

SCHEDULE 1

AGREEMENT BETWEEN CANADA AND PAPUA NEW GUINEA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

Canada and Papua New Guinea,

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

Have agreed as follows:

CHAPTER I SCOPE OF THE AGREEMENT

ARTICLE 1

Personal Scope

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

Taxes Covered

(1) This Agreement shall apply to taxes on income imposed on behalf of each Contracting State, irrespective of the manner in which they are levied.

(2) There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of personal or real property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

(3) The existing taxes to which the Agreement shall apply are in particular:

(a) in the case of Canada:

the income taxes imposed by the Government of Canada (hereinafter referred to as "Canadian tax").

(b) in the case of Papua New Guinea:

the taxes imposed on income under the law of Papua New Guinea including:

- (i) the income tax;
- (ii) the salary or wages tax;
- (iii) the additional profits tax upon taxable additional profits from mining operations;
- (iv) the additional profits tax upon taxable additional profits from petroleum operations;
- (v) the specific gains tax upon taxable specific gains;
- and

(vi) the dividend withholding tax upon taxable dividend income

(hereinafter referred to as "Papua New Guinea tax"),

but do not include any penalty, additional tax in lieu of penalty or interest imposed under the law of either Contracting State relating to such taxes.

(4) The Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The Contracting States shall notify each other of significant changes which have been made in their respective taxation laws.

CHAPTER II DEFINITIONS

ARTICLE 3

General Definitions

(1) For the purposes of this Agreement, unless the context otherwise requires:

- (a) (i) the term "Canada" used in a geographical sense, means the territory of Canada, including any area beyond the territorial seas of Canada which, under the laws of Canada and in accordance with international law, is an area within which Canada

may exercise rights with respect to the sea bed and sub-soil and their natural resources;

- (ii) the term "Papua New Guinea" means the Independent State of Papua New Guinea and when used in a geographical sense, includes any area adjacent to the territorial limits of Papua New Guinea in respect of which there is, for the time being, in force a law of Papua New Guinea dealing with the exploitation of any of the natural resources of the continental shelf, its sea bed and sub-soil;
- (b) the terms "a Contracting State", and "the other Contracting State" mean, as the context requires, Canada or Papua New Guinea;
- (c) the term "person" includes an individual, an estate, a trust, a company and any other body of persons;

ARTICLE 4

Resident

(1) For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

(2) Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident solely of the Contracting State in which he has a permanent home available to him;
- (b) if he has a permanent home available to him in both Contracting States, or if he does not have a permanent home available to him in either of them, he shall be deemed to be a resident solely of the Contracting State in which he has an habitual abode;
- (c) if he has an habitual abode in both Contracting States or if he does not have an habitual abode in either of them, he shall be deemed to be a resident solely of the Contracting State with which his personal and economic relations are closer (hereinafter referred to as his "centre of vital interests");
- (d) if the Contracting State in which he has his centre of vital interests cannot be determined, he shall be deemed to be a resident of the Contracting State of which he is a citizen;
- (e) if he is a citizen of both Contracting 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, then it shall be deemed to be a resident solely of the Contracting State in which it was incorporated or otherwise constituted.

(4) Where by reason of the provisions of paragraph 1 a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement. In the absence of such agreement, such person shall be deemed not to be a resident of either Contracting State for the purposes of Articles 6 to 21 inclusive.

ARTICLE 5

Permanent Establishment

(1) For the purposes of this Agreement, the term "**permanent establishment**" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

(2) The term "permanent establishment" includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;

- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) an agricultural, pastoral or forestry property; and
- (h) a building site, a construction, assembly or installation project but only where such site or project continues for a period aggregating more than three months in any twelve month period.

(3) 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 or display 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 or display;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise for the enterprise or, subject to paragraph 8, of collecting information for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character, such as advertising or scientific research.

