

Memorandum of Understanding on the Implementation of Part VI of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting between the competent authorities of Australia and Canada

The competent authorities of Australia and of Canada (hereinafter referred to as the "Contracting Jurisdictions") hereby enter into the following mutual arrangements (hereinafter referred to as the "Memorandum of Understanding") to establish the mode of application of the arbitration process provided for in Part VI of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (hereinafter referred to as the "Convention"). This Memorandum of Understanding is entered into pursuant to Article 24 of the Convention between Australia and Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (hereinafter referred to as the "Covered Tax Agreement"), as modified by Article 16 of the Convention, and paragraph 10 of Article 19 of the Convention. The competent authorities may modify or supplement this Memorandum of Understanding by mutual consent in writing.

Section 1. Request for submission of case to arbitration

- 1.1 A request that unresolved issues arising from a mutual agreement procedure case be submitted to arbitration pursuant to paragraph 1 of Article 19 of the Convention (hereinafter referred to as the "request for arbitration") will be made in writing and sent to one or both of the competent authorities. The request must contain sufficient information to identify the case. The request will also be accompanied by a written statement by each of the persons who either made the request or is directly affected by the case that no decision on the same issues has already been rendered by a court or administrative tribunal of the Contracting Jurisdictions.
- 1.2 Within 10 days after the receipt of the request, a competent authority who received it without any indication that it was also sent to the other competent authority will send a copy of that request and the accompanying statements to the other competent authority.

Section 2. Minimum information necessary for case to be considered

- 2.1 For purposes of Article 19 of the Convention, references to "the information necessary to undertake substantive consideration of the case" and "the minimum information necessary for each competent authority to undertake substantive consideration of the case" will be understood as follows:
 - (a) for Australia, the information and documentation which must be provided when making a request for Mutual Agreement Procedure as set out on the Mutual Agreement Procedure page on the Australian Taxation Office website, ato.gov.au, as such guidance may be amended from time to time;
 - (b) for Canada, the information set out in Canada Revenue Agency Information Circular 71-17, as such guidance may be amended from time to time;
 - (c) any other specific additional information requested by the competent authority of a Contracting Jurisdiction within three calendar months after the receipt of the request for a mutual agreement procedure; and
 - (d) a proposed resolution by the taxpayer addressing the unresolved issue to be arbitrated and their position as to how the taxation not in accordance with the treaty will be resolved.

- 2.2 The competent authorities of the Contracting Jurisdictions will notify each other of any significant changes that are made with respect to the information requirements provided in their domestic guidance relevant to a request for a Mutual Agreement Procedure.

Section 3. Suspension of time during domestic appeals processes

- 3.1 In accordance with subparagraph b) of paragraph 1 of Article 19 of the Convention, which allows the competent authorities to determine to a different time period, the competent authorities may jointly determine that the period provided for in subparagraph b) of paragraph 1 of Article 19 of the Convention will stop running and the mutual agreement procedure will be suspended from the time the taxpayer proceeds with a Notice of Objection or an appeal to a court and does not request that the objection or appeal be held in abeyance for the duration of the time which those processes are not suspended and until those processes are withdrawn or otherwise concluded.
- 3.2 The competent authorities will notify the person who presented the MAP request concerning this different time period when the joint determination to suspend is made by both competent authorities.

Section 4. Failure to provide information

- 4.1 Where the competent authorities jointly determine that a person directly affected by the case has failed to provide any additional information requested by either competent authority after the start date of the period provided in subparagraph b) of paragraph 1 of Article 19 of the Convention, that period will be extended for an amount of time equal to the period beginning on the date by which the information was requested and ending on the date on which the information was provided. Where, however, within a jointly determined additional period of time, the competent authorities are still not provided with the additional material requested, the competent authorities may jointly determine that the case is no longer required to be submitted to arbitration.

