

**Convention for the
Avoidance of
Double Taxation and
the Prevention of
Fiscal Evasion with
Respect to Taxes on
Income and on Capital
between Austria and
Canada**

**Information for Austrian
scientists and researchers**

**provided by the Office of Science &
Technology Austria (OSTA)**

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Introduction

The goal of a taxation convention is to avoid the double taxation of taxpayers for the same item of income. The Convention between Austria and Canada (the “Convention”) was signed on December 9, 1976, in Vienna, and has been in force since 1980. It has been amended by Protocols signed in 1999 and 2012, respectively¹. The Convention restricts the right of each state to tax various items of income earned by residents of the other state and includes certain other measures designed to provide relief from double taxation and enhance information sharing. The Convention applies to natural and artificial persons.

This document was primarily produced for the use of Austrian scientists residing and/or working in Canada and is not intended to be a comprehensive discussion of the Convention.

¹ Taxation Convention Austria – Canada: https://www.fin.gc.ca/treaties-conventions/austria_-eng.asp

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10004336>

1. Scope of the Convention

The Convention applies to persons who are **residents of one or both of the Contracting States**. In Article 4 a “resident” is defined as a person who is subject to taxation under the law of a particular State due to domicile, residence, citizenship, place of management, or any criterion of similar nature.

Where an individual is a resident of both Contracting States, the state of residence for the purposes of the Convention is determined under a set of tie-breaking rules. Generally, such an individual will be resident in the state in which the person has a permanent home. If the person has a permanent home in both states (or in neither), the individual is considered to be resident in the state with which his or her personal and economic relations are closest. If this cannot be determined the individual is considered to be resident in the place in which he or she has a habitual abode. If he or she has a habitual abode in both states (or neither state) residency is in the state of which he or she is a national. If a national of both states, residency is determined by the competent authorities of the states. Where a person other than an individual is a resident of both Contracting States, the country of residence for the purposes of the Convention is to be determined by the competent authorities of the Contracting States.

2. Residency

In order to decide whether a person is a resident of Canada under Canadian laws, many factors must be taken into account. Among the factors of primary importance are:

- physical presence in Canada
- spouse, common law partner or dependents in Canada
- availability of a permanent home in Canada.

Other factors, typically of secondary importance, include the following:

- personal property in Canada (such as furniture, clothing, automobiles, and recreational vehicles);
- social ties with Canada (such as memberships in Canadian recreational or religious organizations);
- economic ties with Canada (such as employment with a Canadian employer and active involvement in a Canadian business, and Canadian bank accounts, retirement savings plans, credit cards, and securities accounts);
- landed immigrant status or appropriate work permits in Canada;
- hospitalization and medical insurance coverage from a province or territory of Canada;
- a driver's license from a province or territory of Canada;
- a vehicle registered in a province or territory of Canada;
- a seasonal dwelling place in Canada;
- a Canadian passport; and
- memberships in Canadian unions or professional organizations.

In certain cases, special rules apply:

- Persons who do not meet any of the criteria above, or similar criteria can still be deemed residents if they “sojourn” in Canada for at least 183 days in a given fiscal year.
- Special rules apply for government employees who work outside of Canada, and to members of the “Canadian Forces” who are stationed abroad.

Detailed information can be found on the “Canada Revenue Agency” website:

<http://www.cra-arc.gc.ca/tx/nrrsdnts/cmmn/rsdncy-eng.html>

3. Taxes regulated in the Convention

The Convention regulates income and capital taxes. These include:

For Austria: **Income Tax (Einkommensteuer)**
Corporate Income Tax (Körperschaftsteuer)
Directors Tax (Aufsichtsratsabgabe)
Capital Tax (Vermögensteuer)
Tax on property eluding death duties (Abgabe von Vermögen, die der Erbschaftssteuer entzogen sind)
Tax on commercial and industrial enterprises, including the tax levied on the sum of wages (Gewerbsteuer, einschließlich Lohnsummensteuer)
Land tax (Grundsteuer)
Tax on agricultural and forestry enterprises (Abgabe vom Bodenwert bei unbebauten Grundstücken)
Contributions from agricultural and forestry enterprises to the equalization fund (die Beiträge von landund forstwirtschaftlichen Betrieben)

For Canada: **Income Taxes imposed by the Government of Canada**

4. Types of Income

The taxation of different items of income in accordance with the Convention is discussed below.

