

PROTOCOL

AMENDING THE AGREEMENT

between

BARBADOS

and

CANADA

**FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE
PREVENTION OF FISCAL EVASION WITH RESPECT
TO TAXES ON INCOME AND ON CAPITAL,
SIGNED AT BRIDGETOWN
ON 22 JANUARY 1980**

**PROTOCOL AMENDING THE AGREEMENT BETWEEN BARBADOS
AND CANADA FOR THE AVOIDANCE OF DOUBLE TAXATION
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RESPECT TO TAXES ON INCOME AND ON
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The Government of Barbados and the Government of Canada,

DESIRING to conclude a Protocol to amend the Agreement Between Barbados and Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, signed at Bridgetown on 22 January 1980 (hereinafter referred to as "the Agreement"),

Have agreed as follows:

ARTICLE 1

1. Paragraph 1 of Article IV of the Agreement shall be deleted and replaced by the following:

"1. For the purposes of this Agreement, 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 or capital situated therein, and
- (b) that State, or a political subdivision or local authority thereof or any agency or instrumentality of any government of such State, subdivision or authority."

2. Paragraph 3 of Article IV of the Agreement shall be deleted and replaced by the following:

"3. Where a company is a national of a Contracting State and by reason of paragraph 1 a resident of both Contracting States then it shall be deemed to be a resident only of the first-mentioned State.

4. Where by reason of the provisions of paragraph 1 a person other than an individual or a company described in paragraph 3 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 Agreement 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 Agreement.”

ARTICLE 2

1. Paragraph 3 of Article XIV of the Agreement shall be deleted and replaced by the following:

“3. Income or 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, trust or other entity, the value of which is derived principally from immovable property situated in that other State;

may be taxed in that other State.”

2. Paragraph 5 of Article XIV of the Agreement shall be deleted, and replaced by the following:

“5. The provisions of paragraph 4 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, other than property to which the provisions of paragraph 6 apply, 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 six years immediately preceding the alienation of the property.

6. 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 (in this paragraph referred to as the “deemed alienation”) 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 the lesser of its fair market value at the

time of the deemed alienation and the amount the individual elects, at the time of the actual alienation of the property, to be the proceeds of disposition in the first-mentioned State in respect of the deemed alienation. However, this provision shall not apply to property any gain from which, arising immediately before the individual became a resident of that other State, may be taxed in that other State nor to immovable property situated in a third State.”

ARTICLE 3

1. Paragraph 1 of Article XXV of the Agreement shall be deleted and replaced by the following:

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

- (a) subject to the existing provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada and to any subsequent modification of those provisions - which shall not affect the general principle hereof - and unless a greater deduction or relief is provided under the laws of Canada, tax payable in Barbados on profits, income or gains arising in Barbados shall be deducted from any Canadian tax payable in respect of such profits, income or gains;
- (b) subject to the existing provisions of the law of Canada regarding the allowance as a credit against Canadian tax of tax payable in a territory outside Canada and to any subsequent modification of those provisions - which shall not affect the general principle hereof - where a company which is a resident of Barbados pays a dividend to a company which is a resident of Canada and which controls directly or indirectly at least 10 per cent of the voting power in the first-mentioned company, the credit shall take into account the tax payable in Barbados by that first-mentioned company in respect of the profits out of which such dividend is paid; and
- (c) where, in accordance with any provision of the Agreement, 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. Paragraph 4 of Article XXV of the Agreement shall be deleted.

ARTICLE 4

Article XXVIII of the Agreement shall be deleted and replaced by the following:

“Article XXVIII

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.
2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to taxes, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
 - (a) to carry out administrative measures at variance with the laws and the administrative practice of that or of the other Contracting State;
 - (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State; or
 - (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

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

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

ARTICLE 5

1. Paragraph 2 of Article XXX of the Agreement shall be deleted and replaced by the following:

“2. Nothing in this Agreement shall be construed as preventing Canada from imposing a tax on amounts included in the income of a resident of Canada with respect to a company, partnership, trust, or other entity, in which that resident has an interest.”

2. Paragraph 3 of Article XXX of the Agreement shall be deleted and replaced by the following:

“3. The provisions of Articles VI to XXIV of this Agreement shall not apply to any person or other entity entitled to any special tax benefit:

- (a) in Barbados, under the *International Business Companies Act*, the *Exempt Insurance Act*, the *Insurance Act*, the *International Financial Services Act*, the *Society With Restricted Liability Act*, or the *International Trusts Act*, or any substantially similar law subsequently enacted; or
- (b) in either Contracting State, under a law of that State which has been identified in an Exchange of Notes between the Contracting States.”

3. The following new paragraph 5 shall be added to Article XXX of the Agreement:

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

ARTICLE 6

1. Each of the Contracting States shall take all measures necessary to give this Protocol the force of law within its jurisdiction and each shall notify the other of the completion of such measures. This Protocol shall enter into force on the date of the later notification of these notifications and shall thereupon have effect:

(a) in Canada:

- (i) in respect of tax withheld at the source, on amounts paid or credited to non-residents on or after the first day of January in the calendar year next following that in which this Protocol enters into force; and
- (ii) in respect of other Canadian tax, for taxation years beginning on or after the first day of January in the calendar year next following that in which this Protocol enters into force;

(b) in Barbados:

- (i) in respect of tax withheld at the source, on amounts paid or credited to non-residents on or after the first day of January in the calendar year next following that in which this Protocol enters into force; and
- (ii) in respect of other Barbadian tax, for taxation years beginning on or after the first day of January in the calendar year next following that in which this Protocol enters into force.

2. Notwithstanding the provisions of this Article, the provisions of paragraph 1 of Article 2 of this Protocol shall have effect for taxation years beginning on or after the later of:

(a) the first day of January in the calendar year next following that in which this Protocol enters into force; and

(b) January 1, 2012.

3. Notwithstanding the provisions of this Article, the provisions of Article 4 of this Protocol (Exchange of Information) shall have effect from the date of entry into force of this Protocol, without regard to the taxation year to which a request for information relates.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Protocol.

DONE in duplicate at Bridgetown, this 8th day of November 2011, in the English and French languages, both texts being equally authentic.

FOR BARBADOS

FOR CANADA