Section 5. Terms of Reference

- 5.1 Unless the competent authorities otherwise jointly determine:
- (a) Within 60 days after the request for arbitration has been received by both competent authorities, the competent authorities will jointly determine the unresolved issue to be resolved by the arbitration panel and communicate them in writing to the person who made the request for arbitration. This will constitute the "Terms of Reference" for the case. Notwithstanding the following provisions of this Memorandum of Understanding, the competent authorities may also, in the Terms of Reference, provide procedural rules that are additional to, or different from, those included in these provisions and deal with such other matters as are deemed appropriate.
 - (b) If the Terms of Reference have not been communicated to the person who made the request for arbitration within the period referred to in sub-paragraph a) above, that person and each competent authority may, within 30 days after the end of that period, communicate in writing to each other a list of issues to be resolved by the arbitration. All the lists so communicated during that period will constitute the tentative Terms of Reference. Within 30 days after all the arbitrators have been appointed as provided in the following provisions of this Memorandum of Understanding, the Chair will communicate to the competent authorities and the

person who made the request for arbitration a revised version of the tentative Terms of Reference based on the lists so communicated. Within 30 days after the revised version has been received by both of them, the competent authorities may jointly determine different Terms of Reference and communicate them in writing to the arbitrators and the person who made the request for arbitration. If they do so within that period, these different Terms of Reference will constitute the Terms of Reference for the case. If no different Terms of Reference have been jointly determined by the competent authorities and communicated in writing within that period, the revised version of the tentative Terms of Reference prepared by the arbitrators will constitute the Terms of Reference for the case.

Section 6. Appointment of arbitrators

- 6.1** Notwithstanding the provisions of Article 20 of the Convention, the competent authorities of the Contracting Jurisdictions have jointly determined that the following rules will govern the appointment of the members of an arbitration panel:
- (a) Each competent authority will appoint one panel member within 90 days of the date of the request for arbitration under paragraph 1 of Article 19 of the Convention. The two members so appointed will, within 60 days of the latter of their appointments, appoint a third member who will serve as the Chair of the arbitration panel. The arbitrators will choose the Chair from the list that has been jointly determined by the competent authorities pursuant to paragraph 6.6. In the event that no list has been provided pursuant to paragraph 6.6 or none of the persons identified in the list are available, the arbitrators will mutually appoint a Chair at their discretion.
 - (b) In the event that the competent authority of a Contracting Jurisdiction fails to appoint a member of the arbitration panel within the time period specified in subparagraph 6.1(a), a member will be appointed on behalf of that competent authority by the highest ranking official of the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development who is not a national of either Contracting Jurisdiction. The relevant appointment will be made within 60 days after receiving a request to that effect from the person who made the request for arbitration.
 - (c) If the two initial members of the arbitration panel fail to appoint the Chair within the time period specified in subparagraph 6.1(a), the Chair will be appointed by the highest-ranking official of the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development who is not a national of either Contracting Jurisdiction. The relevant appointment will be made within 60 days after receiving a request to that effect from the person who made the request for arbitration. In these circumstances, the Chair of the arbitration panel will be appointed from the list that has been jointly determined by the competent authorities pursuant to paragraph 6.6.
- 6.2** Except to the extent that the competent authorities jointly determined different rules, the procedures provided in Article 20 of the Convention and Section 6 of this Memorandum of Understanding will apply with the necessary adaptations if for any reason it is necessary to replace an arbitrator after the arbitration process has begun. In such circumstances, the competent authorities will also jointly determine necessary adaptations, as appropriate, to the deadlines provided in Section 7 of this Memorandum of Understanding.

- 6.3 An arbitrator will be considered to have been appointed when a letter confirming that appointment and signed by both the arbitrator and the person or persons who have the power to appoint that arbitrator has been communicated to both competent authorities.
- 6.4 The competent authorities will appoint arbitrators who have expertise or experience in international tax matters. They need not, however, have experience as either a judge or arbitrator. Each arbitrator appointed to the arbitration panel will be impartial and independent of the competent authorities, tax administrations, and ministries of finance of the Contracting Jurisdictions and of all persons directly affected by the case (as well as their advisors and any related persons) at the time of accepting an appointment, maintain their impartiality and independence throughout the proceedings, and avoid any conduct for a period of 12 months thereafter which may damage the appearance of impartiality and independence of the arbitrators with respect to the proceedings. In particular:
- (a) No arbitrator may be employed in any capacity by the competent authority, tax administration or ministry of finance of either Contracting Jurisdiction or by any person directly affected by the case (or by their advisors or any related persons) at the time of accepting their appointment.
 - (b) No arbitrator will have been employed in any capacity by the competent authority, tax administration or ministry of finance of either Contracting Jurisdiction or by any person directly affected by the case (or by their advisors or any related persons) in the period of 12 months preceding their appointment.
 - (c) No arbitrator will accept employment in any capacity with the competent authority, tax administration or ministry of finance of either Contracting Jurisdiction or with any person directly affected by the case (or with their advisors or any related persons) in the period of 12 months following their appointment.
 - (d) Each arbitrator appointed to the arbitration panel will execute a written certification with respect to their impartiality and independence. The arbitrators will undertake to promptly disclose to both competent authorities, in writing, any new facts or circumstances that arise during or following the arbitration proceedings that might give rise to doubts with respect to their impartiality and independence.