4.1. Income from Independent Professional Services

Taxation of income from rendering independent professional services or other similar independent services is dealt with in Article 14 of the Convention. A professional service is rendered independently if there is no employment status involved. A self-employed person works independently, not bound by directives, and at his or her own risk.

In general, the right to taxation lies with a person's **State of Residency**. However, income from independent professional services rendered by a resident of Austria and which are attributable to a fixed base regularly available to him in Canada may be taxed in Canada.

Example 1:

Professor A, an Austrian resident, has his own institute. From time to time he gives lectures in Canada and receives payment for his services. Professor A has unlimited tax liability in Austria. If the independent personal services rendered by Professor A are attributable to a fixed base in Canada, the income may be taxed by Canada. Such income is also subject to taxation in Austria, but Austria provides a foreign tax credit by deducting the Canadian taxes from the Austrian taxes in order to avoid double taxation.

If the services rendered are not attributable to a fixed base in Canada, only Austria will have the right to tax the income.

4.2. Income from Dependent Personal Services

Taxation of income from providing dependent personal services is dealt with in Article 15 of the Convention. Services are typically considered to be dependent where the person rendering the personal services is integrated into the organization of the company and is bound to follow the instructions of his employer, who is the one to bear the business risk or otherwise has an employment relationship.

Income from providing instructional activities at Austrian universities, colleges (Fachhochschulen), academies, or similar educational establishments is regularly categorized as income from providing dependent personal services under Austrian national law. The previous general rule (Decree BGBl. II Nr. 287/1997 – according to which income from teaching activities was considered income from dependent personal services) no longer exists². It is necessary therefore to determine whether the services are dependent on a case by case basis.

In general, the right to taxation lies with the Contracting State **in which the service is rendered**. However there is an exception where the person is present in Austria for less than 183 days of the year, the employer is a non-resident and the remuneration is not borne by a permanent establishment in Austria.

Example 2:

Professor B is an Austrian citizen based in Canada (see Chapter 1 and 2). B is employed by McGill University in Canada, from which she receives monthly payment. Canada will have the right of

² http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=BgblPdf&Dokumentnummer=2003_632_2

taxation for the professor's income. Austria has no right of taxation in this case, provided that the professor is present for less than 183 days in Austria in the calendar year.

Example 3:

Professor C, an Austrian resident (see Chapter 1), is employed by McGill University, from which he receives his salary. Canada has the right to tax this income from dependent personal services due to the activity being carried out in Canada and due to fact that the employer is a Canadian resident. Professor C's income is also subject to taxation in Austria, but Canadian taxes are deducted from Austrian taxes to avoid double taxation.

Exception:

As noted above, the exclusive right to taxation lies with the Contracting State of residence under certain conditions:

- The natural person is not present in the other Contracting State more than 183 days in the calendar year;
- the remuneration is paid by, or on behalf of, an employer that is not a resident of the Contracting State in which the service is rendered; **and**
- the payment is not derived from a fixed base or permanent establishment of the employer has in the other Contracting State (in which the service is rendered).

Example 4:

Professor D, an Austrian citizen and resident of Canada, receives his income from his home university in Toronto. The University of Toronto is organizing a lecture series for Austrian students in Linz, held by Professor D. D spends 25 days in Austria. His income from the lecture series is subject to taxation in Canada only, because he is employed by an employer from Canada, he is in Austria for less than 183 days and he is a resident of Canada. Should Professor D go back to Austria several times in the course of the fiscal year and his physical presence in Austria exceed the limit of 183 days, the income from lecturing in Austria would be subject to taxation in Austria.

Example 5:

Professor E, an Austrian citizen who is resident in Austria, is employed by the University of Linz, from which she receives her salary. For a lecture series at the University of Toronto, she receives separate payment directly from the University of Toronto. E is lecturing a total of 25 days in Canada. The income from the lecture series is subject to taxation in Canada, because Professor E's employer

for this lecture series is a resident of Canada.

