



Treaty Series No. 28 (2004)

# Protocol

amending the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains, signed at London on 8 September 1978, as amended by the Protocol signed at Ottawa on 15 April 1980 and as further amended by the Protocol signed at London on 16 October 1985

with

Exchange of Notes

London, 7 May 2003

[The Protocol entered into force on 4 May 2004]

*Presented to Parliament  
by the Secretary of State for Foreign and Commonwealth Affairs  
by Command of Her Majesty  
July 2004*

**© Crown copyright 2004**

The text in this document (excluding the Royal Arms and departmental logos) may be reproduced free of charge in any format or medium providing it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the document specified.

Any enquiries relating to the copyright in this document should be addressed to the Licensing Division, HMSO, St Clements House, 2-16 Colegate, Norwich NR3 1BQ.  
Fax 010603 723000 or e-mail: [licensing@cabinet-office.x.gsi.gov.uk](mailto:licensing@cabinet-office.x.gsi.gov.uk)

**PROTOCOL AMENDING THE CONVENTION BETWEEN THE  
GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND  
NORTHERN IRELAND AND THE GOVERNMENT OF CANADA FOR THE  
AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF  
FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND  
CAPITAL GAINS, SIGNED AT LONDON ON 8 SEPTEMBER 1978<sup>1</sup>, AS  
AMENDED BY THE PROTOCOL SIGNED AT OTTAWA ON 15 APRIL  
1980<sup>2</sup> AND AS FURTHER AMENDED BY THE PROTOCOL SIGNED AT  
LONDON ON 16 OCTOBER 1985<sup>3</sup>**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Canada;

Desiring to conclude a Protocol to amend further the Convention between the Governments of the Contracting States for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains, signed at London on 8 September 1978, as amended by the Protocol signed at Ottawa on 15 April 1980 and as further amended by the Protocol signed at London on 16 October 1985 (hereinafter referred to as “the Convention”);

Have agreed as follows:

ARTICLE I

1. Sub-paragraph (c) of paragraph 1 of Article 3 of the Convention shall be deleted and replaced by the following:

“(c) the term “person” includes an individual, a trust, a company, any entity treated as a unit for tax purposes and any other body of persons, but does not include a partnership;”

2. Clause (i) of sub-paragraph (h) of paragraph 1 of Article 3 of the Convention shall be deleted and replaced by the following:

“(i) in relation to the United Kingdom, any British citizen, or any British subject not possessing the citizenship of any other Commonwealth country or territory, provided that citizen or subject has the right of abode in the United Kingdom; and any legal person, partnership, association or other entity deriving its status as such from the law in force in the United Kingdom;”

---

<sup>1</sup> Treaty Series No. 36 (1981) Cmnd 8261

<sup>2</sup> Treaty Series No. 36 (1981) Cmnd 8261

<sup>3</sup> Treaty Series No. 7 (1986) Cmnd 9718

## ARTICLE II

Paragraph 3 of Article 4 of the Convention shall be deleted and replaced by the following:

“3. Where by reason of the provisions of paragraph 1 of this Article a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the State of which the person shall be deemed to be a resident, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. If the competent authorities are unable to determine the matter by mutual agreement, they shall endeavour to determine by mutual agreement the mode of application of the Convention to that person.”

## ARTICLE III

Article 9 of the Convention shall be deleted and replaced by the following:

### “ARTICLE 9

#### **Associated enterprises**

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

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any 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 by a Contracting State in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits

which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then, subject to the provisions of paragraph 3 of this Article, that other State shall (notwithstanding any time limits in the domestic law of that other State) make an appropriate adjustment to the amount of tax charged therein on the profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

3. Where a Contracting State makes or proposes to make an adjustment in accordance with the provisions of paragraph 1 of this Article, the other Contracting State shall be required to make the appropriate adjustment provided for under paragraph 2 of this Article to the profits of the associated enterprise in that other State only if within six years from the end of the taxation year (in Canada) or the chargeable period (in the United Kingdom) to which the first-mentioned adjustment relates, the competent authority of the other State has been notified that the first-mentioned adjustment has been made or proposed.

4. The provisions of paragraphs 2 and 3 of this Article shall not impose any obligation on Canada in the case of fraud, wilful default or gross negligence or on the United Kingdom in the case of fraudulent conduct.”

#### ARTICLE IV

1. Paragraphs 1 and 2 of Article 10 of the Convention shall be deleted and replaced by the following:

“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) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which controls, directly or indirectly, at least 10 per cent of the voting power in the company paying the dividends;

(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.”

