reason of the provisions of paragraph 1 of Article 4 of the Convention a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Convention, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by the Convention.

Article 5

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

2. The term "permanent establishment" includes especially:

- (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) a workshop; and
 - (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. A building site or construction or installation

project constitutes a permanent establishment only if it lasts more than 12 months.

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

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

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom the provisions of paragraph 6 apply - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that Contracting State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it

carries on business in that Contracting State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

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

Article 6

1. Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other Contracting State.

2. The term "immovable property" shall have the meaning which it has under the laws 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 immovable property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

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

4. 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

1. The profits of an enterprise of a Contracting State shall be taxable only in that Contracting State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in that other Contracting 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 those deductible expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere.

4. 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 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 contained in this Article.

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

6. For the purposes of the provisions of the preceding paragraphs of this Article, 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.

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

Article 8

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

2. Notwithstanding the provisions of Article 2, provided

that no political subdivision or local authority in Canada levies an income tax or a tax similar to the enterprise tax in Japan in respect of the operation of ships or aircraft in international traffic carried on by an enterprise of Japan, an enterprise of Canada shall be exempt from the local inhabitant taxes and the enterprise tax in Japan in respect of the operation of ships or aircraft in international traffic.

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

Article 9

1. Where

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

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

2. Where a Contracting State includes, in accordance with the provisions of paragraph 1, in the profits of an enterprise of that Contracting State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and where the competent authorities of the Contracting States agree, upon consultation, that all or part of the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting State shall make an appropriate adjustment to the amount of tax charged therein on those agreed profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention.

3. Notwithstanding the provisions of paragraph 1, a Contracting State shall not change the profits of an enterprise of that Contracting State in the circumstances referred to in paragraph 1 after seven years from the end of the taxable or taxation year in which the profits that 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 or wilful default.

Article 10

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 Contracting 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 Contracting State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

- (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which owns at least 25 per cent of the voting shares of the company paying the dividends throughout the period of six months immediately before the end of the accounting period for which the distribution of profits takes place;
- (b) 15 per cent of the gross amount of the dividends in all other cases.

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

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

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated

therein, or performs in that other Contracting 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 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 Contracting 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 Contracting 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 that other Contracting State.

Article 11

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

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

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and derived by the Government of the other Contracting State including a political subdivision and a local authority thereof, the Central Bank of that other Contracting State or any financial institution wholly owned by that Government, or by any resident of the other Contracting State with respect to debt-claims guaranteed or indirectly financed by the Government of that other Contracting State including a political subdivision and a local authority thereof, the Central Bank of that other Contracting State or any financial institution wholly owned by that Government shall be exempt from tax in the first-mentioned Contracting State.

4. For the purposes of paragraph 3, the terms "the Central Bank" and "financial institution wholly owned by the Government" mean:

- (a) in the case of Canada:
 - (i) the Bank of Canada;
 - (ii) the Export Development Corporation of Canada; and
 - (iii) such other financial institution the capital of which is wholly owned by the Government of Canada as may be agreed upon from time to time between the Governments of the two Contracting States;
- (b) in the case of Japan:
 - (i) the Bank of Japan;
 - (ii) the Export-Import Bank of Japan;
 - (iii) the Overseas Economic Cooperation Fund;
 - (iv) the Japan International Cooperation Agency; and
 - (v) such other financial institution the capital of which is wholly owned by the Government of Japan as may be agreed upon from time to time between the Governments of the two Contracting States.

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

6. The provisions of paragraphs 1 and 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 Contracting 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.

7. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision or a local authority thereof, or a resident of that Contracting 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 Contracting State in which the permanent establishment or fixed base is situated.

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

Article 12

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

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

3. 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 and films or tapes 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 provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other

Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other Contracting State independent personal 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 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 Contracting State itself, a political subdivision or a local authority thereof, or a resident of that Contracting 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 a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such 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, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other Contracting State.

2. Gains from the alienation of any property, other than immovable 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 any property, other than immovable 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 Contracting State.

3. Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic and any property, other than immovable property, pertaining to the operation of such ships or aircraft shall be taxable only in that Contracting State.

4. Gains derived by a resident of a Contracting State from the alienation of any property other than that referred to in paragraphs 1 to 3 and arising in the other Contracting State may be taxed in that other Contracting State.

