

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

General disclaimer on the Synthesised text document

This document presents the synthesised text for the application of the Convention between the Republic of Austria and Canada for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital signed on 9 December 1976 as amended by the Protocol signed on 15 June 1999 and the Second Protocol and the Interpretative Protocol signed on 9 March 2012 (the “Convention”), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by the Republic of Austria and Canada on 7 June 2017 (the “MLI”).

The document was prepared on the basis of the MLI position of the Republic of Austria submitted to the Depository upon ratification on 22 September 2017 and Canada submitted to the Depository upon ratification on 29 August 2019. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on this Convention.

The authentic legal texts of the Convention and the MLI take precedence and remain the legal texts applicable.

The provisions of the MLI that are applicable with respect to the provisions of the Convention are included in boxes throughout the text of this document in the context of the relevant provisions of the Convention. The boxes containing the provisions of the MLI have generally been inserted in accordance with the ordering of the provisions of the OECD Model Tax Convention.

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 “Covered Tax Agreement” and “Convention”, “Contracting Jurisdictions” and “Contracting States”), to ease the comprehension of the provisions of the MLI. The changes in terminology are intended to increase the readability of the document and are not intended to change the substance of the provisions of the MLI. Similarly, changes have been made to parts of provisions of the MLI that describe existing provisions of the Convention: descriptive language has been replaced by legal references of the existing provisions to ease the readability.

In all cases, references made to the provisions of the Convention or to the Convention must be understood as referring to the Convention as modified by the provisions of the MLI, provided such provisions of the MLI have taken effect.

References

The authentic legal texts of the MLI and the Convention can be found on the webpage of the Federal Ministry of Finance (<https://www.bmf.gv.at/>).

The MLI position of the Republic of Austria submitted to the Depository upon ratification on 22 September 2017 and the MLI position of Canada submitted to the Depository upon ratification on 29 August 2019 can be found on the MLI Depository (OECD) webpage (<http://www.oecd.org/tax/treaties/beps-mli-signatories-and-parties.pdf>)

Disclaimer on the entry into effect of the provisions of the MLI

Entry into Effect of the MLI Provisions

The provisions of the MLI applicable to this Convention do not take effect on the same dates as the original provisions of the Convention. Each of the provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by the Republic of Austria and Canada in their MLI positions.

Dates of the deposit of instruments of ratification, acceptance or approval: 22 September 2017 for the Republic of Austria and 29 August 2019 for Canada.

Entry into force of the MLI: 1 July 2018 for the Republic of Austria and 1 December 2019 for Canada.

This document provides specific information on the dates on or after which each of the provisions of the MLI has effect with respect to the Convention throughout this document.

**CONVENTION BETWEEN
THE REPUBLIC OF AUSTRIA AND CANADA
FOR THE AVOIDANCE OF DOUBLE TAXATION AND
THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL**

The Republic of Austria and Canada,

desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,

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

ARTICLE 6 OF THE MLI – PURPOSE OF A COVERED TAX AGREEMENT

Intending to eliminate double taxation with respect to the taxes covered by this 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 this Convention for the indirect benefit of residents of third jurisdictions),

have agreed as follows:

Article 1

Personal scope

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

Article 2

Taxes covered

1. This Convention shall apply to taxes on income and on capital 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 and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, 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 Convention shall apply are, in particular:
 - (a) in the case of Canada:
 - the income taxes imposed by the Government of Canada

¹ In accordance with paragraphs 1 and 3 of Article 35 of the MLI, paragraph 1 of Article 6 of the MLI has effect in the Republic of Austria with respect to this Convention:

- a) 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 1 January 2020; and
- b) with respect to all other taxes levied by the Republic of Austria, for taxes levied with respect to taxable periods beginning on or after 1 January 2021;

and,

In accordance with paragraph 1 of Article 35 of the MLI, paragraph 1 of Article 6 of the MLI has effect in Canada with respect to this Convention:

- a) 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 1 January 2020; and
- b) with respect to all other taxes levied by Canada, for taxes levied with respect to taxable periods beginning on or after 1 June 2020.

