

SECOND PROTOCOL AMENDING THE CONVENTION

BETWEEN THE REPUBLIC OF AUSTRIA

AND

CANADA

FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF
FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL,
DONE AT VIENNA ON 9 DECEMBER 1976, AS AMENDED BY THE PROTOCOL
DONE AT VIENNA ON 15 JUNE 1999

THE REPUBLIC OF AUSTRIA AND CANADA;

DESIRING to amend the *Convention between the Republic of Austria and Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital*, done at Vienna on 9 December 1976, as amended by the Protocol done at Vienna on 15 June 1999 ("the Convention"),

HAVE AGREED as follows:

Article 1

Paragraphs 1, 2 and 3 of Article 26 of the Convention shall be deleted and replaced by the following paragraphs 1, 2, 3, 4 and 5 and paragraphs 4 and 5 shall be renumbered 6 and 7 respectively:

“1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention 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 Convention. 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 that 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 that 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 it relates to ownership interests in a person.”

Article 2

The Contracting States shall notify one another through diplomatic channels that all legal procedures for the entry into force of this Protocol have been completed. The Protocol shall enter into force on the first day of the third month following the date of the receipt of the later of the notifications. The provisions of this Protocol shall have effect with regard to taxable periods beginning on or after 1 January of the calendar year following the year of the entry into force of this Protocol. If there is no taxable period, the provisions shall have effect with regard to all charges to tax arising on or after 1 January of the calendar year following the year of the entry into force of this Protocol.

IN WITNESS whereof the undersigned, duly authorised thereto, by their respective Governments, have signed this Protocol.

DONE in duplicate at Vienna, this 9th day of March 2012, each in the German, English and French languages, all the texts being equally authentic.

For the Republic of Austria:

For Canada:

Andreas Schieder m.p.

John Barrett m.p.

INTERPRETATIVE PROTOCOL

At the time of signing of the *Second Protocol amending the Convention between the Republic of Austria and Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, done at Vienna on 9 December 1976, as amended by the Protocol done at Vienna on 15 June 1999*, the undersigned have agreed upon the following provisions which shall be an integral part of the aforementioned Convention.

1. It is understood that the competent authority of the Contracting State requesting information (the “applicant State”) shall provide the following information to the competent authority of the Contracting State requested to provide information (the “requested State”) when making a request for information under the Convention to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
- (b) a statement of the information sought including its nature and the form in which the applicant State wishes to receive the information from the requested State;
- (c) the tax purpose for which the information is sought;
- (d) grounds for believing that the information requested is held in the requested State or is in the possession or control of a person within the jurisdiction of the requested State;
- (e) to the extent known, the name and address of any person believed to be in possession of the requested information; and
- (f) a statement that the applicant State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

2. It is understood that the standard of “foreseeable relevance” is intended to provide for exchange of information in tax matters to the widest possible extent and, at the same time, to

clarify that Contracting States are not at liberty to engage in “fishing expeditions” or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. While paragraph 1 of this Protocol contains important procedural requirements that are intended to ensure that fishing expeditions do not occur, subparagraphs (a) through (f) of paragraph 1 nevertheless need to be interpreted liberally in order not to frustrate effective exchange of information.

3. It is understood that paragraph 5 of Article 26 of the Convention does not require the Contracting States to exchange information on a spontaneous or automatic basis.

IN WITNESS whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Interpretative Protocol.

DONE in duplicate at Vienna, this 9th day of March 2012, each in the German, English and French languages, each version being equally authentic.

For the Republic of Austria:

For Canada:

Andreas Schieder m.p.

John Barrett m.p.