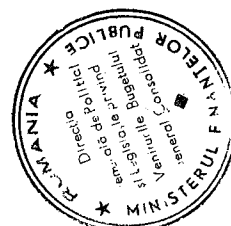


CONVENTIE  
INTRE  
ROMANIA SI CANADA  
PENTRU EVITAREA DUBLEI IMPUNERI SI  
PREVENIREA EVAZIUNII FISCALE CU PRIVIRE  
LA IMPOZITELE PE VENIT SI PE CAPITAL



Romania si Canada, dorind sa incheie o Conventie pentru evitarea dublei impuneri si prevenirea evaziunii fiscale cu privire la impozitele pe venit si pe capital, au convenit dupa cum urmeaza:

## ARTICOLUL 1

### Persoane vizate

Prezenta Conventie se aplica persoanelor care sunt rezidente ale unuia sau ale ambelor State Contractante.

## ARTICOLUL 2

### Impozite vizate

1. Prezenta Conventie se aplica impozitelor pe venit si pe capital stabilite in numele unui Stat Contractant, indiferent de modul in care sunt percepute.

2. Sunt considerate impozite pe venit si pe capital toate impozitele stabilite pe venitul total, pe capitalul total sau pe elementele de venit sau de capital, inclusiv impozitele pe castigurile provenite din instrainarea proprietatii mobiliare sau imobiliare, precum si impozitele asupra cresterii capitalului.

3. Impozitele existente asupra carora se aplica Conventia sunt in special:

a) In cazul Romaniei:

(i) impozitul pe venit;

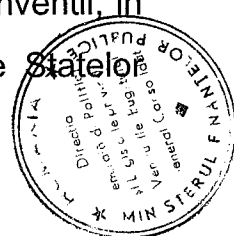
(ii) impozitul pe profit;

(iii) impozitul pe venitul agricol;

(denumite in continuare "impozit roman"), si

b) In cazul Canadei, impozitele percepute de catre Guvernul Canadei in conformitate cu Legea impozitului pe venit (denumite in continuare "impozit canadian").

4. Conventia se va aplica, de asemenea, oricaror impozite identice sau in esenta similare, care sunt stabilite dupa data semnarii acestei Conventii, in plus sau in locul impozitelor existente. Autoritatile competente ale Statelor



Contractante se vor informa reciproc asupra oricaror modificari importante aduse in legislatiile lor fiscale respective..

### ARTICOLUL 3

#### Definitii generale

1. In sensul prezentei Conventii in masura in care contextul nu cere o interpretare diferita:

a) expresiile "un Stat Contractant" si "celalalt Stat Contractant" inseamna Romania sau Canada, dupa cum cere contextul;

b) termenul "Romania", folosit in sens geografic, inseamna teritoriul de stat al Romaniei, inclusiv marea sa teritoriala si spatiul aerian de deasupra teritoriului si marii teritoriale asupra carora Romania isi exercita suveranitatea, precum si zona contigua si platoul continental si zona economica exclusiva asupra carora România isi exercita, in conformitate cu legislatia sa si potrivit normelor si principiilor dreptului international, drepturi suverane si jurisdicia;

c) termenul "Canada", utilizat in sens geografic, inseamna teritoriul Canadei, inclusiv:

(i) orice zona dincolo de marea teritoriala a Canadei care, in conformitate cu legislatia internationala si legile Canadei, este o zona cu privire la care Canada poate exercita drepturi cu privire la fundul marii si subsolul si resursele naturale ale acestora, si

(ii) marea si spatiul aerian de deasupra fiecarei zone mentionate la clauza (i);

d) termenul "persoana" include o persoana fizica, un trust, o societate, o asociere de persoane si orice alta grupare de persoane;

e) termenul "societate" inseamna orice persoana juridica sau orice entitate care este considerata ca o persoana juridica in scopul impozitarii;

f) expresiile "intreprindere a unui Stat Contractant" si "intreprindere a celuilalt Stat Contractant" inseamna respectiv o intreprindere exploatata de un rezident al unui Stat Contractant si o intreprindere exploatata de un rezident al celuilalt Stat Contractant;



g) termenul "national" inseamna:

(i) orice persoana fizica având cetatenia unui Stat Contractant, si

(ii) orice persoana juridica, asociere de persoane sau asociatie avand statutul in conformitate cu legislatia in vigoare intr-un Stat Contractant;

h) expresia "transport international" inseamna orice calatorie efectuata de o nava sau aeronava exploatata de o intreprindere a unui Stat Contractant pentru a transporta pasageri sau bunuri, cu exceptia cazului cand scopul principal al calatoriei este de a transporta pasageri sau bunuri intre locuri din celalalt Stat Contractant;

i) expresia "autoritate competenta" inseamna:

(i) in cazul Romaniei, Ministrul Finantelor Publice sau reprezentantul autorizat al ministrului, si

(ii) in cazul Canadei, Ministrul Veniturilor Nationale sau reprezentantul autorizat al ministrului.

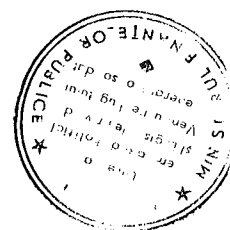
2. In ceea ce priveste aplicarea acestei Conventii in orice moment de un Stat Contractant, orice termen care nu este definit in Conventie va avea, daca contextul nu cere o interpretare diferita, intelesul pe care il are in acel moment in cadrul legislatiei acestui stat cu privire la impozitele la care prezenta Conventie se aplica, orice inteles dat de legislatia fiscala aplicabila in acest stat prevaland asupra intelesului dat termenului de alte legi ale acestui stat.

## ARTICOLUL 4

### Rezident

1. In sensul prezentei Conventii, expresia "rezident al unui Stat Contractant" inseamna:

(a) orice persoana care potrivit legislatiei acestui stat, este supusa impunerii in acest stat datorita domiciliului sau, rezidentei sale, locului de conducere sau oricarui alt criteriu de natura similara, dar nu include orice persoana care este supusa impozitarii in acel stat numai pentru faptul ca obtine venituri din surse situate in acest stat, si



(b) acest stat sau orice unitate administrativ-teritoriala a acestuia in cazul Romaniei, sau o subdiviziune politica sau autoritate locala a acestuia in cazul Canadei sau orice agentie sau institutie a acestui stat, unitate, subdiviziune sau autoritate, dupa caz.

2. Când, in conformitate cu prevederile paragrafului 1, o persoana fizica este rezidenta a ambelor State Contractante, atunci statutul persoanei fizice se determina dupa cum urmeaza:

a) aceasta va fi considerata rezidenta numai a statului in care are o locuinta permanenta la dispozitia sa si daca dispune de o locuinta permanenta in ambele state, ea va fi considerata rezidenta numai a statului cu care legaturile sale personale si economice sunt mai stranse (centrul intereselor vitale);

b) daca statul in care aceasta persoana are centrul intereselor sale vitale nu poate fi determinat sau daca ea nu dispune de o locuinta permanenta la dispozitia sa in nici unul dintre state, ea va fi considerata rezidenta numai a statului in care locuieste in mod obisnuit;

c) daca aceasta persoana locuieste in mod obisnuit in ambele state sau in nici unul dintre ele, ea va fi considerata rezidenta numai a statului al carui national este;

d) daca aceasta persoana este national al ambelor state sau a nici unuia dintre ele, autoritatile competente ale Statelor Contractante vor rezolva problema de comun acord.

3. Cand, potrivit prevederilor paragrafului 1, o persoana, alta decat o persoana fizica, este rezidenta a ambelor State Contractante, autoritatile competente ale Statelor Contractante se vor stradui de comun acord sa rezolve problema si sa determine modul de aplicare a Conventiei pentru aceasta persoana. In absenta unui astfel de acord, aceasta persoana nu va fi indreptatita sa solicite orice reducere sau scutire de la impozitele prevazute in Conventie.



## ARTICOLUL 5

### Sediu Permanent

1. In sensul prezentei Conventii, expresia "sediu permanent" inseamna un loc fix de afaceri prin care intreprinderea isi desfasoara in intregime sau in parte activitatea sa.

2. Expresia "sediu permanent" include indeosebi:

a) un loc de conducere;

b) o sucursala;

c) un birou;

d) o fabrica;

e) un magazin;

f) un atelier, si

g) o mina, un put petrolier sau de gaze, o cariera sau orice alt loc de explorare sau exploatare a resurselor naturale.

3. Un santier de constructii sau un proiect de constructii sau de instalare constituie sediu permanent numai atunci cand acesta dureaza mai mult de 12 luni.

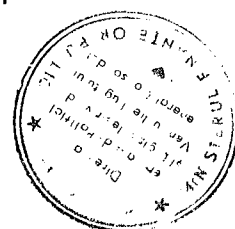
4. Independent de prevederile anterioare ale acestui articol, expresia "sediu permanent" se considera ca nu include:

a) folosirea de instalatii numai in scopul depozitarii, expunerii sau livrarii de produse sau marfuri apartinand intreprinderii;

b) mentinerea unui stoc de produse sau marfuri apartinand intreprinderii numai in scopul depozitarii, expunerii sau livrarii;

c) mentinerea unui stoc de produse sau marfuri apartinand intreprinderii numai in scopul prelucrarii de catre o alta intreprindere;

d) mentinerea unui stoc de produse sau marfuri apartinand intreprinderii care sunt expuse in cadrul unui targ comercial sau expozitii organizate temporar si ocazional si care sunt vandute de intreprindere la inchiderea unui astfel de targ sau expozitii;



e) mentinerea unui loc fix de afaceri numai in scopul cumpararii de produse sau marfuri sau colectarii de informatii pentru intreprindere;

f) mentinerea unui loc fix de afaceri numai in scopul desfasurarii pentru intreprindere a oricarei alte activitati cu caracter pregatitor sau auxiliar;

g) mentinerea unui loc fix de afaceri numai pentru orice combinatie de activitati mentionate in subparagrafele de la a) la f), cu conditia ca intreaga activitate a locului fix de afaceri ce rezulta din aceasta combinatie sa aiba un caracter pregatitor sau auxiliar.

