

## **COMPETENT AUTHORITY MUTUAL AGREEMENT**

The competent authorities of the United States and Canada hereby enter into the following agreement regarding the application of Article VII (Business Profits) of the Convention between Canada and the United States of America with Respect to Taxes on Income and on Capital done at Washington on September 26, 1980, as amended by the Protocols done on June 14, 1983, March 28, 1994, March 17, 1995, July 29, 1997, and September 17, 2007 (the "Convention") in view of the agreed understanding set out in paragraph 9 of the Second Exchange of Notes to the Fifth Protocol to the Convention and annexed to the Convention as Annex B. This agreement is entered into under paragraph 3 of Article XXVI (Mutual Agreement Procedure) of the Convention.

With reference to Article VII of the Convention, paragraph 9 of Annex B of the Convention refers to the applicability of the Organisation for Economic Cooperation and Development (the "OECD") Transfer Pricing Guidelines, by analogy, for the purposes of determining the business profits attributable to a permanent establishment. The OECD Report on the Attribution of Profits to Permanent Establishments (the "Report") was finalized in 2008 and revised in 2010 without change to the conclusions of the Report (the "authorized OECD approach" ("full AOA")). The competent authorities of the United States and Canada understand that paragraph 9 of Annex B of the Convention indicates that the principles of the full AOA as set out in the Report would apply without waiting for the Report to be finalized.

The competent authorities of the United States and Canada therefore agree that, under paragraph 9 of Annex B of the Convention, Article VII of the Convention is to be interpreted in a manner entirely consistent with the full AOA as set out in the Report. All other provisions of the Convention that require a determination of whether an asset or amount is effectively connected or attributable to a permanent establishment are also to be interpreted in a manner entirely consistent with the full AOA as set out in the Report. Further explanation of paragraph 9 and its effects on the interpretation and application of Article VII(2) and (3) of the Convention is found in the U.S. Treasury Department's Technical Explanation of the Fifth Protocol to the Convention, the contents with respect to which the Government of Canada subscribes.

The competent authorities understand that relief of double taxation continues to be subject to the provisions and limitations of each country's domestic law, as provided in Article XXIV (Elimination of Double Taxation).

This agreement generally applies to taxable years that begin on or after January 1, 2012; however, a taxpayer may choose to apply the entirety of this agreement in both Contracting States for all taxable years beginning after December 31, 2008.

Agreed:

\_\_\_\_\_  
Michael Danilack  
United States Competent Authority  
Deputy Commissioner (International)  
Large Business & International Division

\_\_\_\_\_  
Costa Dimitrakopoulos  
Canadian Competent Authority  
Director General  
Legislative Policy Directorate

Date: \_\_\_\_\_

Date: \_\_\_\_\_