The following paragraph 4 of Article 9 of the MLI applies to the Convention:

*Article 9 – Capital Gains from Alienation of Shares or Interests of Entities
Deriving their Value Principally from Immovable Property*

4. For purposes of the Convention, gains derived by a resident of a Contracting State from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the other Contracting State if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property situated in that other Contracting State.

Article 14

1. Income derived by 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. If he has such a fixed base, the income may be taxed in that other Contracting 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

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 Contracting 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 Contracting 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 Contracting State, if:

- (a) the recipient is present in that other Contracting State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other Contracting State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in that other Contracting State.

3. Notwithstanding the provisions of the preceding paragraphs 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 may be taxed in that Contracting State.

Article 16

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 Contracting State.

Article 17

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 an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other Contracting State.

Such income shall, however, be exempt from tax in that other Contracting State if such activities are exercised by an individual, being a resident of the first-mentioned

Contracting State, pursuant to a special programme for cultural exchange agreed upon between the Governments of the two Contracting States.

2. Where income in respect of personal activities exercised in a Contracting State by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person who is a resident of the other Contracting State, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the first-mentioned Contracting State.

Such income shall, however, be exempt from tax in the first-mentioned Contracting State if such activities are exercised pursuant to a special programme for cultural exchange agreed upon between the Governments of the two Contracting States.

Article 18

1. (a) 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 Contracting State or a political subdivision or a local authority thereof, in the discharge of functions of a governmental nature, shall be taxable only in that Contracting State.
- (b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other Contracting State and the individual is a resident of that other Contracting State who:
 - (i) is a national of that other Contracting State; or
 - (ii) did not become a resident of that other Contracting State solely for the purpose of rendering the services.

2. The provisions of Articles 15, 16 and 17 shall 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 19

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present

in the first-mentioned Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall be exempt from tax in the first-mentioned Contracting State, provided that such payments are made to him from outside that first-mentioned Contracting State.

Article 20

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the income 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.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may be taxed in that other Contracting State.

Article 21

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

- (a) Subject to the existing provisions of the laws of Canada regarding the deduction from tax payable in Canada of foreign tax paid 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 Japan on profits, income or gains arising in Japan shall be deducted from any Canadian tax payable in respect of such profits, income or gains.
- (b) Subject to the existing provisions of the laws 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 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 Japan.

For the purposes of this paragraph, profits, income or gains of a resident of Canada which are taxed in Japan in accordance with the provisions of this Convention shall be deemed to arise from sources in Japan.

2. Subject to the laws of Japan regarding the allowance as a credit against Japanese tax of tax payable in any country other than Japan:

- (a) Where a resident of Japan derives income from Canada which may be taxed in Canada in accordance with the provisions of this Convention, the amount of Canadian tax payable in respect of that income shall be allowed as a credit against the Japanese tax imposed on that resident. The amount of credit, however, shall not exceed that part of the Japanese tax which is appropriate to that income.
- (b) Where the income derived from Canada is a dividend paid by a company which is a resident of Canada to a company which is a resident of Japan and which owns not less than 25 per cent either of the voting shares of the company paying the dividend, or of the total shares issued by that company, the credit shall take into account the Canadian tax payable by the company paying the dividend in respect of its income.

Article 22

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 Contracting State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to individuals who are not residents of one or both of the Contracting States.

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

that other Contracting State than the taxation levied on enterprises of that other Contracting 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 Contracting 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 Contracting 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 the taxes which are the subject of this Convention.

Article 23

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic laws of those Contracting States, present his case in writing to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 22, to that of the Contracting State of which he is a national. ~~The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of this Convention.~~

The following second sentence of paragraph 1 of Article 16 of the MLI replaces the second sentence of paragraph 1 of Article 23 of the Convention:

Article 16 – Mutual Agreement Procedure

The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority 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 provisions of this Convention.

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

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs of this Article.