5. Independent de prevederile paragrafelor 1 si 2, atunci cand o persoana - alta decat un agent cu statut independent caruia i se aplica prevederile paragrafului 7 - actioneaza in numele unei intreprinderi si are si exercita in mod obisnuit intr-un Stat Contractant autoritatea de a incheia contracte in numele intreprinderii, aceasta intreprindere se considera ca are un sediu permanent in acel stat in privinta oricaror activitati pe care persoana le exercita pentru intreprindere, in afara de cazul cand activitatile acestei persoane sunt limitate la cele mentionate in paragraful 4 care, daca sunt exercitate in cadrul unui loc fix de afaceri, nu fac din acest loc fix de afaceri un sediu permanent potrivit prevederilor acelui paragraf.

6. Independent de prevederile anterioare ale acestui articol, o intreprindere de asigurare, cu exceptia celor de reasigurare, a unui Stat Contractant se considera ca are un sediu permanent in celalalt Stat Contractant daca colecteaza prime pe teritoriul celuiilalt stat sau asigura riscuri situate acolo, prin intermediul unei persoane, alta decat un agent cu statut independent caruia i se aplica prevederile paragraful 7.

7. O intreprindere nu se considera ca are un sediu permanent intr-un Stat Contractant, numai prin faptul ca aceasta isi exercita activitatea de afaceri in acel stat printr-un broker, agent comisionar general sau orice alt agent cu statut independent, cu conditia ca aceste persoane sa actioneze in cadrul activitatii lor obisnuite.



8. Faptul ca o societate care este rezidenta a unui Stat Contractant controleaza sau este controlata de o societate care este rezidenta a celuilalt Stat Contractant sau care isi exercita activitatea de afaceri in celalalt stat (printr-un sediu permanent sau in alt mod) nu este suficient pentru a face una din aceste societati un sediu permanent al celeilalte.

## ARTICOLUL 6

### Venituri din proprietati imobiliare

1. Veniturile realizate de un rezident al unui Stat Contractant din proprietati imobiliare (inclusiv veniturile din agricultura sau din exploatare forestiere) situate in celalalt Stat Contractant sunt impozabile in celalalt stat.

2. In sensul prezentei Conventii expresia "proprietati imobiliare" are intelesul care este atribuit de legislatia referitoare la impozite a Statului Contractant in care proprietatile in cauza sunt situate. Expresia include, in orice caz, accesoriile proprietatii imobiliare, inventarul viu si echipamentul utilizat in agricultura si exploatare forestiere, drepturile asupra carora se aplica prevederile dreptului comun cu privire la proprietatea funciara, uzufructul proprietatilor imobiliare si drepturile la rente variabile sau fixe pentru exploatarea sau concesionarea exploatareii zacamintelor minerale, izvoarelor si a altor resurse naturale; navele si aeronavele nu sunt considerate proprietati imobiliare.

3. Prevederile paragrafului 1 se aplica veniturilor obtinute din exploatarea directa, din inchirierea sau din folosirea in orice alta forma a proprietatii imobiliare si veniturilor din instrainarea unei asemenea proprietati.

4. Prevederile paragrafelor 1 si 3 se aplica de asemenea veniturilor provenind din proprietati imobiliare ale unei intreprinderi si veniturilor din proprietati imobiliare utilizate pentru exercitarea unei profesii independente.

## ARTICOLUL 7

### Profiturile intreprinderii

1. Profiturile unei intreprinderi a unui Stat Contractant sunt impozabile numai in acel stat, in afara de cazul cand intreprinderea exercita activitate de



afaceri in celalalt Stat Contractant printr-un sediu permanent situat acolo. Daca intreprinderea exercita activitate de afaceri in acest mod, profiturile intreprinderii pot fi impuse in celalalt stat, dar numai acea parte din ele care este atribuabila acelui sediu permanent.

2. Sub rezerva prevederilor paragrafului 3, cand o intreprindere a unui Stat Contractant exercita activitate de afaceri in celalalt Stat Contractant printr-un sediu permanent situat acolo, atunci se atribuie in fiecare Stat Contractant, acelui sediu permanent, profiturile pe care acesta le-ar fi putut realiza daca ar fi constituit o intreprindere distincta si separata, exercitand activitati identice sau similare, in conditii identice sau similare si tratand cu toata independenta cu intreprinderea a carui sediu permanent este si cu toate celelalte persoane.

3. La determinarea profiturilor unui sediu permanent sunt admise ca deductibile cheltuielile ce pot fi dovedite ca fiind efectuate pentru scopurile urmarite de acest sediu permanent, inclusiv cheltuielile de conducere si cheltuielile generale de administrare efectuate, indiferent de faptul ca s-au efectuat in statul in care se afla situat sediul permanent sau in alta parte. Aceste prevederi sunt aplicabile sub rezerva restrictiilor prevazute de legislatia interna.

4. In masura in care intr-un Stat Contractant, se obisnuieste ca profitul care se atribuie unui sediu permanent sa fie determinat prin repartizarea profitului total al intreprinderii in diversele sale parti componente, nici o prevedere a paragrafului 2 nu impiedica acest Stat Contractant sa determine profitul impozabil in conformitate cu repartitia uzuala; metoda de repartizare adoptata trebuie sa fie totusi aceea prin care rezultatul obtinut sa fie in concordanta cu principiile enuntate in prezentul articol.

5. Nici un profit nu se atribuie unui sediu permanent numai pentru faptul ca acest sediu permanent cumpara produse sau marfuri pentru intreprindere.

6. In vederea aplicarii prevederilor paragrafelor precedente, profitul care se atribuie unui sediu permanent se determina in fiecare an prin aceeași



metoda, in afara de cazul cand exista motive temeinice si suficiente de a proceda altfel.

7. Când profiturile includ elemente de venit care sunt tratate separat in alte articole ale prezentei Conventii, prevederile acelor articole nu sunt afectate de prevederile prezentului articol.

## ARTICOLUL 8

### Transporturi internationale

1. Profiturile obtinute de o intreprindere a unui Stat Contractant din exploatarea in trafic international a navelor sau aeronavelor sunt impozabile numai in acel stat.

2. Independent de prevederile articolului 7, profiturile obtinute de o intreprindere a unui Stat Contractant dintr-o calatorie efectuata de o nava sau aeronava cand scopul principal al calatoriei este de a transporta pasageri sau bunuri intre locuri din celalalt Stat Contractant pot fi impuse in celalalt stat.

3. Prevederile paragrafelor 1 si 2 se aplica de asemenea profiturilor obtinute din participarea la un pool, la o exploatare in comun sau la o agentie internationala de transporturi.

4 In sensul acestui Articol,

a) termenul "profituri" include:

(i) incasarile brute si veniturile obtinute direct din exploatarea navelor sau aeronavelor in trafic international, si

(ii) dobanda care este legata de exploatarea navelor sau aeronavelor in trafic international; si

b) expresia "exploatarea navelor sau aeronavelor in trafic international" de o intreprindere include:

(i) navlosirea sau inchirierea navelor sau aeronavelor,

(ii) inchirierea containerelor si a echipamentelor legate de acestea,



de catre acea intreprindere daca navlosirea sau inchirierea este legata de exploatarea de catre acea intreprindere a navelor sau aeronavelor in trafic international.

## ARTICOLUL 9

### Intreprinderi asociate

#### 1. Cand

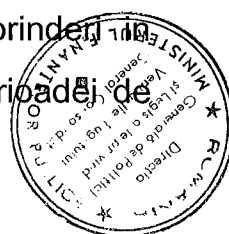
a) o intreprindere a unui Stat Contractant participa direct sau indirect la conducerea, controlul sau la capitalul unei intreprinderi a celui alt Stat Contractant, sau

b) aceleasi persoane participa direct sau indirect la conducerea, controlul sau la capitalul unei intreprinderi a unui Stat Contractant si a unei intreprinderi a celui alt Stat Contractant,

si, fie intr-un caz, fie in celalalt, cele doua intreprinderi sunt legate in relatiile lor financiare sau comerciale de conditii acceptate sau impuse care difera de acelea care ar fi fost stabilite intre intreprinderi independente, atunci profiturile care fara aceste conditii ar fi fost obtinute de una din intreprinderi, dar nu au putut fi obtinute in fapt datorita acestor conditii, pot fi incluse in profiturile acelei intreprinderi si impuse in consecinta.

2. Cand un Stat Contractant include in profiturile unei intreprinderi apartinand acelui stat si impune in consecinta profiturile asupra carora o intreprindere a celui alt Stat Contractant a fost supusa impozitarii in celalalt stat si profiturile astfel incluse sunt profituri care ar fi revenit intreprinderii primului stat mentionat daca conditiile stabilite intre cele doua intreprinderi ar fi fost acelea care ar fi fost convenite intre intreprinderi independente, atunci celalalt stat va proceda la modificarea corespunzatoare a sumei impozitului stabilit asupra acestor profituri. La efectuarea acestei modificari se tine seama de celelalte prevederi ale prezentei Conventii si daca este necesar autoritatile competente ale Statelor Contractante se vor consulta reciproc.