(hereinafter referred to as "Canadian tax");

(b) in the case of Austria:

1. the income tax (die Einkommensteuer);
2. the corporation tax (die Körperschaftsteuer);
3. the directors tax (die Aufsichtsratsabgabe);
4. the capital tax (die Vermögensteuer);
5. the tax on property eluding death duties (die Abgabe von Vermögen, die der Erbschaftssteuer entzogen sind);
6. the tax on commercial and industrial enterprises, including the tax levied on the sum of wages (die Gewerbesteuer einschliesslich der Lohnsummensteuer);
7. the land tax (die Grundsteuer);
8. the tax on agricultural and forestry enterprises (die Abgabe von land- und forstwirtschaftlichen Betrieben);
9. the contributions from agricultural and forestry enterprises to the fund for the equalization of family burdens (die Beiträge von land- und forstwirtschaftlichen Betrieben zum Ausgleichsfonds für Familienbeihilfen);
10. the tax on the value of vacant plots (die Abgaben vom Bodenwert bei unbebauten Grundstücken);

(hereinafter referred to as "Austrian tax").

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

Article 3

General definitions

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

(a) (i) the term "Canada" used in a geographical sense means the territory of Canada, including any area outside the territorial waters of Canada which under the laws of Canada is an area within which the rights of Canada with respect to the sea-bed and sub-soil and their natural resources may be exercised;

(ii) the term "Austria" used in a geographical sense, means the territory of the Republic of Austria;

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

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

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

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

(f) the term "competent authority" means:

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

(ii) in the case of Austria, the Federal Minister of Finance;

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

(h) the term "national" means:

- (i) any individual possessing the nationality of a Contracting State;
- (ii) any legal person, partnership and association deriving its status as such from the law in force in a Contracting State.

2. As regards the application of the Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has

Article 4 **Fiscal domicile**

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management 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, his status shall be determined in accordance with the following rules:

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

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

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

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

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement 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 any such settlement, such person shall be deemed not to be a resident of either Contracting State for the purposes of Articles 6 to 22 inclusive and Article 24.

Article 5 **Permanent establishment**

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

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

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, quarry or other place of extraction of natural resources;

(g) a building site or construction or assembly project which exists for more than 12 months.

3. The term "permanent establishment" shall not be deemed 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 for collecting information, for the enterprise;

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

4. A person -- other than an agent of an independent status to whom paragraph 5 applies -- acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

5. 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, where such persons are acting in the ordinary course of their business.

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

2. The term "Immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

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

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

Article 7

Business profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the

enterprise carries on or has carried on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on or has carried on business in the other Contracting State through a permanent establishment situated therein, there shall be attributed to that permanent establishment profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently, with the enterprise of which it is a permanent establishment.

3. In the determination of the profits of a permanent establishment there shall be allowed those deductible expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses, whether incurred in the State in which the permanent establishment is situated or elsewhere.

4. The term "profits" as used in this Article includes the profits derived by any partner from his participation in a partnership and, in the case of Austria, from a participation in a sleeping partnership (Stille Gesellschaft) created under Austrian law.

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

Article 8

Shipping and air transport

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

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

Article 9

Associated enterprises

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.

Article 10

Dividends

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

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

(a) except in the case of dividends paid by a non-resident-owned investment corporation that is a resident of Canada, 5 per cent of the gross amount of the dividends if the beneficial owner is a company that controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividends; and

(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, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident.

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

5. Where a company is a resident of a Contracting State, the other Contracting State may not impose any tax on the dividends paid by the company to persons who are not residents of that other State, or subject the company to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State. The provisions of this paragraph shall not prevent that other State from taxing dividends relating to a holding which is effectively connected with a permanent establishment or a fixed base operated in that other State.

6. Notwithstanding any provision in this Convention, a Contracting State may impose on the earnings of a company attributable to permanent establishments in that State, or on the alienation of immovable property situated in that State by a company carrying on a trade in immovable property, tax in addition to the tax which would be chargeable on the earnings of a company that is a resident of that State, provided that the rate of such additional tax so imposed shall not exceed the percentage limitation provided for under subparagraph (a) of paragraph 2 of the amount of such earnings which have not been subjected to such additional tax in previous taxation years. For the purpose of this provision, the term "earnings" means:

(a) the earnings attributable to the alienation of such immovable property situated in that State as may be taxed by that State under the provisions of Article 6 or of paragraph 1 of Article 13; and