For the purposes of this paragraph, a person who has accepted an appointment as an arbitrator in another arbitration proceeding pursuant to Part VI of the Convention, or pursuant to the provisions of any other bilateral or multilateral agreement providing for the arbitration of unresolved issues in a mutual agreement procedure case, will not be considered based on such appointment to be employed, or to have been employed, by the competent authority, tax administration or ministry of finance of a Contracting Jurisdiction.

- 6.5 If a competent authority becomes aware of a breach by an arbitrator of the impartiality and independence requirements referred to in paragraph 6.4, they will bring that breach to the attention of the other arbitrators and the other competent authority immediately. The competent authorities will then, based on the particular facts and circumstances of the case and the breach, jointly determine how to proceed and may, for example –
- (a) remove and replace the relevant arbitrator;
 - (b) terminate the arbitration proceeding and appoint a new arbitration panel; or

- (c) invalidate the arbitration decision, if the arbitration decision has already been rendered.

6.6 The competent authorities will identify and jointly determine a list of at least 3 persons who are qualified and willing to serve as the Chair of an arbitration panel. The competent authorities will review and revise this list as necessary. The persons to be identified for purposes of this list must meet the requirements of paragraph 6.4.

Section 7. Arbitration process

Final Offer Arbitration

- 7.1 Within 90 days after the appointment of the Chair of the arbitration panel (unless, before the end of that period, the competent authorities jointly determine a different period), the competent authority of each Contracting Jurisdiction will submit to the Chair of the arbitration panel a proposed resolution which addresses all unresolved issue(s) in the case (taking into account all agreements previously reached in that case between the competent authorities). The Chair will forward the proposed resolutions to the other members of the arbitration panel and the other competent authority only after receipt of both proposed resolutions or after the 90 day period has expired, whichever is the earlier. The proposed resolution will be limited to a disposition of specific monetary amounts (for example, of income or expense) or, where specified, the maximum rate of tax that may be charged pursuant to the provisions of the Covered Tax Agreement (as it may be modified by the Convention), for each adjustment or similar issue in the case. In a case in which the competent authorities of the Contracting Jurisdictions have been unable to reach a mutual agreement on an issue regarding the conditions for application of a provision of the Covered Tax Agreement (as it may be modified by the Convention) (hereinafter referred to as a "threshold question"), such as whether an individual is a resident or whether a permanent establishment exists, the competent authorities may submit alternative proposed resolutions with respect to issues the determination of which is contingent on resolution of such threshold questions. The proposed resolution will not exceed five pages, unless otherwise jointly determined by the competent authorities.
- 7.2 The competent authority of each Contracting Jurisdiction may also submit a supporting position paper for consideration by the arbitrators. Any such supporting position paper will be submitted to the Chair of the arbitration panel within the period of time provided for in paragraph 7.1. A supporting position paper will not exceed 30 pages, plus annexes, unless otherwise jointly determined by the competent authorities. Any annex to a supporting position paper must be a document that was provided by one competent authority to the other, or by the taxpayer to both competent authorities, for use in the negotiation of the mutual agreement procedure case. The Chair will forward the supporting position papers to the other members of the arbitration panel and the other competent authority only after receipt of both supporting position papers or after the period of time provided for in paragraph 7.1 has expired, whichever is the earlier.
- 7.3 In the event that the competent authority of one Contracting Jurisdiction fails to submit a proposed resolution within the period of time provided for in paragraph 7.1, the Chair of the arbitration panel will inform the competent authority that if a proposed resolution is not

received within an additional 7 days, the arbitration panel will select as its decision the proposed resolution submitted by the other competent authority.