3. Un Stat Contractant nu va schimba profitul unei intreprinderi in situatiile la care se face referire in paragraful 1 dupa expirarea perioadei de



prescriptie prevazuta in legislatia interna si in nici un caz dupa 5 ani de la sfarsitul anului in care profitul care ar fi supus unor astfel de schimbari ar fi fost atribuit acestei intreprinderi, daca nu ar fi existat conditiile la care se face referire in paragraful 1.

4. Prevederile paragrafelor 2 si 3 nu se aplica in caz de fraudă, omisiune intentionata sau neglijenta.

## ARTICOLUL 10

### Dividende

1. Dividendele platite de o societate care este rezidenta a unui Stat Contractant unui rezident al celui alt Stat Contractant sunt impozabile in cel alt stat.

2. Totusi, aceste dividende sunt de asemenea impozabile in Statul Contractant in care este rezidenta societatea platitoare de dividende si potrivit legislatiei acestui stat, dar daca beneficiarul efectiv al dividendelor este rezident al celui alt Stat Contractant, impozitul astfel stabilit nu va depasi:

a) 5 la suta din suma bruta a dividendelor daca beneficiarul efectiv este o societate care controleaza direct sau indirect cel putin 10 la suta din puterea de vot a societatii platitoare de dividende, cu exceptia dividendelor platite de o corporatie de investitii detinuta de un nerezident si care este rezidenta in Canada;

b) 15 la suta din suma bruta a dividendelor in toate celelalte cazuri.

Prezentul paragraf nu afecteaza impunerea societatii cu privire la profiturile din care se platesc dividendele.

3. Termenul "dividende" folosit in acest articol inseamna veniturile provenind din actiuni, din actiuni si din drepturi de folosinta, din parti miniere, din parti de fondator sau alte drepturi, care nu sunt titluri de creanta, din participarea la profituri, precum si veniturile care sunt supuse aceluasi regim de impunere ca veniturile din actiuni de catre legislatia statului in care este rezidenta societatea distribuitoare a dividendelor.



4. Prevederile paragrafelor 1 si 2 nu se aplica daca beneficiarul efectiv al dividendelor, fiind rezident al unui Stat Contractant, desfasoara activitate de afaceri in celalalt Stat Contractant, in care societatea platitoare de dividende este rezidenta, printr-un sediu permanent situat acolo sau desfasoara in celalalt stat profesii independente printr-o baza fixa situata acolo, iar detinerea drepturilor generatoare de dividende in legatura cu care dividendele sunt platite este efectiv legata de un asemenea sediu permanent sau baza fixa. In aceasta situatie, se aplica prevederile articolului 7 sau ale articolului 14, dupa caz.

5. Cand o societate rezidenta a unui Stat Contractant realizeaza profituri sau venituri din celalalt Stat Contractant, celalalt stat nu poate percepe nici un impozit asupra dividendelor platite de acea societate, cu exceptia cazului cand asemenea dividende sunt platite unui rezident al celui alt stat sau cand detinerea drepturilor generatoare de dividende in legatura cu care dividendele sunt platite este efectiv legata de un sediu permanent sau de o baza fixa situate in celalalt stat, nici sa supuna profiturile nedistribuite ale societatii unui impozit asupra profiturilor nedistribuite, chiar daca dividendele platite sau profiturile nedistribuite reprezinta in intregime sau in parte profituri sau venituri provenind din celalalt stat.

6. Nici o prevedere a acestei conventii nu va fi interpretata ca impiedicand un Stat Contractant sa perceapa, asupra castigurilor unei societati care sunt atribuibile unui sediu permanent din acest stat sau asupra castigurilor atribuibile instrainarii proprietatii imobiliare situata in acel stat ale unei societati care desfasoara activitate in domeniul proprietatilor imobiliare, un impozit care se adauga la impozitul care ar fi aplicabil asupra castigurilor unei societati care este un national al acelui stat, cu conditia ca impozitul aditional astfel stabilit sa nu depaseasca cinci la suta din suma unor astfel de castiguri care nu au fost supuse unui impozit aditional in anii fiscali precedenti. In sensul acestei prevederi, expresia "castiguri" inseamna castigurile atribuibile instrainarii unei astfel de proprietati imobiliare situata intr-un Stat



Contractant, care pot fi impuse in acel stat, conform prevederilor articolului 6 sau paragrafului 1 al articolului 13 si profiturile, inclusiv castigurile atribuibile unui sediu permanent dintr-un Stat Contractant intr-un an si in anii anteriori, dupa deducerea din acestea a tuturor impozitelor, altele decat impozitul aditional vizat in prezentul paragraf, percepute asupra unor asemenea profituri in acel stat.

## ARTICOLUL 11

### Dobanzi

1. Dobanzile provenind dintr-un Stat Contractant si platite unui rezident al celui alt Stat Contractant sunt impozabile in cel alt stat.

2. Totusi, aceste dobanzi sunt de asemenea impozabile in Statul Contractant din care provin si potrivit legislatiei acestui stat, dar daca beneficiarul efectiv al dobanzilor este rezident al celui alt Stat Contractant, impozitul astfel stabilit nu va depasi 10 la suta din suma bruta a dobanzilor.

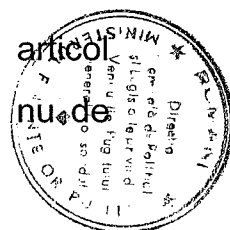
3. Independent de prevederile paragrafului 2:

a) dobanzile provenind dintr-un Stat Contractant si platite in legatura cu o creanta a guvernului celui alt stat sau unitate administrativ-teritoriala a acestuia in cazul Romaniei, sau subdiviziune politica sau autoritate locala a acestuia in cazul Canadei, sunt impuse numai in cel alt stat daca dobanda este obtinuta efectiv de un rezident al celui alt Stat Contractant;

b) dobanzile provenind din Romania si platite unui rezident al Canadei sunt impozabile numai in Canada daca sunt platite in legatura cu un imprumut acordat, garantat sau asigurat sau un credit oferit, garantat sau asigurat de institutia denumita Dezvoltarea Exportului Canadian;

c) dobanzile provenind din Canada si platite unui rezident al Romaniei sunt impozabile numai in Romania daca sunt platite in legatura cu un imprumut acordat, garantat sau asigurat sau un credit oferit, garantat sau asigurat de Banca de Export Import a Romaniei S.A. (EXIMBANK).

4. Termenul "dobanzi" astfel cum este folosit in prezentul articol insemna veniturile din titluri de creanta de orice natura insotite sau nu de

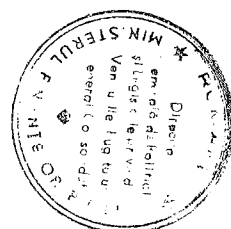


garanții ipotecare și în special veniturile din efecte publice, titluri de creanță sau obligațiuni, inclusiv primele și premiile legate de asemenea efecte, titluri de creanță sau obligațiuni, precum și veniturile care sunt supuse aceluiași tratament fiscal ca veniturile din împrumuturi banesti de către legislația statului de unde provin veniturile. Totuși, termenul “dobândă” nu include venitul la care se face referire în articolul 8 sau articolul 10.

5. Prevederile paragrafelor 1 și 2 nu se aplică dacă beneficiarul efectiv al dobânzilor, fiind un rezident al unui Stat Contractant, desfășoară activitate de afaceri în celălalt Stat Contractant din care provin dobânzile printr-un sediu permanent situat acolo sau prestează în celălalt stat profesii independente printr-o bază fixă situată acolo, iar creanța în legătură cu care sunt plătite dobânzile este efectiv legată de un asemenea sediu permanent sau bază fixă. În această situație, se aplică prevederile articolului 7 sau ale articolului 14, după caz.

6. Dobânzile se consideră ca provin dintr-un Stat Contractant când platitorul este un rezident al acestui stat. Totuși, când platitorul dobânzilor, fie că este sau nu rezident al unui Stat Contractant, are într-un Stat Contractant un sediu permanent sau o bază fixă în legătură cu care a fost contractată creanța generatoare de dobânzi și aceste dobânzi se suportă de acest sediu permanent sau bază fixă, atunci aceste dobânzi se consideră ca provin din Statul Contractant în care este situat sediul permanent sau bază fixă.

7. Când datorită relațiilor speciale existente între debitor și beneficiarul efectiv sau între ambii și o altă persoană, suma dobânzilor, ținând seama de creanța pentru care sunt plătite, depășește suma care s-ar fi convenit între debitor și beneficiarul efectiv în lipsa unor astfel de relații, prevederile prezentului articol se aplică numai la această ultimă sumă menționată. În acest caz, partea excedentară a plăților este impozabilă potrivit legislației fiecărui Stat Contractant, ținând seama de celelalte prevederi ale prezentei Convenții.



## ARTICOLUL 12

### Redevente

1. Redeventele provenind dintr-un Stat Contractant si platite unui rezident al celui alt Stat Contractant sunt impozabile in cel alt stat.