(b) the profits attributable to such permanent establishments in that State (including gains from the alienation of property forming part of the business property, referred to in paragraph 2 of Article 13, of such permanent establishments) in accordance with Article 7 in a year and previous years after deducting therefrom:

(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 year and previous years,

(ii) all taxes chargeable in that State on such profits, other than the additional tax referred to herein,

(iii) the profits reinvested in that State, provided that the amount of such deduction shall be determined in accordance with the existing provisions of the laws of that State, as they may be amended from time to time without changing the general principle hereof, regarding the computation of the allowance in respect of investment in property in that State, and

(iv) five hundred thousand Canadian dollars (\$500,000) or its equivalent in the currency of the Republic of Austria, less any amount deducted

(A) by the company, or

(B) by a person related thereto from the same or a similar business as that carried on by the company under this clause.

Article 11

Interest

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

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

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

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

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

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

7. Notwithstanding the provisions of paragraph 2,

(a) interest arising in a Contracting State and paid in respect of a bond, debenture or other similar obligation of the government of that Contracting 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 Austria and paid to a resident of Canada shall be taxable only in Canada with respect to a loan made, guaranteed or insured, or any other debt-claim or credit guaranteed or insured, by the Export Development Corporation;

(c) interest arising in Canada and paid to a resident of Austria shall be taxable only in Austria with respect to a loan made, guaranteed or insured, or any other debt-claim or credit guaranteed or insured, by the Osterreichische Kontrollbank AG;

(d) interest arising in a Contracting State and paid to the Central Bank of the other Contracting State shall be exempt from tax in the first-mentioned State;

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

(i) the resident is the beneficial owner of the interest and is generally exempt from tax in the other State, and

(ii) the interest is not derived from carrying on a trade or a business or from a related person;

(f) interest arising in a Contracting State shall be taxable only in the other Contracting State if:

(i) the recipient is an enterprise of that other State and is the beneficial owner of the interest, and

(ii) the interest is paid with respect to indebtedness arising from the sale on credit, by that enterprise, of any merchandise or industrial, commercial or scientific equipment to an enterprise of the first-mentioned State, except where the sale or indebtedness is between related persons.

Article 12

Royalties

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

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

3. Notwithstanding the provisions of paragraph 2

(a) copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or other artistic work (but not including royalties in respect of motion picture films nor royalties in respect of works on film or videotape or other means of reproduction for use in connection with television broadcasting), and

(b) royalties for the use of, or the right to use, computer software or 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)

arising in a Contracting State and paid to a resident of the other Contracting State who is the beneficial owner of the royalties shall be taxable only in that other State.

4. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of or the right to use any copyright, patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience, and includes payments of any kind in respect of motion picture films and works on films or videotapes for use in connection with television.

5. The provisions of paragraphs 2 and 3 shall not apply if the recipient of the royalties, being a resident of a Contracting State, carries on in the other Contracting State in which the royalties arise a trade or business through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or

fixed base in connection with which the obligation to pay the royalties was incurred, and those royalties are borne by that permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

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

Article 13

Gains from the alienation of property

1. Gains from the alienation of immovable property, as defined in paragraph 2 of Article 6, may be taxed in the Contracting State in which such property is situated.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise or an interest therein) or of such a fixed base may be taxed in the other State. However, gains from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which such property is taxable according to paragraph 3 of Article 22.

3. Paragraphs 1 and 2 also apply to gains from the alienation of an interest in a partnership to the extent that the gain can be attributed to immovable property or to movable property forming part of the business property of an enterprise.

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

(a) shares (other than shares listed on an approved stock exchange in a Contracting State) forming part of a substantial interest in the capital stock of a company the value of which shares is derived principally from immovable property situated in the other State, or

(b) a substantial interest in a partnership or trust, the value of which is derived principally from immovable property situated in that other State,

may be taxed in that other State. For the purposes of this paragraph, the term "immovable property" includes the shares of a company referred to in subparagraph (a) or an interest in a partnership or trust referred to in subparagraph (b) but does not include any property, other than rental property, in which the business of the company, partnership or trust is carried on.

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

6. The provisions of paragraph 5 shall not affect the right of a Contracting State to levy, according to its domestic law, a tax on gains from the alienation of any property derived by an individual who is a resident of the other Contracting State and who

(a) possesses the nationality of the first-mentioned State or was a resident thereof for ten years or more prior to the alienation of the property, and

(b) was a resident of the first-mentioned State at any time during the five years immediately preceding the alienation of the property.