- 7.4 Each competent authority may also submit a reply submission with respect to the proposed resolution and supporting position paper submitted by the other competent authority. Any such reply submission will be submitted to the Chair of the arbitration panel within 150 days after the appointment of the Chair of the arbitration panel. A reply submission will not exceed 10 pages, unless otherwise jointly determined by the competent authorities. The Chair will forward the reply submissions to the other members of the arbitration panel and the other competent authority only after receipt of both reply submissions or after the 150 day period has expired, whichever is the earlier.
- 7.5 Additional information may be submitted to the Chair only at their request on behalf of the arbitration panel. Copies of the arbitration panel's request and the competent authority's response will be provided to the other competent authority on the date on which the request or the response is submitted. The competent authority's response will be submitted within 14 days of the request. The Chair may request additional information only from the competent authorities and only information that consists of existing documents, not new or additional analyses. In the event that the competent authority of one Contracting Jurisdiction fails to submit a reply submission within the period of time provided for in paragraph 7.4, the Chair of the arbitration panel will inform the competent authority that any reply submission not received within an additional 7 days will not be considered by the arbitrators.
- 7.6 As far as possible, the arbitrators will use tele- and videoconferencing to communicate between themselves and with both competent authorities. If a face-to-face meeting involving additional costs is necessary, the Chair will contact the competent authorities who will decide when and where the meeting will be held and will communicate that information to the arbitrators.
- 7.7 The arbitration panel will select as its decision one of the proposed resolutions for the case submitted by the competent authorities with respect to each issue and any threshold questions, and will not include a rationale or any other explanation of the decision. The arbitration decision will be adopted by a simple majority of the arbitrators. The arbitration decision will be delivered to the competent authorities of the Contracting Jurisdictions in writing within 90 days after the reception by the arbitrators of the last reply submission or, if no reply submission has been submitted, within 180 days after the appointment of the Chair of the arbitration panel. The arbitration decision will have no precedential value.

Section 8. Communication of information and confidentiality

- 8.1 The competent authorities will, together, ensure each arbitrator agrees in writing, prior to acting in an arbitration proceeding, to abide by and be subject to the confidentiality and non-disclosure provisions of Article 25 of the Covered Tax Agreement and of the applicable domestic laws of the Contracting Jurisdictions. If an arbitrator uses staff in connection with the performance of their duties, each staff member will execute a similar written agreement.
- 8.2 If a competent authority becomes aware of a breach by an arbitrator and/or their staff of the confidentiality and non-disclosure requirements referred to in paragraph 8.1 they will bring that

breach to the attention of the other arbitrators and the competent authority of the other Contracting Jurisdiction immediately. The competent authorities will then, based on the particular facts and circumstances of the case and the breach, jointly determine how to proceed and may, for example –

- (a) remove and replace the relevant arbitrator;
- (b) terminate the arbitration proceeding and appoint a new arbitration panel; or
- (c) invalidate the arbitration decision, if the arbitration decision has already been rendered.

- 8.3 Before the Chair is appointed, the competent authorities will send any correspondence concurrently to both arbitrators.
- 8.4 After the Chair is appointed, unless jointly determined otherwise by the competent authorities and the Chair, the competent authorities will send any correspondence to the Chair (with a copy sent to the other competent authority). The Chair will send any correspondence from the arbitrators concurrently to both competent authorities.
- 8.5 Except with regard to administrative or logistical matters, no arbitrator will have any *ex parte* communications with one competent authority with respect to the mutual agreement procedure case that resulted in the arbitration proceeding.
- 8.6 All communication, except with regard to administrative or logistical matters, between the arbitrators and the competent authorities will be in writing. Unless the competent authorities otherwise jointly determine, written communication by email is allowed to the extent that appropriate measures are taken to preserve the confidentiality of any information that may identify the taxpayer. Express or priority mail or a courier service will be used for all correspondence other than that sent via email.
- 8.7 No substantive discussions may take place without all three arbitrators present.
- 8.8 No arbitrator will have communications regarding the issues or matters before the arbitration panel with
- (a) the person who presented the case;
 - (b) any other person whose tax liability to either Contracting Jurisdiction may be directly affected by a mutual agreement reached as a result of the case; or
 - (c) their representatives or agents
- during or subsequent to the arbitration proceedings.
- 8.9 At the termination of the arbitration proceedings each arbitrator and any staff will immediately destroy all documents or other information received in connection with the proceedings.

Section 9. Operating procedures

- 9.1 To the extent needed, the arbitration panel may adopt any additional procedures necessary for the conduct of its business, provided that the procedures are not inconsistent with any provision of Part VI of the Convention or Article 24 of the Covered Tax Agreement, as modified by Article 16 of the Convention.
- 9.2 If the arbitration panel adopts any additional procedures, the Chair will provide a written copy of them to the competent authorities. These procedures will have effect only if both competent authorities mutually consent.