2. Totusi, aceste redevente sunt de asemenea impozabile in Statul Contractant din care provin si potrivit legislatiei acestui stat, dar daca beneficiarul efectiv al redeventelor este rezident al celui alt Stat Contractant, impozitul astfel stabilit nu va depasi:

a) 5 la suta din suma bruta a redeventelor daca acestea reprezinta:

(i) drepturi de autor si alte asemenea plati legate de producerea sau reproducerea oricaror opere literare, dramatice, muzicale sau artistice (dar nu includ redeventele legate de filme cinematografice si nici redevente legate de operele care sunt inregistrate pe film sau benzi video sau alte mijloace de reproducere utilizate pentru emisiunile televizate); sau

(ii) redevente pentru utilizarea sau dreptul de a utiliza un software sau orice patent sau pentru informatii referitoare la experienta in domeniul industrial, comercial sau stiintific (dar nu includ redeventele furnizate in legatura cu un contract de inchiriere sau franciza);

b) 10 la suta din suma bruta a redeventelor in celelalte cazuri.

3. Termenul "redevente" folosit in prezentul articol inseamna plati de orice fel primite pentru folosirea sau dreptul de a folosi orice drept de autor, patent, marca de comert, desen sau model, plan, formula secreta sau procedeu sau alta proprietate intangibila sau pentru utilizarea sau dreptul de a utiliza un echipament industrial, comercial sau stiintific, sau pentru informatii referitoare la experienta in domeniul industrial, comercial sau stiintific si include plati de orice natura in legatura cu filmele de cinematograf si operele inregistrate pe filme, casete video sau alte mijloace de reproducere utilizate in televiziune.



4. Prevederile paragrafelor 1 si 2 nu se aplica daca beneficiarul efectiv al redeventelor, fiind un rezident al unui Stat Contractant, desfasoara activitate de afaceri in celalalt Stat Contractant din care provin redeventele printr-un sediu permanent situat acolo sau presteaza in celalalt stat profesii independente printr-o baza fixa situata acolo, iar dreptul sau proprietatea pentru care se platesc redeventele sunt efectiv legate de un asemenea sediu permanent sau baza fixa. In aceasta situatie, se aplica prevederile articolului 7 sau ale articolului 14, dupa caz.

5. Redeventele se considera ca provin dintr-un Stat Contractant cand platitorul este un rezident al acestui stat. Totusi, cand platitorul redeventelor, fie ca este sau nu rezident al unui Stat Contractant, are intr-un Stat Contractant un sediu permanent sau o baza fixa de care este legata obligatia de a plati redeventele si acestea sunt suportate de un asemenea sediu permanent sau baza fixa, atunci aceste redevente se considera ca provin din Statul Contractant in care este situat sediul permanent sau baza fixa.

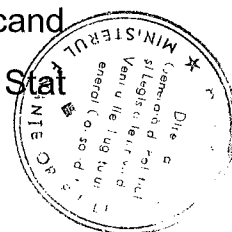
6. Cand, datorita relatiilor speciale existente intre platitorul si beneficiarul efectiv sau intre ambii si o alta persoana, suma redeventelor, avand in vedere utilizarea, dreptul sau informatia pentru care sunt platite, depaseste suma care ar fi fost convenita intre platitor si beneficiarul efectiv in lipsa unor astfel de relatii, prevederile prezentului articol se aplica numai la aceasta ultima suma mentionata. In acest caz, partea excedentara a platilor este impozabila potrivit legislatiei fiecarui Stat Contractant, tinand seama de celelalte prevederi ale prezentei Conventii.

## ARTICOLUL 13

### Castiguri de capital

1. Castigurile realizate de un rezident al unui Stat Contractant din instrainarea proprietatii imobiliare situata in celalalt Stat Contractant sunt impozabile in celalalt stat.

2. Castigurile provenind din instrainarea proprietatii mobiliare facand parte din activul unui sediu permanent pe care o intreprindere a unui Stat



Contractant il are sau l-a avut in celalalt Stat Contractant sau a proprietatii mobiliare tinand de o baza fixa de care dispune sau a dispus un rezident al unui Stat Contractant in celalalt Stat Contractant pentru exercitarea unei profesii independente, inclusiv castigurile provenind din instrainarea unui asemenea sediu permanent (singur sau cu intreaga intreprindere) sau a unei asemenea baze fixe, sunt impozabile in celalalt stat.

3. Castigurile realizate de o intreprindere a unui Stat Contractant din instrainarea navelor sau aeronavelor exploatate in trafic international sau a proprietatilor mobiliare necesare exploatarii unor asemenea nave sau aeronave sunt impozabile numai in acel stat.

4. Castigurile obtinute de un rezident al unui Stat Contractant din instrainarea:

a) actiunilor a caror valoare consta in principal din proprietati imobiliare situate in celalalt stat; sau

b) unei participari intr-o asociere de persoane sau trust, a carui valoare consta in principal din proprietate imobiliara situata in celalalt stat;

pot fi impuse in celalalt stat. In sensul acestui paragraf, expresia "proprietati imobiliare" nu include nici o proprietate, alta decat proprietatea inchiriata, in care este desfasurata activitatea de afaceri a unei societati, asocieri de persoane sau trust.

5. Castigurile provenind din instrainarea oricaror proprietati, altele decat cele la care se face referire in paragrafele 1, 2, 3 si 4, sunt impozabile numai in Statul Contractant in care este rezident cel care instraineaza.

6. Prevederile paragrafului 5 nu afecteaza dreptul unui Stat Contractant de a percepe, potrivit propriei sale legislatii, un impozit pe castigurile din instrainarea oricarei proprietati dobandita de o persoana fizica care este rezidenta a celuialt Stat Contractant si care la un moment dat, in cursul a cinci ani imediat anteriori instrainarii proprietatii a fost rezidenta a primului stat mentionat.



7. Cand o persoana fizica care inceteaza sa fie rezidenta a unui Stat Contractant si imediat devine rezidenta a celuilalt Stat Contractant, dar din punct de vedere fiscal in primul stat mentionat este impozitata pentru instrainarea unei proprietati, acea persoana fizica poate opta ca sa fie tratata in celalalt stat din punct de vedere fiscal ca si cand imediat anterior de a deveni rezident a celuilalt stat a vandut si cumparat din nou proprietatea pentru o suma egala cu valoarea corecta de piata la acea data.

## ARTICOLUL 14

### Profesii independente

1. Veniturile realizate de o persoana fizica care este rezident al unui Stat Contractant din exercitarea unor profesii independente sau a altor servicii similare cu caracter independent sunt impozabile numai in acest stat, in afara de cazul in care aceasta dispune de o baza fixa la dispozitia sa in celalalt Stat Contractant in scopul exercitarii serviciilor sale. Daca persoana fizica dispune sau a dispus de o astfel de baza fixa, venitul poate fi impus in celalalt stat, dar numai acea parte care este atribuibila acelei baze fixe.

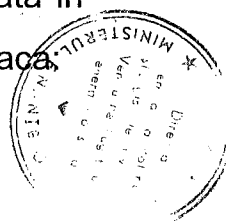
2. Expresia "profesii independente" cuprinde in special activitatile independente cu caracter stiintific, literar, artistic, educativ sau pedagogic, precum si exercitarea independenta a profesiilor de medic, avocat, inginer, arhitect, dentist si contabil.

## ARTICOLUL 15

### Profesii dependente

1. Sub rezerva prevederilor articolelor 16, 18 si 19, salariile si alte remuneratii obtinute de un rezident al unui Stat Contractant pentru o activitate salariata sunt impozabile numai in acel stat, in afara de cazul cAnd activitatea salariata este exercitata in celalalt Stat Contractant. Daca activitatea salariata este astfel exercitata, remuneratiile primite sunt impozabile in celalalt stat.

2. Independent de prevederile paragrafului 1, remuneratiile obtinute de un rezident al unui Stat Contractant pentru o activitate salariata exercitata in celalalt Stat Contractant sunt impozabile numai in primul stat mentionat daca



a) beneficiarul este prezent in celalalt stat pentru o perioada sau perioade care nu depasesc in total 183 de zile in orice perioada de 12 luni incepand sau sfarsind in anul calendaristic vizat; si

b) remuneratiile sunt platite de o persoana sau in numele unei persoane care angajeaza si care nu este rezidenta a celuiilalt stat; si

c) remuneratiile nu sunt suportate de un sediu permanent sau de o baza fixa pe care cel care angajeaza le are in celalalt stat.

3. Independent de prevederile precedente ale acestui articol, remuneratiile primite pentru o activitate salariata exercitata la bordul unei nave sau aeronave exploatata in trafic international de o intreprindere a unui Stat Contractant sunt impozabile numai in acel stat, in afara de cazul in care remuneratia este obtinuta de un rezident al celuiilalt Stat Contractant.

## ARTICOLUL 16

### Remuneratiile membrilor Consiliului de Administratie

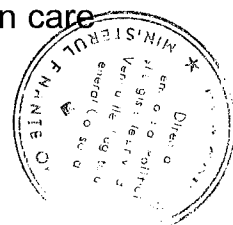
Remuneratiile si alte plati similare primite de un rezident al unui Stat Contractant in calitatea sa de membru al consiliului de administratie sau al unui organ similar al unei societati care este rezidenta a celuiilalt Stat Contractant sunt impozabile in celalalt stat.