(4) An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if:

- (a) it carries on supervisory activities in that State for more than three months in connection with a building site, or a construction, installation or assembly project which is being undertaken in that State; or
- (b) services are furnished in that State, including consultancy services through employees or other personnel engaged by the enterprise for such purposes, and those activities continue for the same or a connected project within that State for a period or periods aggregating more than three months within any twelve month period.

(5) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State — other than an agent of an independent status to whom paragraph 6 applies — shall be deemed to be a permanent establishment of that enterprise in the first-mentioned State if:

- (a) he has, and habitually exercises in that State, an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the mere purchase of goods or merchandise for the enterprise;
- (b) he has no such authority, but habitually maintains in that State a stock of goods or merchandise from which he regularly delivers in that State goods or merchandise on behalf of the enterprise; or
- (c) in so acting, he manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise.

(6) An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because:

- (a) it carries on business in that other State through a broker, general commission agent or any other agent of an independent status; or
- (b) it maintains in that other State a stock of goods with an agent of an independent status from which deliveries are made by that agent

provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

(7) The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

(8)(a) A person who is a resident of a Contracting State and carries on activities in the other Contracting State in connection with the exploration or exploitation of natural resources situated in that other Contracting State shall, subject to subparagraph (b) of this paragraph, be deemed to be carrying on a business in that other Contracting State through a permanent establishment situated therein;

(b) the provisions of subparagraph (a) shall not apply where the activities referred to therein are carried on for a period or periods not exceeding in the aggregate 30 days in any 12 month period.

For the purposes of this paragraph:

- (i) where a person carrying on activities referred to in subparagraph (a) is associated with an enterprise carrying on substantially similar activities, that person shall be deemed to be carrying on those substantially similar activities of the enterprise with which he is associated, in addition to his own activities; and
- (ii) two enterprises shall be deemed to be associated if one enterprise participates directly or indirectly in the management or control of the other enterprise or if the same persons participate directly or indirectly in the management or control of both enterprises.

CHAPTER III TAXATION OF INCOME

ARTICLE 6

Income from Real Property

(1) Income derived by a resident of a Contracting State from real property (including income from agriculture, forestry or other natural resources) situated in the other Contracting State may be taxed in that other State.

(2) For the purposes of this Agreement, the term "real property" shall have the meaning which it has under the taxation laws of the Contracting State in which the property in question is situated and shall include any option or similar right in respect thereof. The term shall in any case include property accessory to real property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of real property, rights to explore for or to exploit mineral deposits, sources and other natural resources and rights to amounts computed by reference to the amount or value of production from such resources; ships and aircraft shall not be regarded as real property.

(3) The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of real property.

(4) The provisions of paragraphs 1 and 3 shall also apply to the income from real property of an enterprise and to income from real 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:

- (a) that permanent establishment;
- (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or
- (c) other business activities carried on in that other State of the same or similar kind as those effected through 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 or with other enterprises with which it deals.

(3) In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment (including executive and general administrative expenses so incurred) and which would be deductible in accordance with the law of the State in which the permanent establishment is situated (under the general provisions of that law or under any special industry or investment incentives provisions) if the permanent establishment were an independent entity which paid those expenses whether incurred in the State in which the permanent establishment is situated or elsewhere.

(4) Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person in cases where the information available to the competent authority of that State is inadequate to determine the profits to be attributed to a permanent establishment, provided that that law shall be applied in accordance with the principles of this Article so far as the information available to the competent authority permits.

(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 purpose 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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

(8) Nothing in this Article shall affect the operation of:

- (a) any law of a Contracting State relating to tax imposed on profits from insurance with non-residents; or
- (b) the law of Papua New Guinea relating to:
 - (i) the specific gains tax upon taxable specific gains; or

- (ii) the taxation of income derived by a foreign contractor from a prescribed contract within the meaning of that law, where that contractor is a resident of Canada with a permanent establishment in Papua New Guinea, provided that if the relevant law in force in either Contracting State at the date of signature of this Agreement is varied (otherwise than in minor respects so as not to affect its general character) the Contracting States shall consult with each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