The following Part VI of the MLI applies to the Convention:

PART VI.
ARBITRATION

Article 19 - Mandatory Binding Arbitration

1. Where:

- a) under paragraph 1 of Article 23 of the Convention, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of the Convention; and
- b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 of Article 23 of the Convention, within a period of two years beginning on the start date referred to in paragraph 8 or 9, as the case may be (unless, prior to the expiration of that period the competent authorities of the Contracting States have agreed to a different time period with respect to that case and have notified the person who presented the case of such agreement),

any unresolved issues arising from the case shall, if the person so requests in writing, be submitted to arbitration

in the manner described in this Part, according to any rules or procedures agreed upon by the competent authorities of the Contracting States pursuant to the provisions of paragraph 10.

2. Where a competent authority has suspended the mutual agreement procedure referred to in paragraph 1 because a case with respect to one or more of the same issues is pending before court or administrative tribunal, the period provided in subparagraph b) of paragraph 1 will stop running until either a final decision has been rendered by the court or administrative tribunal or the case has been suspended or withdrawn. In addition, where a person who presented a case and a competent authority have agreed to suspend the mutual agreement procedure, the period provided in subparagraph b) of paragraph 1 will stop running until the suspension has been lifted.

3. Where both competent authorities agree that a person directly affected by the case has failed to provide in a timely manner any additional material information requested by either competent authority after the start of the period provided in subparagraph b) of paragraph 1, the period provided in subparagraph b) of paragraph 1 shall be extended for an amount of time equal to the period beginning on the date by which the information was requested and ending on the date on which that information was provided.

4. a) The arbitration decision with respect to the issues submitted to arbitration shall be implemented through the mutual agreement concerning the case referred to in paragraph 1. The arbitration decision shall be final.
- b) The arbitration decision shall be binding on both Contracting States except in the following cases:
- i) if a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision. In such a case, the case shall not be eligible for any further consideration by the competent authorities. The mutual agreement that implements the arbitration decision on the case shall be considered not to be accepted by a person directly affected by the case if any person directly affected by the case does not, within 60 days after the date on which notification of the mutual agreement is sent to the person, withdraw all issues resolved in the mutual agreement implementing the arbitration decision from

consideration by any court or administrative tribunal or otherwise terminate any pending court or administrative proceedings with respect to such issues in a manner consistent with that mutual agreement.

ii) if a final decision of the courts of one of the Contracting States holds that the arbitration decision is invalid. In such a case, the request for arbitration under paragraph 1 shall be considered not to have been made, and the arbitration process shall be considered not to have taken place (except for the purposes of Articles 21 (Confidentiality of Arbitration Proceedings) and 25 (Costs of Arbitration Proceedings) of the MLI). In such a case, a new request for arbitration may be made unless the competent authorities agree that such a new request should not be permitted.

iii) if a person directly affected by the case pursues litigation on the issues which were resolved in the mutual agreement implementing the arbitration decision in any court or administrative tribunal.

5. The competent authority that received the initial request for a mutual agreement procedure as described in subparagraph a) of paragraph 1 shall, within two calendar months of receiving the request:

- a) send a notification to the person who presented the case that it has received the request; and
- b) send a notification of that request, along with a copy of the request, to the competent authority of the other Contracting State.

6. Within three calendar months after a competent authority receives the request for a mutual agreement procedure (or a copy thereof from the competent authority of the other Contracting State) it shall either:

- a) notify the person who has presented the case and the other competent authority that it has received the information necessary to undertake substantive consideration of the case; or
- b) request additional information from that person for that purpose.

7. Where pursuant to subparagraph b) of paragraph 6, one

or both of the competent authorities have requested from the person who presented the case additional information necessary to undertake substantive consideration of the case, the competent authority that requested the additional information shall, within three calendar months of receiving the additional information from that person, notify that person and the other competent authority either:

- a) that it has received the requested information;
or
- b) that some of the requested information is still missing.

8. Where neither competent authority has requested additional information pursuant to subparagraph b) of paragraph 6, the start date referred to in paragraph 1 shall be the earlier of:

- a) the date on which both competent authorities have notified the person who presented the case pursuant to subparagraph a) of paragraph 6; and
- b) the date that is three calendar months after the notification to the competent authority of the other Contracting State pursuant to subparagraph b) of paragraph 5.

