No. 4153

NETHERLANDS
and
CANADA

Convention (with Protocol) for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income. Signed at Ottawa, on 2 April 1957

Official texts: English and Dutch.

Registered by the Netherlands on 17 January 1958.

PAYS-BAS
et
CANADA

Accord (avec Protocole) pour éviter les doubles impositions et empêcher la fraude fiscale en matière d'impôt sur le revenu. Signé à Ottawa, le 2 avril 1957

Textes officiels anglais et néerlandais.

Enregistré par les Pays-Bas le 17 janvier 1958.

No. 4153. CONVENTION[1] BETWEEN THE KINGDOM OF THE NETHERLANDS AND CANADA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME. SIGNED AT OTTAWA, ON 2 APRIL 1957

The Government of the Kingdom of the Netherlands and the Government of Canada, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, agree as follows:

Article I

1. The taxes which are subject to this Convention are :

(*a*) In the Netherlands :

The income tax,
The wages tax,
The company tax,
The dividends tax, and
The tax on fees of directors ;

(*b*) In Canada :

Income taxes, including surtaxes, which are imposed by the Government of Canada.

2. This Convention shall also apply to any other taxes of a substantially similar character, imposed by either Contracting Party subsequent to the signing of this Convention.

3. In case there should be any substantial amendment of the taxation laws in one of the States, notice of the amendment shall be given by the competent authority of this State to the competent authority of the other State, in order to bring about such alterations in or such interpretation of this Convention which may be deemed necessary.

Article II

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

[1] Came into force on 19 December 1957, the date of the exchange of the instruments of ratification at The Hague, in accordance with article XXVI.

(*a*) The terms "one of the States" and "the other State" mean the Netherlands or Canada, as the context requires.

(*b*) The term "Netherlands" means the Part of the Kingdom of the Netherlands, that is situated in Europe.

(*c*) The term "tax" means Netherlands tax or Canadian tax, as the context requires.

(*d*) The term "person" includes any company as well as any body of persons, corporate or not corporate.

(*e*) The term "company" includes any body corporate and any partnership the capital of which is wholly or partly represented by shares.

(*f*) The terms "resident of the Netherlands" and "resident of Canada" mean respectively any person who is resident in the Netherlands for the purposes of Netherlands tax and not resident in Canada for the purposes of Canadian tax and any person who is resident in Canada for the puposes of Canadian tax, and not resident in the Netherlands for the purposes of Netherlands tax ; a company shall be regarded as resident in the Netherlands if its business is managed and controlled in the Netherlands and as resident in Canada if its business is managed and controlled in Canada.

(*g*) The terms "resident of one of the States" and "resident of the other State" mean a person who is a resident of the Netherlands or a person who is a resident of Canada, as the context requires.

(*h*) The terms "Netherlands enterprise" and "Canadian enterprise" mean respectively an enterprise carried on by a resident of the Netherlands and an enterprise carried on by a resident of Canada, and the terms "enterprise of one of the States" and "enterprise of the other State" mean a Netherlands enterprise or a Canadian enterprise, as the context requires.

(*i*) The term "permanent establishment" when used with respect to an enterprise of one of the States, means a branch, office, factory, or other fixed place of business, a mine, quarry or any other place of natural resources subject to exploitation, but does not include a casual and temporary use of merely storage facilities. Nor does it include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of the enterprise or has a stock of merchandise from which he regularly fills orders on its behalf. In this connection :

(i) An enterprise of one of the States shall not be deemed to have a permanent establishment in the other State merely because it carries on business dealings in that other State through a *bona fide* broker or general commission agent acting in the ordinary course of his business as such ;

(ii) The fact that an enterprise of one of the States maintains in the other State a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise ;

(iii) The fact that a company which is a resident of one of the States has a subsidiary company which is a resident of the other State or which carries on a trade or business in that other State (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company.

(*j*) The term "liberal profession" means independent activity for the purpose of profit (not being exercised in an enterprise) such as independent activity in the field of science, arts, literature, instruction or education, medicine, law, architecture, engineering and accountancy.

(*k*) The term "competent authority" means in the case of the Netherlands the Minister of Finance or his authorised representative and in the case of Canada, the Minister of National Revenue or his authorised representative.

2. In the application of the provisions of this Convention by either of the States, any term which is not defined in this Convention shall, unless the context otherwise requires, have the meaning which that term has under the laws of that State.

Article III

1. Income from immovable property, interest (other than debenture interest) from any mortgage of such property and royalties in respect of the operation of a mine or quarry or of any other extraction of a natural resource, shall be subject to tax in the State in which such immovable property, mine, quarry or natural resource is situated.

2. A resident of one of the States, deriving income from immovable property situated in the other State, may elect for any taxation year to be subject to the tax of such other State, on a net basis, as if such resident was engaged in trade or business within such other State through a permanent establishment therein during such taxation year, provided that he is not entitled to any personal deduction from income to determine taxable income.

Article IV

1. The profits of an enterprise of one of the States shall not be subject to tax in the other State unless the enterprise is engaged in trade or business in that other State through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by the last-mentioned State but only on so much of them as is attributable to that permanent establishment.

2. Where an enterprise of one of the States is engaged in trade or business in the other State through a permanent establishment situated therein, there shall be attributed to such permanent establishment the profits which it might be expected to derive in that other State if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

3. No portion of any profits arising to an enterprise of one of the States shall be attributed to a permanent establishment situated in the other State by reason of the mere purchase of goods or merchandise within that other State by the enterprise.

4. In determining profits of a permanent establishment there shall be allowed as a deduction all expenses reasonably applicable to the permanent establishment including executive and general administrative expenses so applicable.

5. Where a company which is a resident of one of the States derives profits or income from sources within the other State, that other State shall not impose any form of taxation on dividends paid by the company to persons not resident in that other State, or any tax in the nature of an undistributed profits tax on undistributed profits of the company, by reason of the fact that those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

6. The competent authorities of the two States may lay down rules by agreement for the apportionment of profits.

Article V

Where

(*a*) an enterprise of one of the States participates directly or indirectly in the management, control or capital of an enterprise of the other State, or

(*b*) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the States and an enterprise of the other State, and