## ARTICOLUL 17

### Artisti si sportivi

1. Independent de prevederile articolelor 14 si 15, veniturile obtinute de un rezident al unui Stat Contractant in calitate de artist de spectacol cum sunt artistii de teatru, de film, de radio sau de televiziune, ori ca interpreti muzicali sau ca sportivi, din activitatile lui personale desfasurate in aceasta calitate in celalalt Stat Contractant, sunt impozabile in celalalt stat.

2. Cand veniturile in legatura cu activitatile personale desfasurate de un artist de spectacol sau de un sportiv, in aceasta calitate, nu revin artistului de spectacol sau sportivului, ci unei alte persoane, acele venituri, independent de prevederile articolelor 7, 14 si 15, sunt impozabile in Statul Contractant in care sunt exercitate activitatile artistului de spectacol sau sportivului.



3. Independent de prevederile paragrafelor 1 si 2, veniturile obtinute din activitatile mentionate la paragraful 1, in cadrul schimburilor culturale sau sportive aprobate de guvernele Statelor Contractante si care nu sunt exercitate in scopul de a obtine profituri, sunt scutite de impozit in Statul Contractant in care sunt exercitate aceste activitati.

## ARTICOLUL 18

### Pensii

1. Pensiile, inclusiv sumele primite din asigurarile sociale, provenind dintr-un Stat Contractant si platite unui rezident al celui alt Stat Contractant pot fi impuse in celalalt stat.

2. Pensiile, inclusiv sumele din asigurari sociale, provenind dintr-un Stat Contractant si platite unui rezident al celui alt Stat Contractant pot fi de asemenea impuse in statul din care provin si potrivit legislatiei acelui stat, dar in cazul sumelor periodice impozitul astfel stabilit nu va depasi 15 la suta din suma bruta a platilor periodice platite unui beneficiar in anul calendaristic vizat care depaseste 12000 dolari canadieni sau echivalentul in moneda romana.

## ARTICOLUL 19

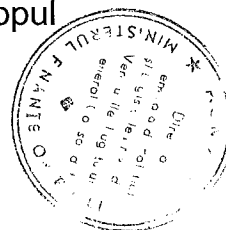
### Functii publice

1. a) Salariile si alte remuneratii similare, altele decat pensiile, platite de un Stat Contractant sau de o unitate administrativ-teritoriala a acestuia in cazul Romaniei, sau de o subdiviziune politica sau o autoritate locala a acestuia in cazul Canadei unei persoane fizice pentru serviciile prestate acestui stat, subdiviziuni, autoritati sau unitati, sunt impozabile numai in acest stat.

b) Totusi, aceste salarii si alte remuneratii similare sunt impozabile numai in celalalt Stat Contractant daca serviciile sunt prestate in acel stat si persoana fizica este rezidenta a acelui stat, si:

(i) este un national al acelui stat; sau

(ii) nu a devenit rezidenta a acelui stat numai in scopul prestarii serviciilor.



2. Prevederile paragrafului 1 nu se aplica salariilor si altor remuneratii similare platite pentru serviciile prestate in legatura cu o activitate de afaceri desfasurata de un Stat Contractant, o unitate administrativ-teritoriala a acestuia in cazul Romaniei, sau de o subdiviziune politica sau autoritate locala a acestuia, in cazul Canadei.

## ARTICOLUL 20

### Studenti

Sumele pe care le primeste pentru intretinere, educare sau pregatire un student sau un practicant care este sau a fost rezident al celuilalt Stat Contractant imediat anterior venirii sale intr-un Stat Contractant si care este prezent in primul Stat Contractant mentionat numai in scopul educarii sau pregatirii sale, nu sunt impozabile in acel stat, cu conditia ca astfel de sume sa provina din surse aflate in afara acelui stat.

## ARTICOLUL 21

### Alte venituri

1. Elementele de venit ale unui rezident al unui Stat Contractant, indiferent de unde provin, care nu sunt tratate la articolele precedente ale prezentei Conventii sunt impozabile in acel stat.

2. Totusi, daca acest venit este obtinut de un rezident al unui Stat Contractant din surse situate in celalalt Stat Contractant, acest venit poate fi de asemenea impus in statul din care provine si potrivit legislatiei acelui stat.

## ARTICOLUL 22

### Capital

1. Capitalul constituit din proprietati imobiliare, detinut de un rezident al unui Stat Contractant si situate in celalalt Stat Contractant, este impozabil in celalalt stat.

2. Capitalul constituit din proprietati mobiliare facand parte din activul unui sediu permanent pe care o intreprindere a unui Stat Contractant il are in celalalt Stat Contractant sau de proprietati mobiliare apartinand unei baze fixe



pe care un rezident al unui Stat Contractant o are in celalalt Stat Contractant pentru exercitarea unei profesii independente este impozabil in celalalt stat.

3. Capitalul constituit din nave si aeronave exploatate in trafic international de o intreprindere a unui Stat Contractant si din proprietati mobiliare tinand de exploatarea unor asemenea nave si aeronave este impozabil numai in acel stat.

4. Toate celelalte elemente de capital ale unui rezident al unui Stat Contractant sunt impozabile numai in acest stat.

### Articolul 23

#### Eliminarea dublei impuneri

1. S-a convenit ca dubla impunere sa fie evitata dupa cum urmeaza:

a) In cazul Romaniei:

Cand un rezident al Romaniei realizeaza venituri sau detine capital care, in conformitate cu prevederile acestei Conventii pot fi impozitate in Canada, Romania va acorda:

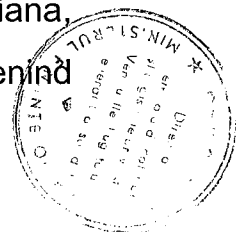
(i) ca o deducere din impozitul pe venitul acelui rezident, o suma egala cu impozitul pe venit platit in Canada;

(ii) ca o deducere din impozitul pe capitalul acelui rezident, o suma egala cu impozitul pe capital platit in Canada.

Totusi, aceasta deducere nu va putea depasi in nici un caz acea parte a impozitului pe venit sau a impozitului pe capital, astfel cum este calculata inainte ca deducerea sa fie acordata, care este atribuabila, dupa caz, venitului sau capitalului care poate fi impozitat in Canada.

b) In cazul Canadei:

(i) sub rezerva prevederilor existente in legislatia canadiana cu privire la deducerea impozitului platit intr-un teritoriu din afara Canadei din impozitul platibil in Canada si a oricaror modificari ulterioare ale acestor prevederi - care nu ar afecta principiul general - si fara a renunta la o deducere sau reducere mai importanta prevazuta in legislatia canadiana, impozitul roman datorat in functie de profituri, venituri sau castiguri provenind



din Romania se deduce din orice impozit canadian datorat pentru asemenea profituri, venituri sau castiguri,

(ii) cand, potrivit prevederilor prezentei conventii, venitul obtinut sau capitalul detinut de un rezident al Canadei este scutit de impozit in Canada, Canada poate cu toate acestea sa ia in considerare la calculul altor impozite pe venit si capital venitul sau capitalul scutit.

2. In sensul acestui articol, profiturile, veniturile sau castigurile unui rezident al unui Stat Contractant care pot fi impuse in celalalt Stat Contractant potrivit acestei Conventii sunt considerate ca provin din surse din celalalt stat.

## ARTICOLUL 24

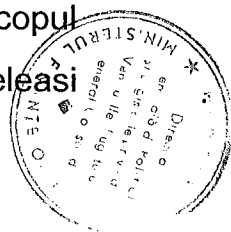
### Nediscriminarea

1. Nationalii unui Stat Contractant nu vor fi supusi in celalalt Stat Contractant la nici o impozitare sau obligatie legata de aceasta, mai impovaratoare decat impozitarea sau obligatia la care sunt sau pot fi supusi nationalii celuiilalt stat aflati in aceeaasi situatie, mai ales in ceea priveste rezidenta.

2. Impozitarea unui sediu permanent pe care o intreprindere a unui Stat Contractant il are in celalalt Stat Contractant nu va fi stabilita in conditii mai putin favorabile in celalalt Stat Contractant decat impunerea stabilita intreprinderilor celuiilalt stat care desfasoara aceleasi activitati.

3. Nici o prevedere a acestui articol nu va fi interpretata ca obligand un Stat Contractant sa acorde rezidentilor celuiilalt Stat Contractant nici o deducere personala, inlesnire sau reducere in ceea ce priveste impozitarea, pe considerente legate de starea civila sau de responsabilitatile familiale pe care le acorda rezidentilor sai.

4. Cu exceptia cazului cand se aplica prevederile paragrafului 1 al articolului 9, paragrafului 7 al articolului 11 sau paragrafului 6 al articolului 12, dobanzile, redeventele si alte plati facute de o intreprindere a unui Stat Contractant unui rezident al celuiilalt Stat Contractant se vor deduce, in scopul determinarii profiturilor impozabile ale unei asemenea intreprinderi, in aceleasi



conditii ca si cum ar fi fost platite unui rezident al primului stat mentionat. In mod similar, orice datorii ale unei intreprinderi a unui Stat Contractant fata de un rezident al celuilalt Stat Contractant vor fi deductibile, in vederea determinarii capitalului impozabil al acestei intreprinderi, in aceleasi conditii ca si cum ar fi fost contractate fata de un rezident al primului stat mentionat.