2. Paragraph 3 of Article 10 of the Convention shall be deleted.
3. Paragraph 5 of Article 10 of the Convention shall be deleted and replaced by the following:

“5. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.”

4. Paragraph 7 of Article 10 of the Convention shall be deleted and replaced by the following:

“7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.”

## ARTICLE V

1. Paragraph 3 of Article 11 of the Convention shall be deleted and replaced by the following:

- “3. Notwithstanding the provisions of paragraph 2 of this Article,
- (a) interest arising in the United Kingdom and paid to a resident of Canada shall be taxable only in Canada if it is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by Export Development Canada;
  - (b) interest arising in Canada and paid to a resident of the United Kingdom shall be taxable only in the United Kingdom if it is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by the United Kingdom Export Credits Guarantee Department; and
  - (c) interest arising in a Contracting State and paid with respect to indebtedness in connection with the sale on credit by a resident of the other State of any equipment, merchandise or services, except where

the sale or indebtedness was between related persons, shall be taxable only in the other State.”

2. Paragraph 6 of Article 11 of the Convention shall be deleted and replaced by the following:

“6. The provisions of paragraphs 1, 2, 3 and 4 of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, or performs in that other State 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.”

3. The following new paragraph shall be inserted immediately after paragraph 10 of Article 11 of the Convention:

“11. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.”

## ARTICLE VI

1. Paragraph 3 of Article 12 of the Convention shall be deleted and replaced by the following:

“3. Notwithstanding the provisions of paragraph 2 of this Article,

(a) copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or artistic work (other than payments in respect of motion pictures and works on film, videotape or other means of reproduction for use in connection with television broadcasting);

(b) payments for the use of, or the right to use, any patent or for information concerning industrial, commercial or scientific experience (but not including any such payment provided in connection with a rental or franchise agreement);

(c) payments for the use of, or the right to use, computer software;

arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.”

2. Paragraph 5 of Article 12 of the Convention shall be deleted and replaced by the following:

“5. The provisions of paragraphs 1, 2 and 3 of this Article shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, or performs in that other 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.”

3. The following new paragraph shall be inserted immediately after paragraph 7 of Article 12 of the Convention:

“8. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.”

## ARTICLE VII

1. Paragraph 9 of Article 13 of the Convention shall be deleted and replaced by the following:

“9. The provisions of paragraph 8 of this Article shall not affect the right of a Contracting State to levy according to its law a tax on or in respect of gains from the alienation of any property on a person who is a resident of that State at any time during the fiscal year in which the property is alienated, or has been so resident at any time during the six years immediately preceding the alienation of the property.”

2. The following new paragraph shall be inserted immediately after paragraph 9 of Article 13 of the Convention:

“10. Where an individual ceases to be a resident of a Contracting State and by reason thereof is treated under the laws of that State as having alienated property before ceasing to be a resident of that State and is taxed in that State accordingly and at any time thereafter becomes a resident of the other Contracting State, the other Contracting State may tax gains in respect of the property only to the extent that such gains had not accrued while the individual was a resident of the first-mentioned State. However, this provision shall not apply to property, any gain from which that other State could have taxed in accordance with the provisions of this Article, other than this paragraph, if the individual had realized the gain before becoming



a resident of that other State. The competent authorities of the Contracting States may consult to determine the application of this paragraph.”

#### ARTICLE VIII

1. Paragraph 1 of Article 17 of the Convention shall be deleted and replaced by the following:

“1. Periodic pension payments arising in a Contracting State and paid to a resident of the other Contracting State who is the beneficial owner thereof shall be taxable only in that other State.”

2. Paragraph 3 of Article 17 of the Convention shall be deleted and replaced by the following:

“3. For the purposes of this Convention, the term “pension” includes any payment under a superannuation, pension or retirement plan, Armed Forces retirement pay, war veterans’ pensions and allowances, and any payment under a sickness, accident or disability plan, as well as any payment made under the social security legislation in a Contracting State.”

3. Paragraph 4 of Article 17 of the Convention shall be deleted and replaced by the following:

“4. For the purposes of this Convention, the term “annuity” means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money’s worth, but does not include any payment under a superannuation, pension or retirement plan or any payment under an income-averaging annuity contract.”

#### ARTICLE IX

The following new Article shall be inserted immediately after Article 20 of the Convention:

#### “ARTICLE 20A

#### **Other income**

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

2. The provisions of paragraph 1 of this Article shall not apply to income, other than income from immovable property, if the beneficial owner of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14 of this Convention, as the case may be, shall apply.