9. Where additional information has been requested pursuant to subparagraph b) of paragraph 6, the start date referred to in paragraph 1 shall be the earlier of:

- a) the latest date on which the competent authorities that requested additional information have notified the person who presented the case and the other competent authority pursuant to subparagraph a) of paragraph 7; and
- b) the date that is three calendar months after both competent authorities have received all information requested by either competent authority from the person who presented the case.

If, however, one or both of the competent authorities send the notification referred to in subparagraph b) of paragraph 7, such notification shall be treated as a request for additional information under subparagraph b) of paragraph 6.

10. The competent authorities of the Contracting States shall by mutual agreement pursuant to Article 23 of the Convention settle the mode of application of the provisions

contained in this Part, including the minimum information necessary for each competent authority to undertake substantive consideration of the case. Such an agreement shall be concluded before the date on which unresolved issues in a case are first eligible to be submitted to arbitration and may be modified from time to time thereafter.

12. Notwithstanding the other provisions of this Article:

- a) any unresolved issue arising from a mutual agreement procedure case otherwise within the scope of the arbitration process provided for by the MLI shall not be submitted to arbitration, if a decision on this issue has already been rendered by a court or administrative tribunal of either Contracting State;
- b) if, at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision to the competent authorities of the Contracting States, a decision concerning the issue is rendered by a court or administrative tribunal of one of the Contracting States, the arbitration process shall terminate.

Article 20 - Appointment of Arbitrators

1. Except to the extent that the competent authorities of the Contracting States mutually agree on different rules, paragraphs 2 through 4 shall apply for the purposes of this Part.

2. The following rules shall govern the appointment of the members of an arbitration panel:

- a) The arbitration panel shall consist of three individual members with expertise or experience in international tax matters.
- b) Each competent authority shall appoint one panel member within 60 days of the date of the request for arbitration under paragraph 1 of Article 19 (Mandatory Binding Arbitration) of the MLI. The two panel members so appointed shall, within 60 days of the latter of their appointments, appoint a third member who shall serve as Chair of the arbitration panel. The Chair shall not be a national or resident of either Contracting State.
- c) Each member appointed to the arbitration panel must be impartial and independent of the competent authorities, tax administrations, and

ministries of finance of the Contracting States and of all persons directly affected by the case (as well as their advisors) at the time of accepting an appointment, maintain his or her impartiality and independence throughout the proceedings, and avoid any conduct for a reasonable period of time thereafter which may damage the appearance of impartiality and independence of the arbitrators with respect to the proceedings.

3. In the event that the competent authority of a Contracting State fails to appoint a member of the arbitration panel in the manner and within the time periods specified in paragraph 2 or agreed to by the competent authorities of the Contracting States, a member shall be appointed on behalf of that competent authority by the highest ranking official of the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development that is not a national of either Contracting State.

4. If the two initial members of the arbitration panel fail to appoint the Chair in the manner and within the time periods specified in paragraph 2 or agreed to by the competent authorities of the Contracting States, the Chair shall be appointed by the highest ranking official of the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development that is not a national of either Contracting State.

Article 21 - Confidentiality of Arbitration Proceedings

1. Solely for the purposes of the application of the provisions of this Part and of the provisions of the Convention and of the domestic laws of the Contracting States related to the exchange of information, confidentiality, and administrative assistance, members of the arbitration panel and a maximum of three staff per member (and prospective arbitrators solely to the extent necessary to verify their ability to fulfil the requirements of arbitrators) shall be considered to be persons or authorities to whom information may be disclosed. Information received by the arbitration panel or prospective arbitrators and information that the competent authorities receive from the arbitration panel shall be considered information that is exchanged under the provisions of the Convention related to the exchange of information and administrative assistance.

2. The competent authorities of the Contracting States shall ensure that members of the arbitration panel and their staff agree in writing, prior to their acting in an

arbitration proceeding, to treat any information relating to the arbitration proceeding consistently with the confidentiality and nondisclosure obligations described in the provisions of the Convention related to exchange of information and administrative assistance and under the applicable laws of the Contracting States.

Article 22 - Resolution of a Case Prior to the Conclusion of the Arbitration

For the purposes of this Part and the provisions of the Convention that provide for resolution of cases through mutual agreement, the mutual agreement procedure, as well as the arbitration proceeding, with respect to a case shall terminate if, at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision to the competent authorities of the Contracting States:

- a) the competent authorities of the Contracting States reach a mutual agreement to resolve the case; or
- b) the person who presented the case withdraws the request for arbitration or the request for a mutual agreement procedure.