7. Where an individual who ceases to be a resident of a Contracting State, and immediately thereafter becomes a resident of the other Contracting State, is treated for the purposes of taxation in the first-mentioned State as having alienated a property and is taxed in that State by reason thereof, the individual may elect to be treated for the purposes of taxation in the other State as if the individual had, immediately before becoming a resident of that State, sold and repurchased the property for an amount equal to its fair market value at that time.

Article 14

Professional services

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar 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 such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.

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

Article 15

Dependent personal services

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

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

(a) the recipient is present in the 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 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 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.

Article 16

Directors' fees

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

Article 17

Artistes and athletes

1. Notwithstanding the provisions of Articles 7, 14 and 15, income derived by entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

2. Where income in respect of the personal activities of an entertainer or athlete accrues not to that entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, to be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.
3. The provisions of paragraph 2 shall not apply if it is established that neither the entertainer or the athlete nor persons related thereto, participate directly or indirectly in the profits of the person referred to in that paragraph.

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 the first-mentioned State.
2. Notwithstanding anything in this Convention, social security pensions, pensions and allowances in respect of military service and any other compensation for an injury or damage sustained as a result of hostilities or past political persecution arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in the first-mentioned State.
3. Alimony and other similar payments arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.

Article 19
Government service

1. (a) Remuneration paid by or out of the public funds of a Contracting State or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the Contracting State of which the recipient is a resident if the services are rendered in that State and the recipient did not become a resident of that State solely for the purpose of performing the services.
2. The provisions of paragraph 1 shall not apply to remuneration in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or a political subdivision or a local authority thereof.

Article 20
Students

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

Article 21
Income not expressly mentioned

1. Subject to the provisions of paragraph 2 of this Article, items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Convention shall be taxable only in that Contracting State.
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, according to the law of that State. However, in the case of income from an estate or trust, created under Canadian law, the tax so charged shall not exceed 15 per cent of the gross amount of the income.

Article 22

Taxation of capital

1. Capital represented by immovable property, as defined in paragraph 2 of Article 6, may be taxed in the Contracting State in which such property is situated.
2. Capital represented by movable property forming part of the business property of a permanent establishment of an enterprise, or by movable property pertaining to a fixed base used for the performance of professional services, may be taxed in the Contracting State in which the permanent establishment or fixed base is situated.
3. Ships and aircraft operated by an enterprise of a Contracting State in international traffic and movable property pertaining to the operation of such ships and aircraft, shall be taxable only in that State.
4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Article 23

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 -- tax payable under the law of Austria and in accordance with this Convention on profits, income or gains arising in Austria 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 determination of the exempt surplus of a foreign affiliate and to any subsequent modification of those provisions -- which shall not affect the general principle hereof -- for the purpose of computing Canadian tax a company resident in Canada shall be allowed to deduct in computing its taxable income any dividend received by it out of the exempt surplus of a foreign affiliate resident in Austria.
2. In the case of Austria, double taxation shall be avoided as follows:
 - (a) Where a resident of Austria derives income from sources within Canada, which, in accordance with the provisions of this Convention, may be taxed in Canada, Austria shall allow as a deduction from the tax on the income of that person, an amount equal to the tax on income paid in Canada. The deduction shall not, however, exceed that part of the tax on income as computed before the deduction is given, which is appropriate to the income which may be taxed in Canada.
 - (b) Where a company resident in Austria owns at least 25 per cent of the share capital of a company resident in Canada, Austria shall, notwithstanding the provision of subparagraph (a) and subject to the provisions of the law of Austria regarding the treatment of intercorporate dividends and to any subsequent modification of those provisions -- which shall not affect the general principle hereof -- exempt the dividends received from its taxes on income and the value of shares from its taxes on capital.
3. For the purpose of this Article, profits, income or gains of a resident of a Contracting State which are taxed in the other Contracting State in accordance with this Convention shall be deemed to arise from sources in that other State.
4. Where a resident of a Contracting State owns capital which, in accordance with Article 22, may be taxed in the other Contracting State, the first-mentioned State shall exempt such capital from tax but may, in calculating tax on the remaining capital of that person, apply the rate of tax which would have been applicable if the exempted capital had not been so exempted.