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

#### ARTICLE X

1. Paragraph 1 of Article 21 of the Convention shall be deleted and replaced by the following:

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

(a) subject to the existing provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada and to any subsequent modification of those provisions – which shall not affect the general principle hereof – and unless a greater deduction or relief is provided under the laws of Canada, tax payable in the United Kingdom on profits, income or gains arising in the United Kingdom 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 allowance as a credit against Canadian tax of tax payable in a territory outside Canada and to any subsequent modification of those provisions – which shall not affect the general principle hereof – where a company that is a resident of the United Kingdom pays a dividend to a company that is a resident of Canada that controls directly or indirectly at least 10 per cent of the voting power in the first-mentioned company, the credit shall take into account the tax payable in the United Kingdom by that first-mentioned company in respect of the profits out of which such dividend is paid;

(c) where in accordance with any provision of this Convention income derived by a resident of Canada is exempt from tax in Canada, Canada may nevertheless, in calculating the amount of tax on other income take into account the exempted income.”

2. Paragraph 4 of Article 21 of the Convention shall be deleted.

#### ARTICLE XI

The reference in paragraph 3 of Article 22 of the Convention to “10 per cent” shall be deleted and replaced by a reference to “5 per cent”.

#### ARTICLE XII

Article 24 of the Convention shall be deleted and replaced by the following:

#### “ARTICLE 24

##### **Exchange of information**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is not contrary to this Convention, in particular, to prevent fraud and to facilitate the administration of statutory provisions against legal avoidance. This includes information relating to the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Convention. The exchange of information is not restricted by Article 1 of this Convention. Any information received by a Contracting State shall be treated as secret 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, or the determination of appeals in relation to, the taxes covered by this Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade

process, or information the disclosure of which would be contrary to public policy.

3. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain that information in the same manner and to the same extent as if the tax of the first-mentioned State were the tax of that other State and were being imposed by that other State, notwithstanding that the other State may not, at that time, need such information for the purposes of its own tax.”

#### ARTICLE XIII

1. Paragraphs 2 and 3 of Article 27 of the Convention shall be deleted and replaced by the following:

“2. Where under any provision of this Convention any income is relieved from tax in a Contracting State and, under the law in force in the other Contracting State a person, in respect of that income, is subject to tax by reference to the amount thereof which is remitted to or received in that other Contracting State and not by reference to the full amount thereof, then the relief to be allowed under this Convention in the first-mentioned Contracting State shall apply only to so much of the income as is taxed in the other Contracting State.

3. Nothing in this Convention shall be construed as restricting the right of Canada to tax a resident of Canada on that resident’s share of any income or capital gains of a partnership, trust or controlled foreign affiliate in which that resident has an interest.”

2. Paragraph 4 of Article 27 of the Convention shall be deleted.

3. The following new paragraph shall be added immediately after paragraph 6 of Article 27 of the Convention:

“7. Contributions paid in a year by, or on behalf of, an individual who exercises employment in a Contracting State in that year to a pension arrangement established in the other Contracting State (including an arrangement created under the social security legislation in that other State) and in which the individual participates in order to secure retirement benefits in respect of those services shall, during a period not exceeding in the aggregate 60 months, and if the contributions to the arrangement would qualify for tax relief if they had been made in that other State, be treated in the same way for tax purposes in the first-mentioned State as contributions paid to a pension arrangement that is recognised for tax purposes in the first-mentioned State, provided that:

- (a) immediately before the individual began to exercise employment in the first-mentioned State, that individual was not a resident of that State and contributions had been paid by or on behalf of that individual to the pension arrangement; and
- (b) the pension arrangement is accepted by the competent authority of the first-mentioned State as generally corresponding to a pension arrangement recognised as such for tax purposes by that State.”

#### ARTICLE XIV

The Governments of the Contracting States shall inform one another, through diplomatic channels, of the completion of the procedures required by their laws for the bringing into force of this Protocol. This Protocol shall enter into force on the date of the later of these notifications and shall thereupon have effect:

- (a) in Canada:
  - (i) in respect of tax withheld at the source, on amounts paid or credited to non-residents on or after the first day of January in the calendar year next following that in which this Protocol enters into force; and
  - (ii) in respect of other Canadian tax, for taxation years beginning on or after the first day of January in the calendar year next following that in which this Protocol enters into force;
- (b) in the United Kingdom:
  - (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which this Protocol enters into force;
  - (ii) in respect of corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which this Protocol enters into force.