Article 23 - Type of Arbitration Process

3. The competent authorities of the Contracting States shall endeavour to reach agreement on the type of arbitration process that shall apply with respect to the Convention. Until such an agreement is reached, Article 19 (Mandatory Binding Arbitration) of the MLI shall not apply with respect to the Convention.

5. Prior to the beginning of arbitration proceedings, the competent authorities of the Contracting States shall ensure that each person that presented the case and their advisors agree in writing not to disclose to any other person any information received during the course of the arbitration proceedings from either competent authority or the arbitration panel. The mutual agreement procedure under the Convention, as well as the arbitration proceeding under this Part, with respect to the case shall terminate if, at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision to the competent authorities of the Contracting States, a person that presented the case or one of that person's advisors materially breaches that agreement.

Article 25 - Costs of Arbitration Proceedings

In an arbitration proceeding under this Part, the fees

and expenses of the members of the arbitration panel, as well as any costs incurred in connection with the arbitration proceedings by the Contracting States, shall be borne by the Contracting States in a manner to be settled by mutual agreement between the competent authorities of the Contracting States. In the absence of such agreement, each Contracting State shall bear its own expenses and those of its appointed panel member. The cost of the chair of the arbitration panel and other expenses associated with the conduct of the arbitration proceedings shall be borne by the Contracting States in equal shares.

Article 26 - Compatibility

2. Any unresolved issue arising from a mutual agreement procedure case otherwise within the scope of the arbitration process provided for in this Part shall not be submitted to arbitration if the issue falls within the scope of a case with respect to which an arbitration panel or similar body has previously been set up in accordance with a bilateral or multilateral convention that provides for mandatory binding arbitration of unresolved issues arising from a mutual agreement procedure case.

3. Nothing in this Part shall affect the fulfilment of wider obligations with respect to the arbitration of unresolved issues arising in the context of a mutual agreement procedure resulting from other conventions to which the Contracting States are or will become parties.

Pursuant to subparagraph a) of paragraph 2 of Article 28 of the MLI, Japan formulates the following reservations with respect to the scope of cases that shall be eligible for arbitration under the provisions of Part VI of the MLI:

1. Japan reserves the right to exclude from the scope of Part VI of the MLI with respect to the Convention cases falling within the provisions of paragraph 2 of Article 4 of the Convention and subparagraph (b) of paragraph 2 of the Protocol to the Convention (in the case of paragraph 2 of Article 4 of the Convention, only to the extent that the provisions of that paragraph relate to a person other than an individual).

Pursuant to subparagraph a) of paragraph 2 of Article 28 of the MLI, Canada formulates the following reservations with respect to the scope of cases that shall be eligible for arbitration under the provisions of Part VI of the MLI:

1. Canada reserves the right to limit the scope of issues eligible for arbitration under the MLI to the following:
 - (a) Issues arising under provisions akin to Article 4 (Resident) of the OECD Model Tax Convention, but only insofar as the issue relates to the residence of an individual;
 - (b) Issues arising under provisions akin to Article 5 (Permanent Establishment) of the OECD Model Tax Convention;
 - (c) Issues arising under provisions akin to Article 7 (Business Profits) of the OECD Model Tax Convention;
 - (d) Issues arising under provisions akin to Article 9 (Associated Enterprises) of the OECD Model Tax Convention;
 - (e) Issues arising under provisions akin to Article 12 (Royalties) of the OECD Model Tax Convention, but only insofar as such a provision might apply in transactions involving related persons to which provisions akin to Article 9 of the OECD Model Tax Convention might apply; and
 - (f) Any other provisions subsequently agreed by the Contracting States through an exchange of diplomatic notes.
2. Canada reserves the right to exclude from the scope of the arbitration provisions of the MLI issues pertaining to the application of anti-abuse provisions whether contained in the MLI, the Convention, or the domestic law of a Contracting State.