Article 24

Non-discrimination

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.
3. Nothing in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
4. In this Article, the term "taxation" means taxes which are the subject of this Convention.

Article 25
Mutual agreement procedure

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation nor in accordance with this Convention, he may, without prejudice to the remedies provided by the national laws of those States, address to the competent authority of the Contracting State of which he is a resident an application in writing stating the grounds for claiming the revision of such taxation. **[REPLACED by the second sentence of paragraph 1 of Article 16 of the MLI]** [To be admissible, the said application must be submitted within two years from the first notification of the action which gives rise to taxation not in accordance with the Convention.]

The following second sentence of paragraph 1 of Article 16 of the MLI replaces the second sentence of paragraph 1 of Article 25 of this Convention.²

ARTICLE 16 OF THE MLI – 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 referred to in paragraph 1 shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Convention.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. In particular, the competent authorities of the Contracting States may consult together to endeavour to agree:
 - (a) to the same attribution of profits to a resident of a Contracting State and its permanent establishment situated in the other Contracting State;
 - (b) to the same allocation of income between a resident of a Contracting State and any associated person provided for in Article 9.

² In accordance with paragraph 4 of Article 35 of the MLI, Article 16 of the MLI has effect with respect to this Convention for a case presented to the competent authority of a Contracting State on or after 1 December 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.

*The following second sentence of paragraph 3 of Article 16 of the MLI applies to this Convention:*³

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

*The following part VI of the MLI applies to this Convention:*⁴

PART VI OF THE MLI (ARBITRATION)

Paragraphs 1 to 10 and 12 of Article 19 (Mandatory Binding Arbitration) of the MLI

1. Where:

a) under paragraph 1 of Article 25 of this 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 this Convention; and

b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 of Article 25 of the Convention, within a period of three-years beginning on the start date referred to in paragraph 8 or 9 of Article 19 of the MLI, 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 of Article 19 of the MLI.

2. Where a competent authority has suspended the mutual agreement procedure referred to in paragraph 1 of Article 19 of the MLI 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 of Article 19 of the MLI 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 of Article 19 of the MLI 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 of Article 19 of the MLI, the period provided in subparagraph b) of paragraph 1 of Article 19 of the MLI 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 of Article 19 of the MLI. The arbitration decision shall be final.

b) The arbitration decision shall be binding on both Contracting States except in the following cases:

³ See footnote 2.

⁴ In accordance with paragraph 1 of Article 36 of the MLI, the provisions of Part VI (Arbitration) of the MLI have effect with respect to this Convention with respect to cases presented to the competent authority of a Contracting State on or after 1 December 2019.

In accordance with paragraph 2 of Article 36 of the MLI, Part VI (Arbitration) of the MLI will apply to a case presented to the competent authority of a Contracting State prior to 1 December 2019 only to the extent that the competent authorities of both Contracting States agree that it will apply to that specific case.

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 of Article 19 of the MLI 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 of Article 19 of the MLI 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 of Article 19 of the MLI, 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 of Article 19 of the MLI, the start date referred to in paragraph 1 of Article 19 of the MLI 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 of Article 19 of the MLI; 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 of Article 19 of the MLI.

9. Where additional information has been requested pursuant to subparagraph b) of paragraph 6 of Article 19 of the MLI, the start date referred to in paragraph 1 of Article 19 of the MLI 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 of Article 19 of the MLI; 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 of Article 19 of the MLI, such notification shall be treated as a request for additional information under subparagraph b) of paragraph 6 of Article 19 of the MLI.

10. The competent authorities of the Contracting States shall by mutual agreement pursuant to Article 25 of this 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 of the MLI:

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) of the MLI

1. Except to the extent that the competent authorities of the Contracting States mutually agree on different rules, paragraphs 2 through 4 of Article 20 of the MLI 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 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 of Article 20 of the MLI 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 of Article 20 of the MLI 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) of the MLI

1. Solely for the purposes of the application of the provisions of this Part and of the provisions of this 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 this 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 this 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) of the MLI

For the purposes of this Part and the provisions of this 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.