5. Prevederile paragrafului 4 nu afecteaza aplicarea prevederilor legislatiei fiscale a unui Stat Contractant:

a) referitoare la deducerea dobanzilor si care este in vigoare la data semnarii Conventiei (inclusiv orice modificari ulterioare ale unor asemenea prevederi care nu schimba natura generala a acestora); sau

b) adoptata dupa o asemenea data de un Stat Contractant si care este conceputa sa asigure ca o persoana care nu este rezidenta a acelui stat, conform legislatiei acelui stat, sa nu beneficieze de un tratament mai favorabil decat cel de care beneficiaza rezidentii acelui stat.

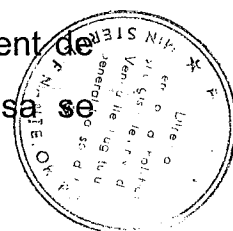
6. Intreprinderile unui Stat Contractant, al caror capital este integral sau partial detinut sau controlat in mod direct sau indirect de unul sau de mai multi rezidenti ai celuilalt Stat Contractant, nu vor fi supuse in primul Stat mentionat nici unei impozitari sau obligatii legata de aceasta care sa fie mai impovaratoare decat impozitarea si obligatiile legate de aceasta la care sunt sau pot fi supuse alte intreprinderi similare rezidente ale primului stat mentionat, al caror capital este in intregime sau in parte detinut sau controlat, direct sau indirect, de unul sau de mai multi rezidenti ai unui stat tert.

7. Prevederile prezentului articol se aplica numai impozitelor care fac obiectul Conventiei.

## ARTICOLUL 25

### Procedura amiabila

1. Cand o persoana considera ca datorita masurilor luate de unul sau de ambele State Contractante rezulta sau va rezulta pentru ea o impozitare care nu este conforma cu prevederile prezentei Conventii, ea poate, indiferent de caile de remediere prevazute de legislatia interna a acestor state, sa se



adreseze in scris autoritatii competente a Statului Contractant al carui rezident este si sa arate motivele pentru care se solicita revederea impozitarii. Pentru a fi admisa, cererea respectiva trebuie prezentata intr-un termen de doi ani incepand de la prima notificare a actiunii din care rezulta o impozitare contrara prevederilor Conventiei.

2. Autoritatea competenta se va stradui, daca reclamatia ii pare intemeiata si daca ea insasi nu este in masura sa ajunga la o solutionare corespunzatoare, sa rezolve cazul pe calea unei intelegeri amiabile cu autoritatea competenta a celuilalt Stat Contractant in vederea evitarii unei impozitari care nu este in conformitate cu Conventia.

3. Un Stat Contractant nu va majora baza impozabila a unui rezident a unuia sau a celuilalt Stat Contractant, incluzand elemente de venit care au fost deja impuse in celalalt Stat Contractant, dupa expirarea perioadelor de prescriptie prevazute de legislatia sa nationala si in orice caz dupa expirarea a cinci ani de la incheierea perioadei impozabile in cursul careia au fost realizate veniturile in cauza. Prezentul paragraf nu se aplica in caz de fraudă, omisiune intentionata sau neglijenta.

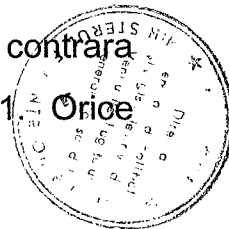
4. Autoritatile competente ale Statelor Contractante se vor stradui sa rezolve pe calea intelegerii amiabile orice dificultati sau dubii rezultate ca urmare a interpretarii sau aplicarii Conventiei.

5. Autoritatile competente ale Statelor Contractante se pot consulta reciproc pentru eliminarea dublei impuneri in cazurile neprevazute de Conventie si pot comunica direct in scopul aplicarii Conventiei.

## ARTICOLUL 26

### Schimb de informatii

1. Autoritatile competente ale Statelor Contractante vor face schimb de informatii necesare aplicarii prevederilor prezentei Conventii sau ale legislatiilor interne ale Statelor Contractante privitoare la impozitele vizate de Conventie, in masura in care impozitarea la care se refera nu este contrara Conventiei. Schimbul de informatii nu este limitat de articolul 1.



informatie obtinuta de un Stat Contractant va fi tratata ca secret in acelasi mod ca si informatia obtinuta conform prevederilor legislatiei interne a acelui stat si va fi dezvaluita numai persoanelor sau autoritatilor (inclusiv instantelor judecatoresti si organelor administrative) insarcinate cu stabilirea sau incasarea, urmarirea impozitelor sau solutionarea contestatiilor cu privire la impozitele din acel stat. Asemenea persoane sau autoritati vor folosi informatia numai in aceste scopuri. Acestea pot dezvalui informatia in procedurile judecatoresti sau in deciziile judiciare.

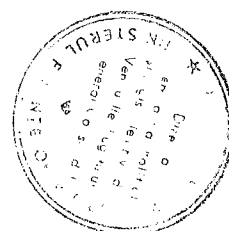
2. Prevederile paragrafului 1 nu vor fi interpretate ca impunand unui Stat Contractant obligatia:

a) de a lua masuri administrative contrare propriei legislatii si practicii administrative a acelui sau a celuiilalt Stat Contractant;

b) de a furniza informatii care nu pot fi obtinute pe baza legislatiei proprii sau in cadrul practicii administrative normale a acelui sau a celuiilalt Stat Contractant;

c) de a furniza informatii care ar dezvalui un secret comercial, de afaceri, industrial sau profesional ori un procedeu de fabricatie sau informatii a caror divulgare ar fi contrara ordinii publice.

3. Daca informatia este solicitata de un Stat Contractant potrivit prevederilor acestui articol, celalalt Stat Contractant se va stradui sa obtina informatia la care se refera cererea respectiva in acelasi mod ca si cand ar fi vorba de propria impunere, chiar daca celalalt stat nu are nevoie de o asemenea informatie. Daca informatia este solicitata in mod expres de autoritatea competenta a unui Stat Contractant, autoritatea competenta a celuiilalt Stat Contractant se va stradui ca in baza acestui articol sa furnizeze informatia in forma solicitata, cum ar fi duplicate ale documentelor originale nemodificate, in aceleasi conditii ca si cand documentele respective pot fi obtinute in baza legilor si practicii administrative ale celuiilalt stat cu privire la propriile impozite.



## ARTICOLUL 27

### Membrii misiunilor diplomatice si ai posturilor consulare

Prevederile prezentei Conventii nu vor afecta privilegiile fiscale de care beneficiaza membrii misiunilor diplomatice sau ai posturilor consulare in virtutea regulilor generale ale dreptului international sau a prevederilor unor acorduri speciale.

## ARTICOLUL 28

### Reguli diverse

1. Prevederile prezentei Conventii nu vor fi considerate ca limitand orice scutire, inlesnire, credit sau alta deducere acordata de legislatia unui Stat Contractant pentru determinarea impozitului perceput de acel stat.

2. Nici o prevedere a acestei Conventii nu va fi considerata ca impiedicand aplicarea prevederilor legislatiei interne a fiecarui Stat Contractant referitoare la impunerea veniturilor persoanelor cu privire la participarea lor intr-o asociere de persoane, trust sau societate nerezidenta sau referitoare la evaziunea fiscala.

3. Conventia nu se aplica societatilor, trusturilor sau oricarei alte entitati care este rezidenta a unui Stat Contractant si care este detinuta efectiv sau controlata, direct sau indirect, de una sau mai multe persoane care nu sunt rezidente ale acelui stat, daca suma impozitului stabilit pe venit sau pe capitalul societatii, trustului sau altei entitati a acelui stat este semnificativ mai mica decat suma care ar fi fost stabilita de acel stat daca toate actiunile din capitalul societatii sau toate participarile in trust sau in alta entitate, dupa caz, ar fi fost detinute efectiv de una sau de mai multe persoane fizice care au fost rezidente ale acelui stat.

4. In sensul paragrafului 3 al articolului XXII (Consultare) din Acordul General pentru Comert cu Servicii, Statele Contractante convin ca, independent de acel paragraf, orice disputa intre acestea in legatura cu posibilitatea ca o anumita masura luata in baza prevederilor prezentei



Conventii sa poata fi adusa in fata Consiliului pentru Comert cu Servicii, dupa cum se stabileste in acel paragraf, numai cu consimtamantul ambelor state. Orice dubii in legatura cu interpretarea acestui paragraf vor fi solutionate conform paragrafului 4 al articolului 25 sau in cazul in care nu se ajunge la un acord in baza acestei proceduri, conform oricarei alte proceduri convenita de ambele State Contractante.

5. Cand, in baza oricarei prevederi a acestei Conventii, un venit este scutit de impozit intr-un Stat Contractant si conform legislatiei in vigoare in celalalt Stat Contractant, referitor la acel venit, o persoana este supusa impozitului asupra acelei sume care este transmisa sau primita in celalalt stat si nu cu referire la aceasta suma totala, atunci scutirea care este acordata conform Conventiei in primul Stat Contractant mentionat se va aplica numai la acea parte din venit care este impusa in celalalt Stat Contractant.

## ARTICOLUL 29

### Intrarea in vigoare

1. Prezenta Conventie va intra in vigoare la 30 zile de la data ultimei notificari prin care Statele Contractante se informeaza reciproc asupra indeplinirii procedurilor legale interne necesare intrarii in vigoare a Conventiei.