Article 24

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is not contrary to the provisions of this Convention, or for the prevention of fiscal evasion with respect to such taxes. Any information so exchanged shall be treated as secret and shall be disclosed only to persons or authorities, including courts, involved in the

assessment or collection of the taxes covered by this Convention or the determination of appeals in relation thereto.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

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

Article 24A

1. Each of the Contracting States shall endeavour to collect such taxes imposed by the other Contracting State as will ensure that any exemption or reduced rate of tax granted under this Convention by that other Contracting State shall not be enjoyed by persons not entitled to such benefits. The Contracting State making such collections shall be responsible to the other Contracting State for the sums thus collected.

2. In no case shall the provisions of paragraph 1 be construed so as to impose upon either of the Contracting States endeavouring to collect the taxes the obligation to carry out administrative measures at variance with the laws and administrative practice of that Contracting State or which would be contrary to the public policy (ordre public) of that Contracting State.

Article 25

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 by the laws of a Contracting State in the determination of the tax imposed by that Contracting State or any agreement between the Governments of the Contracting States.

2. Except to the extent provided in paragraph 3, this

Convention shall not affect the taxation by a Contracting State of its residents.

3. The provisions of paragraph 2 shall not affect the benefits provided under Articles 18, 19, 21, 22 and 23.

Article 26

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

The following paragraph 1 of Article 7 of the MLI applies to the Convention:

Article 7 – Prevention of Treaty Abuse

1. **Notwithstanding any provisions of the Convention, a benefit under the Convention shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Convention.**

Article 27

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

2. This Convention shall enter into force on the thirtieth day after the date of the exchange of instruments of ratification and shall have effect:

(a) in Canada:

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

(ii) in respect of other Canadian tax for taxation years beginning on or after the first day of January in the calendar year next following that in which this Convention

enters into force; and

(b) in Japan:

as regards income for any taxable year beginning on or after the first day of January in the calendar year next following that in which this Convention enters into force.

3. The Convention between Japan and Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at Tokyo on September 5, 1964, shall terminate and cease to have effect in respect of income to which this Convention applies under the provisions of paragraph 2.

4. The termination of the Convention between Japan and Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at Tokyo on September 5, 1964 as provided in paragraph 3 shall not revive the Agreement between the Government of Japan and the Government of Canada made by the Notes exchanged at Ottawa on September 21, 1929, concerning reciprocal exemption from income tax on profits accruing from the operation of ships. Upon the entry into force of this Convention that Agreement shall terminate.

Article 28

This Convention shall continue in effect indefinitely but either Contracting State may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting State, through the diplomatic channel, written notice of termination and, in such event, this Convention shall cease to have effect:

(a) in Canada:

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

(b) in Japan:

- (i) with respect to taxes withheld at source, for amounts taxable on or after the first day of January of the calendar year next following that in which the notice of termination is given; and
- (ii) with respect to taxes on income which are not withheld at source and the enterprise tax, as regards income for any taxable year beginning on or after the first day of January of the calendar year next following that in which the notice of termination is given.

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

DONE in duplicate at Tokyo on the seventh day of May 1986 in the Japanese, English and French languages, each text being equally authentic.

FOR THE GOVERNMENT
OF JAPAN:

Shintaro Abe

FOR THE GOVERNMENT
OF CANADA:

B. C. Steers

PROTOCOL

At the signing of the Convention between the Government of Japan and the Government of Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (hereinafter referred to as "the Convention"), the undersigned have agreed upon the following provisions which form an integral part of the Convention.

1. With reference to sub-paragraph (e) of paragraph 1 of Article 3 of the Convention, the term "person" shall include an estate and a trust.

2. With reference to paragraph 2 of Article 4 of the Convention, where an individual ~~or a company~~ is a resident of both Contracting States the question shall be settled by mutual agreement by applying the following rules:

(a) in the case of an individual,

(i) 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 (centre of vital interests);

(ii) 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;

(iii) 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;

~~(b) in the case of a company, it shall be deemed to be a resident of the Contracting State of which it is a national¹.~~

3. With reference to Articles 6 and 13 of the Convention,

¹ Subparagraph (b) of paragraph 2 of the Protocol to the Convention is replaced by paragraph 1 (as modified by subparagraph e) of paragraph 3) of Article 4 of the MLI (see [page 6](#)).

in the case of Canada, income from the alienation of immovable property shall be subjected to taxation in accordance with the provisions of paragraph 1 of Article 6 of the Convention.