*Paragraphs 1 and 5 of Article 23 (Type of Arbitration Process) of the MLI
(Alternative 1 – Final offer arbitration)*

1. Except to the extent that the competent authorities of the Contracting States mutually agree on different rules, the following rules shall apply with respect to an arbitration proceeding pursuant to this Part:

- a) After a case is submitted to arbitration, the competent authority of each Contracting State shall submit to the arbitration panel, by a date set by agreement, a proposed resolution which addresses all unresolved issue(s) in the case (taking into account all agreements previously reached in that case between the competent authorities of the Contracting States). The proposed resolution shall be limited to a disposition of specific monetary amounts (for example, of income or expense) or, where specified, the maximum rate of tax charged pursuant to this Convention, for each adjustment or similar issue in the case. In a case in which the competent authorities of the Contracting States have been unable to reach agreement on an issue regarding the conditions for application of a provision of this Convention (hereinafter referred to as a “threshold question”), such as whether an individual is a resident or whether a permanent establishment exists, the competent authorities may submit alternative proposed resolutions with respect to issues the determination of which is contingent on resolution of such threshold questions.
- b) The competent authority of each Contracting State may also submit a supporting position paper for consideration by the arbitration panel. Each competent authority that submits a proposed resolution or supporting position paper shall provide a copy to the other competent authority by the date on which the proposed resolution and supporting position paper were due. Each competent authority may also submit to the arbitration panel, by a date set by agreement, a reply submission with respect to the proposed resolution and supporting position paper submitted by the other competent authority. A copy of any reply submission shall be provided to the other competent authority by the date on which the reply submission was due.
- c) The arbitration panel shall select as its decision one of the proposed resolutions for the case submitted by the competent authorities with respect to each issue and any threshold questions, and shall not include a rationale or any other explanation of the decision. The arbitration decision will be adopted by a simple majority of the panel members. The arbitration panel shall deliver its

decision in writing to the competent authorities of the Contracting States. The arbitration decision shall have no precedential value.

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 this 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) of the MLI

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.

Paragraphs 2 and 3 of Article 26 (Compatibility) of the MLI

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.

Subparagraph a) of paragraph 2 of Article 28 (Reservations) of the MLI

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

The Republic of Austria reserves the right to exclude from the scope of Part VI cases involving the application of its domestic general anti-avoidance rules contained in the Federal Fiscal Code ("Bundesabgabenordnung"), in particular its sections 21 and 22. Any subsequent provisions replacing, amending or updating these anti-avoidance rules would also be comprehended. The Republic of Austria shall notify the Depositary of any such subsequent provisions.

Pursuant to subparagraph a) 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.

1. Canada reserves the right to limit the scope of issues eligible for arbitration under the Convention 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 Jurisdictions through an exchange of diplomatic notes.

2. Canada reserves the right to exclude from the scope of the arbitration provisions of the Convention issues pertaining to the application of anti-abuse provisions whether contained in the Convention, a Covered Tax Agreement, or the domestic law of a Contracting Jurisdiction.

Article 26

Exchange of information and Administrative Assistance

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to taxes, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

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

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

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

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

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

6. The preceding paragraphs of this Article shall likewise apply to assistance carried out under penal investigation procedures carried out by either judicial (including assistance in respect of pending judicial proceedings in tax matters) or administrative bodies. However, requests for arrests of persons are not covered by the Convention.

7. The Contracting States undertake to lend each other support and assistance in the collection of taxes to the extent necessary to ensure that relief granted by the Convention from taxation imposed by a Contracting State does not enure to the benefit of persons not entitled thereto, provided that:

(a) the requesting State shall produce a copy of a document certified by its competent authority specifying that the sums referred to for the collection of which it is requesting the intervention of the other State, are finally due and enforceable;

(b) a document produced in accordance with the provisions of this paragraph shall be rendered enforceable with the laws of the requested State. It is specified that under current Austrian legislation, such documents must be rendered enforceable by the Regional Finance Directorates (Finanzlandesdirektionen);

(c) the requested State shall effect recovery in accordance with the rules governing the recovery of similar tax debts of its own; however, tax debts to be recovered shall not be regarded as privileged debts in the requested State. In the Republic of Austria, judicial execution shall be requested by the Finanzprokuratur or by the finance office delegated to act on his behalf; and

(d) appeals concerning the existence or amount of the debt shall lie only to the competent tribunal of the requesting State.