2. Prevederile Conventiei vor produce efecte:

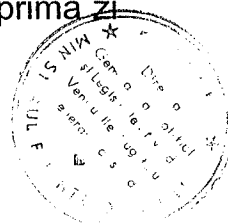
a) In cazul Romaniei:

(i) in ceea ce priveste impozitele retinute prin stopaj la sursa la venitul realizat la sau dupa prima zi a lunii ianuarie a anului calendaristic imediat urmator anului in care Conventia intra in vigoare, si

(ii) in ceea ce priveste celelalte impozite pe venit sau pe capital realizate la sau dupa prima zi a lunii ianuarie a anului calendaristic imediat urmator anului in care Conventia intra in vigoare; si

b) In cazul Canadei:

(i) in ceea ce priveste impozitele retinute prin stopaj la sursa asupra sumelor platite sau creditate nerezidentilor, la sau dupa prima zi



a lunii ianuarie a anului calendaristic imediat urmator anului in care Conventia intra in vigoare, si

(ii) in ceea ce priveste celelalte impozite canadiene, pentru anii fiscali incepand la sau dupa prima zi a lunii ianuarie a anului calendaristic urmator celui in care Conventia intra in vigoare.

3. Prevederile Conventiei intre Guvernul Republicii Socialiste Romania si Guvernul Canadei pentru evitarea dublei impuneri cu privire la impozitele pe venit si pe capital, semnata la Ottawa la 20 noiembrie 1978 va inceta sa aiba efect cu privire la impozitele la care Conventia se aplica, in conformitate cu prevederile paragrafului 2 ale acestui articol.

## ARTICOLUL 30

### Denuntarea

Prezenta Conventie va ramane in vigoare pana va fi denuntata de un Stat Contractant. Fiecare Stat Contractant poate denunta Conventia dupa o perioada de cinci ani de la data la care Conventia a intrat in vigoare, cu conditia remiterii pe cai diplomatice, cu cel putin sase luni inainte, a unei note de denuntare scrisa. In aceasta situatie, Conventia va inceta sa aiba efect:

a) In cazul Romaniei:

(i) in ceea ce priveste impozitele retinute prin stopaj la sursa la venitul realizat la sau dupa prima zi a lunii ianuarie a anului calendaristic imediat urmator anului in care a fost remisa nota de denuntare, si

(ii) in ceea ce priveste celelalte impozite pe venit sau pe capital realizate la sau dupa prima zi a lunii ianuarie a anului calendaristic imediat urmator anului in care a fost remisa nota de denuntare; si

b) In cazul Canadei:

(i) in ceea ce priveste impozitele retinute prin stopaj la sursa asupra sumelor platite sau creditate nerezidentilor, dupa sfarsitul acelui an calendaristic, si



Conform  
cu regulă

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

Romania 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, have agreed as follows:

## ARTICLE 1

### Persons Covered

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 a 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 Romania:
    - (i) the tax on income;
    - (ii) the tax on profit;
    - (iii) the tax on agricultural income;(hereinafter referred to as "Romanian tax"); and
  - (b) in the case of Canada, the taxes imposed by the Government of Canada under the *Income Tax Act* (hereinafter referred to as "Canadian tax").
4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

### ARTICLE 3

#### General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:
  - (a) the terms "a Contracting State" and "the other Contracting State" mean Romania or Canada, as the context requires;
  - (b) the term "Romania", used in a geographical sense, means the State territory of Romania, including its territorial sea and air space over the territory and the territorial sea over which Romania exercises sovereignty, as well as the contiguous zone and the continental shelf and the exclusive economic zone over which Romania exercises, in accordance with its legislation and with the rules and principles of international law, sovereign rights and jurisdiction;
  - (c) the term "Canada", used in a geographical sense, means the territory of Canada, including:
    - (i) any area beyond the territorial sea of Canada that, in accordance with international law and the laws of Canada, is an area in respect of which Canada may exercise rights with respect to the seabed and subsoil and their natural resources, and
    - (ii) the sea and airspace above every area referred to in clause (i);
  - (d) the term "person" includes an individual, a trust, a company, a partnership and any other body of persons;
  - (e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - (f) 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;
  - (g) the term "national" means:
    - (i) any individual possessing the citizenship of a Contracting State, and
    - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
  - (h) the term "international traffic" means any voyage by a ship or aircraft operated by an enterprise of a Contracting State to transport passengers or property except where the principal purpose of the voyage is to transport passengers or property between places in the other Contracting State;

- (i) the term "competent authority" means:
  - (i) in the case of Romania, the Minister of Public Finances or the Minister's authorized representative, and
  - (ii) in the case of Canada, the Minister of National Revenue or the Minister's authorized representative.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

#### ARTICLE 4

##### Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means:
  - (a) any person who, under the laws of that State, is liable to tax therein by reason of the person's domicile, residence, place of management or any other criterion of a similar nature but does not include any person who is liable to tax in that State in respect only of income from sources in that State; and
  - (b) that State or an administrative territorial unit thereof in the case of Romania, or a political subdivision or local authority thereof in the case of Canada or any agency or instrumentality of that State, unit, subdivision or authority as the case may be.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then the individual's status shall be determined as follows:
  - (a) the individual shall be deemed to be a resident only of the State in which the individual has a permanent home available and if the individual has a permanent home available in both States, the individual shall be deemed to be a resident only of the State with which the individual's personal and economic relations are closer (centre of vital interests);
  - (b) if the State in which the individual's centre of vital interests is situated cannot be determined, or if there is not a permanent home available to the individual in either State, the individual shall be deemed to be a resident only of the State in which the individual has an habitual abode;
  - (c) if the individual has an habitual abode in both States or in neither of them, the individual shall be deemed to be a resident only of the State of which the individual is a national;

- (d) if the individual is a national of both States or of neither of them, the competent authorities of the Contracting States shall 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 by mutual agreement endeavour to settle the question and to determine the mode of application of the Convention to such person. In the absence of such agreement, such person shall not be entitled to claim any relief or exemption from tax provided by the Convention.

## ARTICLE 5

### Permanent Establishment

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 shop;
- (f) a workshop, and
- (g) a mine, an oil or gas well, a quarry or any other place relating to the exploration for or the exploitation of natural resources.

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

4. Notwithstanding the preceding provisions 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 stock of goods or merchandise belonging to the enterprise, displayed during an occasional and temporary trade fair or exhibition, and which is sold by the enterprise after the closing of the said fair or exhibition;
- (e) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (f) 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;
- (g) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (f), 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 paragraph 7 applies – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts on behalf of the enterprise, that enterprise shall be deemed to have a permanent establishment in that 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. Notwithstanding the preceding provisions of this Article, an insurance company of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of the other State or it insures risks situated therein through a person, other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that 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.

8. 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 derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. For the purposes of this Convention, the term "immovable property" shall have the meaning which it has for the purposes of the relevant tax 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 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 income from the alienation of such 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

### 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 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 and with all other persons.
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 State in which the permanent establishment is situated or elsewhere. This provision shall apply subject to limitations under domestic law.

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

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

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

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

## ARTICLE 8

### International Traffic

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 Article 7, profits derived by an enterprise of a Contracting State from a voyage of a ship or aircraft where the principal purpose of the voyage is to transport passengers or property between places in the other Contracting State may be taxed in that other State.

3. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

4. For the purposes of this Article,

(a) the term "profits" includes:

- (i) gross receipts and revenues derived directly from the operation of ships or aircraft in international traffic, and
- (ii) interest that is incidental to the operation of ships or aircraft in international traffic; and

(b) the term "operation of ships or aircraft in international traffic" by an enterprise includes:

- (i) the charter or rental of ships or aircraft,

- (ii) the rental of containers and related equipment,

by that enterprise if that charter or rental is incidental to the operation by that enterprise of ships or aircraft in international traffic.

## 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 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 that other State shall make an appropriate adjustment to the amount of the tax charged therein on those 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. A Contracting State shall not change the profits of an enterprise in the circumstances referred to in paragraph 1 after the expiry of the time limits provided in its domestic laws and, in any case, after five years from the end of the year in which the profits that would be subject to such change would, but for the conditions referred to in paragraph 1, have been attributed to that enterprise.

4. The provisions of paragraphs 2 and 3 shall not apply in the case of fraud, wilful default or neglect.

## 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 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 which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

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

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

6. Nothing in this Convention shall be construed as preventing a Contracting State from imposing on the earnings of a company attributable to a permanent establishment in that State, or the earnings attributable to the alienation of immovable property situated in that

State by a company carrying on a trade in immovable property, a tax in addition to the tax that would be chargeable on the earnings of a company that is a national of that State, except that any additional tax so imposed shall not exceed five per cent of the amount of such earnings that have not been subjected to such additional tax in previous taxation years. For the purpose of this provision, the term "earnings" means the earnings attributable to the alienation of such immovable property situated in a Contracting State as may be taxed by that State under the provisions of Article 6 or of paragraph 1 of Article 13, and the profits, including any gains, attributable to a permanent establishment in a Contracting State in a year and previous years, after deducting therefrom all taxes, other than the additional tax referred to herein, imposed on such profits in that State.