ARTICLE 8

Ships and Aircraft

- (1) Profits from the operation of ships or aircraft derived by a resident of a Contracting State shall be taxable only in that State.
- (2) Notwithstanding the provisions of paragraph 1 and Article 7, such profits may be taxed in the other Contracting State where they are profits from operations of ships or aircraft confined solely to places in that other State.
- (3) The provisions of paragraphs 1 and 2 shall apply in relation to the share of the profits from the operation of ships or aircraft derived by a resident of a Contracting State through participation in a pool service, in a joint transport operating organization or in an international operating agency.
- (4) For the purposes of this Article, profits derived from the carriage by ships or aircraft of passengers, livestock, mail, goods or merchandise shipped in a Contracting State for discharge at another place in that State shall be treated as profits from operations of ships or aircraft confined solely to places in that State.

ARTICLE 9

Associated Enterprises

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 operate between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing wholly independently with one another, then any profits which, but for those conditions, might have been expected to accrue 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) Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including determinations in cases where the information available to the competent authority of that State is inadequate to determine the income to be attributed to an enterprise, provided that that law shall be applied, in accordance with the principles of this Article so far as the information available to the competent authority permits.
- (3) Where profits on which an enterprise of a Contracting State has been charged to tax in that State are also included, by virtue of paragraph 1 or 2, in the profits of an enterprise of the other Contracting State and charged to tax in that other State, and the profits so included are profits which might have been expected to have accrued to that enterprise of the other State if the conditions operative between the enterprises had been those which might have been expected to have operated between independent enterprises dealing wholly independently with one another, then the first-mentioned State shall, subject to paragraph 4, make an appropriate adjustment to the

amount of tax charged on those profits in the first-mentioned State. In determining such an adjustment, due regard shall be had to the other provisions of this Agreement and for this purpose the competent authorities of the Contracting States shall if necessary consult each other.

(4) 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 relevant laws and, in any case, after six years from the end of the year in which the profits which would be subject to such change would have accrued to an enterprise of that State.

(5) The provisions of paragraphs 3 and 4 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 recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

- (a) if that State is Canada, 15 per cent of the gross amount of the dividends;
- (b) if that State is Papua New Guinea, 25 per cent of the gross amount of the dividends.

The provisions of this paragraph shall not affect the taxation of the company on the profits out of which the dividends are paid.

(3) The term “dividends” as used in this Article means income from shares and other payments assimilated to income from shares by the taxation law of the Contracting 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 in so far as such dividends are paid to a resident of that other State or in so far 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.

(6) Nothing in this Agreement shall be construed as preventing a Contracting State from imposing on the income of a company attributable to a permanent establishment in that State, tax in addition to the tax which would be chargeable on the income of a company which is a resident of that State, provided that any additional tax so imposed shall not exceed the rate referred to in subparagraph (a) of paragraph 2 if that State is Canada or the rate referred to in subparagraph (b) of paragraph 2 if that State is Papua New Guinea, of the amount of such income which has not been subjected to such additional tax in previous taxation years. For the purposes of this provision, the term “income” means the profits attributable to a permanent establishment in a Contracting State in a year and previous years after deducting there from all taxes, other than the additional tax referred to herein, imposed on such profits by that State.

(7) The amount of specific gains tax imposed by Papua New Guinea in respect of the disposal by a resident of Canada of shares in a company that is a resident of Papua New Guinea shall not exceed an amount equivalent to the amount obtained by applying the rate referred to in subparagraph (b) of paragraph 2 to that proportion of the total dividend to which the vendor would have been entitled in respect of those shares had the company declared a dividend to the extent of its undistributed profits within the meaning of the law of Papua New Guinea relating to Papua New Guinea tax.