4. With reference to paragraph 1 of Article 7 of the Convention, where an enterprise of a Contracting State which has carried on business in the other Contracting State through a permanent establishment situated therein, receives, after the enterprise has ceased to carry on business as aforesaid, profits attributable to the permanent establishment, such profits may be taxed in that other Contracting State in accordance with the principles contained in Article 7 of the Convention.

5. Notwithstanding the provisions of paragraph 5 of Article 11 of the Convention, in the case of Canada, the term "dividends" as defined in paragraph 3 of Article 10 of the Convention shall include income from bonds or debentures which is treated as a distribution of profits.

6. Notwithstanding the provisions of paragraphs 1 and 2 of Article 15 and of paragraph 2 of Article 25 of the Convention, a professor or teacher who enters a Contracting State before the date of entry into force of the Convention and stays for a period not exceeding two years for the purpose of teaching at a university, college, school or other educational institution in that Contracting State, and who is, or immediately before his entry was, a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State in respect of remuneration for such teaching.

7. (a) Nothing in the Convention shall be construed as preventing Canada from imposing a tax on the earnings (other than those derived from the operation of ships or aircraft in international traffic) of a company, being a resident of Japan, which are attributable to its permanent establishments in Canada, in addition to the tax which would be chargeable on the profits of a company which is a resident of Canada. For the purposes of this paragraph, the term "earnings" means the amount by which the business profits attributable to permanent establishments in Canada (including gains from the alienation of property forming part of the business property of such permanent establishments) in a taxation year and previous taxation years exceeds the sum of:

(i) business losses attributable to such permanent establishments (including losses from the alienation of property forming part

of the business property of such permanent establishments) in such taxation year and previous taxation years;

- (ii) all taxes, other than the additional tax referred to in this paragraph, imposed on such profits in Canada; and
 - (iii) the profits reinvested in Canada, provided that such amount shall be determined in accordance with the provisions of paragraph (1)(h) of Section 219 of the Income Tax Act of Canada as they are in force at the date of signature of the Convention regarding the computation of the allowance in respect of investment in property in Canada, and any subsequent modification of those provisions which shall not affect the general principle hereof.
- (b) The provisions of sub-paragraph (a) of this paragraph shall apply only to the extent that the total earnings in the taxation year and previous taxation years of the company and of any associated company with respect to the same or a similar business exceed five hundred thousand Canadian dollars (\$500,000), or an amount that may be agreed upon from time to time by the competent authorities of the two Contracting States; for the purposes of this sub-paragraph (b), a company is associated with another company if one company directly or indirectly controls the other, or both companies are directly or indirectly controlled by the same person or persons.
- (c) For the purposes of sub-paragraph (a) of this paragraph, 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.

8. With reference to Article 8 of the Convention, it is understood that profits from the operation of ships or aircraft in international traffic shall also include:

- (a) profits derived from the rental on a full basis or on a bare boat basis of ships or aircraft;
- (b) profits derived from the use of containers (including trailers and related equipment for the transport of containers) used in international traffic;

if such profits are incidental to profits to which the provisions of paragraph 1 of that Article apply.

9. Notwithstanding the provisions of sub-paragraph (a) of paragraph 2 of Article 10 of the Convention, dividends paid by a company that is a resident of Canada and a non-resident-owned investment corporation to a company that is a resident of Japan, that owns at least 25 per cent of the voting shares of the company paying the dividends throughout the period of six months immediately before the end of the accounting period for which the distribution of profits takes place and that is the beneficial owner of such dividends, may be taxed in Canada at a rate not exceeding 10 per cent of the gross amount of the dividends. For the purposes of this paragraph, the term "non-resident-owned investment corporation" has the meaning it has under the provisions of subsection 8 of section 133 of the Income Tax Act of Canada as they are in force on February 19, 1999 and any subsequent modification of those provisions which shall not affect the general principle hereof.

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

DONE in duplicate at Tokyo on the seventh day of May 1986 in the Japanese, English and French languages, each text being equally authentic.

FOR THE GOVERNMENT
OF JAPAN:

Shintaro Abe

FOR THE GOVERNMENT
OF CANADA:

B. C. Steers