4.3. Income of Public Employees

According to Article 19 of the Convention, wages, salaries, and similar remuneration paid from or out of public funds of a Contracting State to a public servant in respect of services rendered to that Contracting State are subject to taxation **only in such Contracting State**.

If the public servant is a resident of the other Contracting State, his/her income is taxable in that other Contracting State if services are rendered in that other Contracting State and the public servant did not become a resident of the other State solely for the purpose of performing the service.

4.4. Pensions

The basic rule of Article 18 of the Convention is that pensions and similar remuneration are taxable only in the Contracting State in which they arise, regardless of where the person receiving the amount resides.

Further information for retirees living abroad, as well as the fiscal treatment of pensions, is provided by the Austrian National Pension Administration (*Pensionsversicherungsanstalt, PVA*)³.

Example 6:

Professor F, resident in Austria, receives a pension from the University of Toronto. Professor F's pension is taxable in Canada.

4.5. Alimonies

Alimony is a periodic payment made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support. Alimony payments are also dealt with in Article 18 of the Convention. Alimony and similar payments arising in a Contracting State and paid to a recipient who is a resident of the other Contracting State are taxable in the Contracting State in which the recipient resides.

5. Students, Apprentices and Trainee

³ Document in German:

<http://www.pensionsversicherung.at/portal27/portal/pvaportal/content/contentWindow?contentid=10007.707739&action=2>

Article 20 of the Convention provides special rules for students, apprentices, and business trainees. Basically, students, apprentices, and business trainees who visit a Contracting State and were immediately before residents of the other Contracting State. A payment to such a person is exempt from taxation in the Contracting State being visited provided that (i) the payment is made from sources outside of the visited Contracting State; (ii) the payment is for the purpose of maintenance, education or training of such person; and (iii) the person is present in the visited Contracting State solely for the person's education or training.

Example 7:

Student G, based in Salzburg, begins full-time study at McGill University in Canada. Student G receives a scholarship from the Ministry of Science and Research (BMFWF) in the amount of € 3,000. per month. The scholarship is exempt from taxation in Canada. This exemption applies even if student A should become a resident of Canada.

If Student G receives € 2,000. a month from his parents for his maintenance, he also does not have to pay taxes on this amount.

If Student G takes on a side job in Canada, he has to pay taxes on his earnings in Canada according to Article 15 of the Convention. This income is also subject to taxation in Austria, but Canadian taxes are deducted from Austrian taxes to avoid double taxation.

Example 8:

Student H, an Austrian citizen based in Austria, studies in Canada for a year. She receives a scholarship from a Canadian institution. Student H has to pay taxes on her scholarship in Canada. This income is also subject to taxation in Austria, but Canadian taxes are deducted from Austrian taxes to avoid double taxation.

6. Avoiding Double Taxation

According to Article 23 of the Convention, and the exemption method used in the Convention, the taxes paid in one Contracting State are deducted from the taxes to be paid in the State of Residence (“**Tax Credit Method**”). Following the Tax Credit Method, the Country of Residence maintains the right to taxation of a person's world income. The actual taxes paid in a foreign country (Source Country) will be deducted from the taxes to be paid in the country of residence. Also, Canada deducts the taxes paid in Austria.

In practice, the Tax Credit Method is limited in several ways:

- The taxpayer has to make use of all tax benefits available in the source country. If the taxpayer neglects any such benefits, the deduction from tax will be reduced accordingly.
- The amount of deducted taxes cannot exceed the amount of taxes otherwise payable in the home country. In the case of Austria, a specific formula is used⁴:

$$\text{Maximum Contribution} = \frac{\text{Austrian Income Tax} \times \text{Income in Source Country}}{\text{Entire Income}}$$

1084929.2

⁴ VwGH 22/2/1994, 93/14/0202, to be found (in German) on:
http://www.ris2.bka.gv.at/Dokument.wxe?QueryID=Vwgh&Dokumentnummer=JWR_1993140202_19940222X01&W_xeFunctionToken=eea0f2a6-da9e-459c-8260-821ab02bb50c