The provisions of this paragraph shall not impose upon either Contracting State the obligation to carry out administrative measures different from those used in the collection of its own taxes, or which would be contrary to its sovereignty, security, public policy or its essential interests.

Article 27 **Diplomatic and consular officials**

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

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

3. This Convention shall not apply to International Organizations, to organs or officials thereof and to persons who are members of a diplomatic, consular or permanent mission of a third State, being present in a Contracting State and who are not liable in that State to the same obligations in relation to tax on their total world income as are residents of that State.

Article 28 **Miscellaneous rules**

1. The provisions of this Convention shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now, or hereafter accorded:

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

(b) by any other agreement between the Contracting States.

2. Nothing in this Convention shall be construed as preventing Canada from imposing its tax on amounts included in the income of a resident of Canada according to section 91 of the Canadian Income Tax Act. However, that section shall not apply to income from an active business carried on in Austria by a foreign affiliate of a person resident in Canada or to income that pertains to or is incident to an active business carried on in Austria.

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

*The following paragraph 1 of Article 7 of the MLI applies and supersedes the provisions of this Convention:*⁵

ARTICLE 7 OF THE MLI – PREVENTION OF TREATY ABUSE
(Principal purposes test provision)

Notwithstanding any provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income or capital 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 this Convention.

Article 29

Entry into force

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Ottawa.
2. The Convention shall enter into force 60 days after the exchange of the instruments of ratification and its provisions shall have effect:
 - (a) in respect of tax withheld at the source on amounts paid on or after the first day of January in the calendar year in which the exchange of instruments of ratification takes place; and
 - (b) in respect of other tax for taxation years beginning on or after the first day of January in the calendar year in which the exchange of instruments of ratification takes place.

Article 30

Termination

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

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

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

⁵ In accordance with paragraphs 1 and 3 of Article 35 of the MLI, paragraph 1 of Article 7 of the MLI has effect in the Republic of Austria with respect to this Convention:

- a) 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 1 January 2020; and
- b) with respect to all other taxes levied by the Republic of Austria, for taxes levied with respect to taxable periods beginning on or after 1 January 2021;

and,

In accordance with paragraph 1 of Article 35 of the MLI, paragraph 1 of Article 7 of the MLI has effect in Canada with respect to this Convention:

- a) 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 1 January 2020; and
- b) with respect to all other taxes levied by Canada, for taxes levied with respect to taxable periods beginning on or after 1 June 2020.

Done in Vienna on the 9th day of December 1976 in duplicate in the German, English and French languages, each version being equally authentic.

For the Republic of Austria:

Dr. Alfred Twaroch m.p.

For Canada:

Thomas Carter m.p.

INTERPRETATIVE PROTOCOL

At the time of signing of the Second Protocol amending the Convention between the Republic of Austria and Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, done at Vienna on 9 December 1976, as amended by the Protocol done at Vienna on 15 June 1999, the undersigned have agreed upon the following provisions which shall be an integral part of the aforementioned Convention.

1. It is understood that the competent authority of the Contracting State requesting information (the “applicant State”) shall provide the following information to the competent authority of the Contracting State requested to provide information (the “requested State”) when making a request for information under the Convention to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
- (b) a statement of the information sought including its nature and the form in which the applicant State wishes to receive the information from the requested State;
- (c) the tax purpose for which the information is sought;
- (d) grounds for believing that the information requested is held in the requested State or is in the possession or control of a person within the jurisdiction of the requested State;
- (e) to the extent known, the name and address of any person believed to be in possession of the requested information; and
- (f) a statement that the applicant State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

2. It is understood that the standard of “foreseeable relevance” is intended to provide for exchange of information in tax matters to the widest possible extent and, at the same time, to clarify that Contracting States are not at liberty to engage in “fishing expeditions” or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. While paragraph 1 of this Protocol contains important procedural requirements that are intended to ensure that fishing expeditions do not occur, subparagraphs (a) through (f) of paragraph 1 nevertheless need to be interpreted liberally in order not to frustrate effective exchange of information.

3. It is understood that paragraph 5 of Article 26 of the Convention does not require the Contracting States to exchange information on a spontaneous or automatic basis.

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

DONE in duplicate at Vienna, this 9th day of March 2012, each in the German, English and French languages, each version being equally authentic.

For the Republic of Austria:

Andreas Schieder m.p.

For Canada:

John Barrett m.p.