(8) In the event that, pursuant to an agreement concluded with any third State, Papua New Guinea accepts a rate lower than 25 per cent for the taxation of the gross amount of the dividends paid by a company which is a resident of Papua New Guinea to a resident of that third State, the lowest rate shall be automatically substituted in subparagraph (b) of paragraph 2 for the rate referred to in that subparagraph and be applicable for the purposes of that subparagraph and paragraphs 6 and 7, from the date it has effect in accordance with the provisions of the agreement between Papua New Guinea and such third 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 recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

(3) The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, 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 all other income assimilated to income from money lent by the taxation law of the Contracting State in which the income arises. However the term "interest" does not include income dealt with in Article 10.

(4) 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:

(a) such permanent establishment or fixed base; or

(b) business activities referred to under subparagraph (c) of paragraph 1 of Article 7.

In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

(5) Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he 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 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 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 Agreement.

- (7) Notwithstanding the provisions of paragraph 2,
- (a) interest arising in Papua New Guinea 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 the Export Development Corporation; and
 - (b) interest arising in Canada and paid to a resident of Papua New Guinea shall be taxable only in Papua New Guinea if it is paid in respect of a loan made, guaranteed or insured by such lending institution as is specified and agreed in letters exchanged between the Contracting States.

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 the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.
- (3) The term “royalties” in this Article means payments (including credits), whether periodical or not, and however described or computed, to the extent to which they are made as consideration for:
- (a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark, or other like property or right;
 - (b) the use of, or the right to use, any industrial, commercial or scientific equipment;
 - (c) the supply of scientific, technical, industrial or commercial knowledge or information;
 - (d) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in subparagraph (a), any such equipment as is mentioned in subparagraph (b) or any such knowledge or information as is mentioned in subparagraph (c);
 - (e) the use of, or the right to use:
 - (i) motion picture films; or
 - (ii) films or video tapes for use in connection with television; or
 - (iii) tapes for use in connection with radio broadcasting; or
 - (f) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.
- (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:
- (a) such permanent establishment or fixed base; or
 - (b) business activities referred to under subparagraph (c) of paragraph 1 of Article 7.

In such cases 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 that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person

paying the royalties, whether he 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 liability 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 State in which the permanent establishment or fixed base is situated.

(6) Where by reason of a special relationship between the payer and the person beneficially entitled to the royalties, or between both of them and some other person, the amount of the royalties paid or credited, having regard to the use, right or information for which they are paid or credited, exceeds the amount which might have been expected to 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 amount of the royalties paid or credited shall remain taxable according to the taxation law of each Contracting State, but subject to the other provisions of this Agreement. However, if no basis can be determined for the payment or credit of the royalties the amount of the royalties paid or credited may be taxed in the Contracting State in which they arise and according to the taxation law of that State, but subject to the other provisions of this Agreement.

ARTICLE 13

Alienation of Property

(1) Income or gains from the alienation or disposition of:

- (a) real property, as defined in paragraph 2 of Article 6, situated in a Contracting State; or
- (b) any share or comparable interest in a company or association (including a partnership) whose assets consist wholly or principally of real property so situated or of rights to exploit or explore for, natural resources in that State,

may be taxed in that State and according to the law of that State.

(2) For the purposes of this Article and of Article 6,

- (a) the term “right” includes a share or interest in any right, license, permit, authority, title, option, privilege or other concession; and
- (b) a right as so defined shall be treated as being situated in the Contracting State in which the real property to which it relates is situated.

ARTICLE 14

Independent Personal Services

(1) Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:

- (a) If he has a fixed base regularly available to him in the other Contracting State for the purposes of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or
- (b) If his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 90 days in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State; or

- (c) if the remuneration for his activities in the other Contracting State is paid by a resident of that Contracting State or is borne by a permanent establishment or a fixed base situated in that Contracting State and exceeds in the fiscal year 5000 Papua New Guinea Kina or its equivalent in Canadian dollars. In that case, so much of the remuneration as is derived from his activities in that other Contracting State may be taxed in that State.
- (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 similar 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 90 days in the fiscal 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; and
 - (d) the remuneration earned in the other Contracting State in the fiscal year concerned does not exceed 5000 Canadian dollars or its equivalent in Papua New Guinea Kina.
- (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 a resident of a Contracting State may be taxed in that State.