In witness whereof the undersigned, duly authorised thereto by their respective governments, have signed this Protocol.

Done in duplicate at London, this 7<sup>th</sup> day of May 2003, in the English and French languages, both texts being equally authoritative.

**For the Government of  
the United Kingdom of  
Great Britain and  
Northern Ireland:**

**DAWN PRIMAROLO**

**For the Government of  
Canada:**

**MEL CAPPE**

## EXCHANGE OF NOTES

### No. 1

*The Paymaster General to the Canadian High Commissioner*

*London*

*7 May 2003*

I have the honour to refer to the Protocol amending the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, signed at London on 8 September 1978, as amended by the Protocol signed at Ottawa on 15 April 1980 and as further amended by the Protocol signed at London on 16 October 1985, which has been signed today and to make on behalf of the Government of the United Kingdom of Great Britain and Northern Ireland the following proposals:

*With reference to Articles IV, V and VI:*

It is understood that, in the event that, pursuant to an agreement or convention concluded after the date of signature of this Protocol with a country that is a member of the Organisation for Economic Co-operation and Development, Canada agrees to a rate of tax on dividends, interest, or royalties lower than that provided for in the Convention, the appropriate authorities of the Contracting States shall consult at the earliest opportunity with respect to further reductions in the withholding taxes provided for in the Convention.

*With reference to paragraph 1 of Article VII:*

It is understood that an individual who becomes a resident of the United Kingdom and is treated as resident for any year of assessment from the date of arrival shall be charged to capital gains tax only in respect of chargeable gains from the alienation of property made after the date of arrival, provided that the individual has not been resident or ordinarily resident in the United Kingdom at any time during the six years immediately preceding the alienation of the property and that the gain in question is not one that is chargeable on the individual as the settlor of a settlement under sections 77-79 or section 86 and Schedule 5 of the Taxation of Chargeable Gains Act 1992.

*With reference to Article XII:*

It is understood that the provisions of Article 24 (Exchange of Information) of the Convention, as amended by Article XII of the Protocol signed today, shall have effect from the date of entry into force of the Protocol, without regard to the taxable or chargeable period to which the request for information relates.

If the foregoing proposals are acceptable to the Government of Canada, I have the honour to suggest that the present note and Your Excellency's reply to that effect, which is equally authentic in English and French, shall be regarded as constituting an agreement between the two Governments in this matter, which shall enter into force at the same time as the Protocol.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

**DAWN PRIMAROLO**

**No. 2**

*The Canadian High Commissioner to the Paymaster General*

*London*

*7 May 2003*

Excellency

I have the honour to refer to your note dated 7 May 2003, which reads as follows:

**[As in No. 1]**

The foregoing proposals being acceptable to the Government of Canada, I have the honour to confirm that your note and this reply, which is equally authentic in English and French, shall be regarded as constituting an agreement between the two Governments in this matter which shall enter into force at the same time as the Protocol.

Please accept the renewed assurance of my highest consideration.

**MEL CAPPE**











Published by TSO (The Stationery Office) and available from:

**Online**

[www.tso.co.uk/bookshop](http://www.tso.co.uk/bookshop)

**Mail, Telephone Fax & E-mail**

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries 0870 600 5522

order through the Parliamentary Hotline *Lo-Call* 0845 7 023474

Fax orders 0870 600 5533

E-mail [book.orders@tso.co.uk](mailto:book.orders@tso.co.uk)

Textphone 0870 240 3701

**TSO Shops**

123 Kingsway, London WC2B 6PQ

020 7242 6393 Fax 020 7242 6394

68-69 Bull Street, Birmingham B4 6AD

0121 236 9696 Fax 0121 236 9699

9-21 Princess Street, Manchester M60 8AS

0161 834 7201 Fax 0161 833 0634

16 Arthur Street, Belfast BT1 4GD

028 9023 8451 Fax 028 9023 5401

18-19 High Street, Cardiff CF10 1PT

029 2039 5548 Fax 029 2038 4347

71 Lothian Road, Edinburgh EH3 9AZ

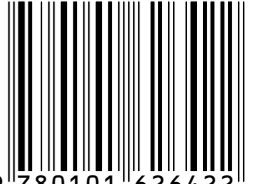
0870 606 5566 Fax 0870 606 5588

**TSO Accredited Agents**

(see Yellow Pages)

and through good booksellers

ISBN 0-10-162642-8



9 780101 626422