## 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. Notwithstanding the provisions of paragraph 2:
  - (a) interest arising in a Contracting State and paid in respect of indebtedness of the government of that State or an administrative territorial unit thereof in the case of Romania, or a political subdivision or local authority thereof in the case of Canada shall, if the interest is beneficially owned by a resident of the other Contracting State, be taxable only in that other State;
  - (b) interest arising in Romania 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;
  - (c) interest arising in Canada and paid to a resident of Romania shall be taxable only in Romania if it is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by *Banca de Export Import a Romaniei S.A. (EXIMBANK)*.
4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as income which is subjected to the same taxation treatment as income from money lent by the laws of the State in which the income arises. However, the term "interest" does not include income dealt with in Article 8 or Article 10.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether the payer is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

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

## ARTICLE 12

### 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 a resident of the other Contracting State is the beneficial owner of the royalties the tax so charged shall not exceed:

- (a) 5 per cent of the gross amount of the royalties if they are:
  - (i) 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); or
  - (ii) 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 royalty provided in connection with a rental or franchise agreement);

(b) 10 per cent of the gross amount of the royalties in all other cases.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright, patent, trade mark, design or model, plan, secret formula or process or other intangible property, 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 film, videotape or other means of reproduction for use in connection with television.

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

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether the payer 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 obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

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

### ARTICLE 13

#### Capital Gains

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

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 or had in the other Contracting State or of movable property pertaining to a fixed base that is or was available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that State.

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

- (a) shares, the value of which is derived principally from immovable property situated in the other State; or
- (b) an 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" 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 that referred to 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 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 has been 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 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

### Independent Personal Services

1. Income derived by an individual who is a resident of a Contracting State in respect of professional or similar services of an independent character shall be taxable only in that State unless the individual has a fixed base regularly available in the other Contracting State for the purpose of performing the services. If the individual has or had such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.

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

## ARTICLE 15

### Dependent Personal Services

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other 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 State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending 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 derived 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 unless the remuneration is derived by a resident of the other Contracting State.

## ARTICLE 16

### Directors' Fees

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

## ARTICLE 17

### Artistes and Sportspersons

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson from that resident's personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in that individual's capacity as such accrues not to the entertainer or sportsperson personally but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived from the activities referred to in paragraph 1 within the framework of cultural or sports exchanges agreed to by the Governments of the Contracting States and carried out other than for the purpose of profit shall be exempt from tax in the Contracting State in which these activities are exercised.

## **ARTICLE 18**

### **Pensions**

1. Pensions, including social security payments, arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. Pensions, including social security payments, arising in a Contracting State and paid to a resident of the other Contracting State may also be taxed in the State in which they arise and according to the laws of that State, but in the case of periodic payments, the tax so charged shall not exceed 15 per cent of the gross amount of such periodic payments paid to the recipient in the calendar year concerned that exceeds twelve thousand Canadian dollars or its equivalent in Romanian currency.

## **ARTICLE 19**

### **Government Service**

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or an administrative territorial unit thereof in the case of Romania, or a political subdivision or local authority thereof in the case of Canada, to an individual in respect of services rendered to that State, subdivision, authority or unit shall be taxable only in that State.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a national of that State, or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. The provisions of paragraph 1 shall not apply to salaries, wages and other similar remuneration in respect of services rendered in connection with a business carried on by a

Contracting State or an administrative territorial unit thereof in the case of Romania, or a political subdivision or local authority thereof in the case of Canada.

## ARTICLE 20

### Students

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

## ARTICLE 21

### Other Income

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

## ARTICLE 22

### Capital

1. Capital represented by immovable property owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.
2. Capital represented by 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 by 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 independent personal services, may be taxed in that other State.
3. Capital represented by ships and aircraft operated by an enterprise of a Contracting State in international traffic and by 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. It is agreed that double taxation shall be avoided as follows:

(a) in the case of Romania:

Where a resident of Romania derives income or owns capital which, in accordance with the provisions of this Convention may be taxed in Canada, Romania shall allow:

- (i) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Canada;
- (ii) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in Canada.

Such deduction in either case shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in Canada.

(b) in the case of Canada:

- (i) 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 Romania on profits, income or gains arising in Romania shall be deducted from any Canadian tax payable in respect of such profits, income or gains,
- (ii) where, in accordance with any provision of the Convention, income derived or capital owned by a resident of Canada is exempt from tax in Canada, Canada may nevertheless, in calculating the amount of tax on other income or capital, take into account the exempted income or capital.

2. For the purposes of this Article, profits, income or gains of a resident of a Contracting State that may be taxed in the other Contracting State in accordance with this Convention shall be deemed to arise from sources in that other State.

## ARTICLE 24

### Non-Discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith that is more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected.
2. The taxation on a permanent establishment that 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 that it grants to its own residents.
4. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.
5. The provisions of paragraph 4 shall not affect the operation of any provision of the taxation laws of a Contracting State:
  - (a) relating to the deductibility of interest and which is in force on the date of signature of this Convention (including any subsequent modification of such provisions that does not change the general nature thereof); or
  - (b) adopted after such date by a Contracting State and which is designed to ensure that a person who is not a resident of that State does not enjoy, under the laws of that State, a tax treatment that is more favourable than that enjoyed by residents of that State.
6. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith that is more burdensome than the taxation and connected requirements to which other similar enterprises that are residents of the first-mentioned State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State, are or may be subjected.
7. The provisions of this Article shall apply only to taxes which are covered by this Convention.

## ARTICLE 25

### Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with the provisions of this Convention, that person may, irrespective of the remedies provided by the domestic law of those States, address to the competent authority of the Contracting State of which that person is a resident an application in writing stating the grounds for claiming the revision of such taxation. To be admissible, the said application must be submitted within two years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Convention.
3. A Contracting State shall not, after the expiry of the time limits provided in its domestic laws and, in any case, after five years from the end of the taxable period to which the income concerned was attributed, increase the tax base of a resident of either of the Contracting States by including therein items of income that have also been charged to tax in the other Contracting State. This paragraph shall not apply in the case of fraud, wilful default or neglect.
4. 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.
5. The competent authorities of the Contracting States may consult together for the elimination of double taxation in cases not provided for in the Convention and may communicate with each other directly for the purpose of applying the Convention.

## ARTICLE 26

### 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 the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1. Any information received 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 in respect of, or the determination of appeals in relation to taxes in that State. 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 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 business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

3. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall endeavour to obtain the information to which the request relates in the same way as if its own taxation were involved, even though the other State does not, at that time, need such information. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall endeavour to provide information under this Article in the form requested, such as copies of unaltered original documents, to the same extent such documents can be obtained under the laws and administrative practices of that other State with respect to its own taxes.

## ARTICLE 27

### Members of Diplomatic Missions and Consular Posts

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

## ARTICLE 28

### Miscellaneous Rules

1. The provisions of this Convention shall not be construed to restrict in any manner any exemption, allowance, credit or other deduction accorded by the laws of a Contracting State in the determination of the tax imposed by that State.

2. Nothing in the Convention shall be construed as preventing the application of the provisions of the domestic law of each Contracting State concerning the taxation of income of persons in respect to their participation in a partnership, trust, or non-resident company or concerning fiscal evasion.

3. The Convention shall not apply to any company, trust or other entity that is a resident of a Contracting State and is beneficially owned or controlled, directly or indirectly, by one or more persons who are not residents of that State, if the amount of the tax imposed on the income or capital of the company, trust or other entity by that State is substantially lower

than the amount that would be imposed by that State if all of the shares of the capital stock of the company or all of the interests in the trust or other entity, as the case may be, were beneficially owned by one or more individuals who were residents of that State.

4. For the purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that, notwithstanding that paragraph, any dispute between them as to whether a measure falls within the scope of the convention may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph 4 of Article 25 or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.

5. Where under any provision of the 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 that 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 the Convention in the first-mentioned Contracting State shall apply only to so much of the income as is taxed in the other Contracting State.

## ARTICLE 29

### Entry into Force

1. This Convention shall enter into force on the thirtieth day following the later of the notifications through which the Contracting States shall notify to each other that the domestic requirements for the entry into force of the Convention have been complied with.

2. The provisions of the Convention shall have effect:

(a) in the case of Romania:

(i) in respect of taxes withheld at the source to the income paid on or after the first day of January in the calendar year next following the year in which the Convention enters into force, and

(ii) in respect of other taxes on income and on capital paid on or after the first day of January in the calendar year next following the year in which the Convention enters into force; and

(b) in the case of 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 following that in which the Convention enters into force, and

- (ii) in respect of other Canadian tax, for taxation years beginning on or after the first day of January in the calendar year following that in which the Convention enters into force.

3. The provisions of the Convention between the Government of the Socialist Republic of Romania and the Government of Canada for the avoidance of double taxation with respect to taxes on income and on capital, signed at Ottawa on the 20th of November 1978, shall cease to have effect with respect to taxes to which this Convention applies in accordance with the provisions of paragraph 2 of this Article.

### ARTICLE 30

#### Termination

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention after five years from the date on which the Convention enters into force provided that at least six months prior a written notice of termination has been given through diplomatic channels. In such event, the Convention shall cease to have effect:

- (a) in the case of Romania:
  - (i) in respect of taxes withheld at the source to the income derived on or after the first day of January in the calendar year next following the year in which the notice of termination is given, and
  - (ii) in respect of other taxes on income and on capital derived on or after the first day of January in the calendar year next following the year in which the notice of termination is given; and
- (b) in the case of Canada:
  - (i) in respect of tax withheld at the source on amounts paid or credited to non-residents, after the end of that calendar year, and
  - (ii) in respect of other Canadian tax, for taxation years beginning after the end of that calendar year.

IN WITNESS WHEREOF the undersigned, duly authorized to that effect, have signed this Convention.

DONE in duplicate at Ottawa, this 8<sup>th</sup> day of April, 2004, in the Romanian, English and French languages, each version being equally authentic.

FOR ROMANIA,



FOR CANADA,