ARTICLE 16

Directors Fees

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

ARTICLE 17

Income Earned by Entertainers and Athletes

- (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 an athlete, from his 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 an athlete in his capacity as such accrues not to the entertainer or athlete himself 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 athlete are exercised.

ARTICLE 18

Pensions and Annuities

(1) Pensions and annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

(2) Pensions 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. However, in the case of periodic pension payments, the tax so charged shall not exceed the lesser of:

- (a) 15 per cent of the gross amount of the payment, and
- (b) the rate determined by reference to the amount of tax that the recipient of the payment would otherwise be required to pay for the year on the total amount of the periodic pension payments received by him in the year, if he were resident in the Contracting State in which the payment arises.

(3) Annuities 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 the tax so charged shall not exceed 15 per cent of the portion thereof that is subject to tax in that State. However this limitation does not apply to lump-sum payments arising on the surrender, cancellation, redemption, sale or other alienation of an annuity, or to payments of any kind under an income-averaging annuity contract.

(4) Notwithstanding anything in this Agreement:

- (a) pensions, howsoever described, paid by a Contracting State in respect of war service to a resident of the other Contracting State, shall not be taxable in that State so long as they are not subject to tax in the first-mentioned State;
- (b) any alimony or other maintenance payments arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in the first-mentioned State.

ARTICLE 19

Remuneration in Respect of Government Service

(1)(a) Remuneration, other than a pension or annuity, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

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

- (i) is a citizen 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 remuneration in respect of services rendered in connection with any trade or business carried on by a Contracting State or a political subdivision or local authority of that State.

ARTICLE 20

Payments Received by Students and Apprentices

Payments which a student or business apprentice who is or was before visiting a Contracting State a resident of the other Contracting State and who is present temporarily in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his 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 Agreement shall be taxable only in that State.

(2) The provisions of paragraph 1 shall not apply to income, other than income from real property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with:

- (a) such permanent establishment or fixed base; or
- (b) business activities referred to under subparagraph (c) of paragraph 1 of Article 7.

In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

ARTICLE 22

Source of Income

(1) Income derived by a resident of a Contracting State which, under any one or more of Articles 6 to 8 and Articles 10 to 18 may be taxed in the other Contracting State shall, for the purposes of Article 23, be deemed to be income from sources in that other Contracting State.

(2) Income derived by a resident of Canada which, under any one or more of Articles 6 to 8 and Articles 10 to 18, may be taxed in Papua New Guinea may be deemed, for the purposes of the Papua New Guinea income tax law, to be income from sources in Papua New Guinea.

CHAPTER IV METHODS OF ELIMINATION OF DOUBLE TAXATION

ARTICLE 23

Elimination of Double Taxation

(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 Papua New Guinea in accordance with this Agreement, on profits, income or gains arising from sources in Papua New Guinea 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 determination of the exempt surplus of a foreign affiliate and to any subsequent modification of those provisions — which shall not affect the general principle hereof — for the purpose of computing Canadian tax, a company resident in Canada shall be allowed to deduct in computing its taxable income any dividend received by it out of the exempt surplus of a foreign affiliate resident in Papua New Guinea.

(2) In the case of Papua New Guinea double taxation shall be avoided as follows:

Subject to the provisions of the law of Papua New Guinea from time to time in force which relate to the allowance of a credit against Papua New Guinea tax of tax paid in a country outside Papua New Guinea (which shall not affect the general principle hereof), tax paid under the law of Canada and in accordance with this Agreement, whether directly or by deduction, in respect of

income derived by a person who is a resident of Papua New Guinea for the purposes of the taxation law of Papua New Guinea from sources in Canada (not including, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid) shall be allowed as a credit against Papua New Guinea tax payable in respect of that income.

