

No. 27498

**JAPAN
and
CANADA**

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (with protocol). Signed at Tokyo on 7 May 1986

Authentic texts: Japanese, English and French.

Registered by Japan on 10 August 1990.

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Convention en vue d'éviter les doubles impositions et de prévenir l'évasion fiscale en matière d'impôts sur le revenu (avec protocole). Signée à Tokyo le 7 mai 1986

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Enregistrée par le Japon le 10 août 1990.

CONVENTION¹ BETWEEN THE GOVERNMENT OF JAPAN AND
THE GOVERNMENT OF CANADA FOR THE AVOIDANCE OF
DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVA-
SION 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,

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 (here-
inafter 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 inter-
national 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 re-
sources; and
- (ii) The seas above every area described in sub-paragraph (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 terri-
tory of Japan, including its territorial sea, in which the laws relating to Japanese tax

¹ Came into force on 14 November 1987, i.e., the thirtieth day following the date of the exchange of the instruments
of ratification, which took place at Ottawa on 15 October 1987, in accordance with article 27 (2).

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 term “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.

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;
 - (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 perma-

nent 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.