(3) For the purposes of subparagraph (a) of paragraph 1, tax payable in Papua New Guinea by a person who is a resident of Canada in respect of profits attributable to a trade or business carried on by him in Papua New Guinea, shall be deemed to include any amount which would have been payable as Papua New Guinea tax for any year but for an exemption from, or reduction of, tax effected for that year or any part thereof by applying the following provisions:

- (a) Sections 72A(3) and (4), Sections 73(3) and (7) and Section 97 of the Papua New Guinea Income Tax Act 1959 as amended insofar as they were in force on, and have not been modified since, the date of signature of this Agreement, or have been modified only in minor respects so as not to affect their general character;
- (b) any other provision which may subsequently be made granting an exemption or reduction of tax which is agreed by the competent authorities of the Contracting States to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.

CHAPTER V SPECIAL PROVISIONS

ARTICLE 24

Mutual Agreement Procedure

(1) Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case in writing stating the grounds for claiming the revision of such taxation to the competent authority of the Contracting State of which he is a resident. To be admissible, the case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

(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 which is not in accordance with this Agreement.

(3) A Contracting State shall not, after the expiry of the time limits provided in its national law and, in any case, after six years from the end of the taxable period in which the income concerned has accrued, increase the tax base of a resident of either of the Contracting States by including therein items of income which 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 Agreement. They may also consult together directly for the purpose of giving effect to the provisions of this Agreement and for the elimination of double taxation in cases not provided for in the Agreement.

ARTICLE 25

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 Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement, insofar as the taxation thereunder is not contrary to the Agreement. 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 it shall be disclosed only to persons

or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes to which the Agreement applies and shall be used only for such purposes.

(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 trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

ARTICLE 26

Miscellaneous

(1) The provisions of this Agreement shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit or other allowance now or hereafter accorded:

- (a) by the law of a Contracting State in the determination of the tax imposed by that Contracting State; or
- (b) by any other agreement entered into by a Contracting State.

(2) Nothing in this Agreement shall be construed as preventing the application of the provisions of the domestic law of each Contracting State concerning the taxation of income of their respective residents in respect of their participation in non-resident companies or concerning fiscal evasion.

ARTICLE 27

Diplomatic Agents and Consular Officers

(1) Nothing in this Agreement shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

(2) The Agreement shall not apply to International Organisations, to organs or officials thereof and to persons who are members of a diplomatic mission, consular post or permanent mission of a third State, being present in a Contracting State and who are not liable in either Contracting State to the same obligations in relation to tax on their total income as are residents thereof.

CHAPTER VI FINAL PROVISIONS

ARTICLE 28

Entry into Force

This Agreement shall enter into force on the date on which the Contracting States exchange notes through the diplomatic channel notifying each other that the last of such things has been done as is necessary to give this Agreement the force of law in Canada and in Papua New Guinea, as the case may be, and thereupon this Agreement shall 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 1 January in the calendar year next following that in which the Agreement enters into force;
 - (ii) in respect of other Canadian tax, for taxation years beginning on or after 1 January in the calendar year next following that in which the Agreement enters into force; and

(b) in Papua New Guinea:

- (i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1 January in the calendar year next following that in which the Agreement enters into force;
- (ii) in respect of other Papua New Guinea tax, in relation to income of any year of income beginning on or after 1 January in the calendar year next following that in which the Agreement enters into force.

ARTICLE 29

Termination

This Agreement shall continue in effect indefinitely, but either of the Contracting States may, on or before 30 June in any calendar year beginning after the expiration of 5 years from the date of its entry into force, give to the other Contracting State through the diplomatic channel written notice of termination and, in that event, this Agreement shall cease to be effective:

(a) in Canada:

- (i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after 1 January in the calendar year next following that in which the notice of termination is given;
- (ii) in respect of other Canadian tax, for taxation years beginning on or after 1 January in the calendar year next following that in which the notice of termination is given; and

(b) in Papua New Guinea:

- (i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1 January in the calendar year next following that in which the notice of termination is given;
- (ii) in respect of other Papua New Guinea tax, in relation to income of any year of income beginning on or after 1 January in the calendar year next following that in which the notice of termination is given.