Section 10. Costs

- 10.1 Unless the competent authorities otherwise jointly determine:
- (a) each competent authority will bear the costs related to its own participation in the arbitration proceedings (including travel costs and costs related to the preparation and presentation of its views);
 - (b) all other costs related to the arbitration proceedings will be borne in equal shares by the two competent authorities.
- 10.2 The competent authorities will jointly determine in writing the compensation of the arbitrators in proceedings under this Memorandum of Understanding including:
- (a) The fees of the arbitrators per person per meeting, preparation or travel day;
 - (b) The reimbursement of the expenses of the arbitrators; and
 - (c) Limits on the overall amount of compensation to be paid.
- 10.3 It is anticipated that members of the arbitration panel will be able to perform their duties without the use of additional staff. If a panel member uses staff, the competent authorities will not compensate in respect of any work performed by a staff member.

Section 11. Failure to communicate the decision within the required period

- 11.1 In the event that the decision has not been communicated to the competent authorities within the period provided for in paragraph 7.7, or within any other period jointly determined by the competent authorities, the fees of each arbitrator will be limited to an amount, if any, jointly determined by the competent authorities. In such a case, the competent authorities may jointly determine to appoint new arbitrators in accordance with Article 20 of the Convention and Section 6 of this Memorandum of Understanding. The date of such joint determination to appoint new arbitrators will, for the purposes of the subsequent application of Article 20 of the Convention and Section 6 of this Memorandum of Understanding, be deemed to be the date when the request for arbitration has been received by both competent authorities.

Section 12. Final decision

- 12.1 If a final decision by a court of one of the Contracting Jurisdictions holds that the arbitration decision is invalid, the arbitration decision will not be binding on the Contracting Jurisdictions. In such a case, the request for arbitration under paragraph 1 of Article 19 of the Convention will be considered not to have been made, and the arbitration process will be considered not to have taken place (except for the purposes of Article 21 (Confidentiality of Arbitration Proceedings) and Article 25 (Costs of Arbitration Proceedings) of the Convention and Sections 8 and 10 of this Memorandum of Understanding). In such a case the person who made the request for arbitration may make a new request for arbitration, which will be accepted unless the competent authorities jointly determine that such a new request should not be permitted.
- 12.2 It is understood that subdivision ii) of subparagraph b) of paragraph 4 of Article 19 of the Convention is intended to apply where, under the domestic laws of a Contracting Jurisdiction, a court has invalidated the arbitration decision based on a procedural or other failure or other conduct that has materially affected the outcome of the arbitration proceeding, which may include:
- (a) a violation of the impartiality or independence requirements applicable to arbitrators pursuant to Article 20 of the Convention and Section 6 of this Memorandum of Understanding;
 - (b) a breach of the confidentiality requirements applicable to arbitrators pursuant to Article 21 of the Convention and Section 8 of this Memorandum of Understanding;
 - (c) any other failure to adhere to the procedural requirements provided in Part VI of the Convention and this Memorandum of Understanding; or
 - (d) collusion between the person who presented the mutual agreement procedure request and one of the Contracting Jurisdictions.
- 12.3 It is understood that Section 12 of this Memorandum of Understanding does not provide independent grounds for the invalidation of an arbitration decision where such grounds do not exist under the domestic laws of the Contracting Jurisdictions.

Section 13. Implementing the arbitration decision

- 13.1 The competent authorities will implement the arbitration decision within 180 days after the communication of the decision to them by reaching a mutual determination on the case that led to the arbitration.

Section 14. Entry into effect of Part VI (Arbitration) of the Convention

- 14.1 As provided by Article 36 (Entry into Effect of Part VI) of the Convention the provisions of Part VI (Arbitration) of the Convention will have effect with respect to cases presented to the competent authority of a Contracting Jurisdiction on or after the later of the dates on which the Convention has entered into force for each of the Contracting Jurisdictions.
- 14.2 For the purposes of the application of Part VI of the Convention to mutual agreement procedure cases presented to the competent authority of a Contracting Jurisdiction prior to the later of the dates on which the Convention has entered into force for each of the Contracting Jurisdictions, the competent authorities will mutually determine, for each such case, the start

date of the period of two years after which the person who presented the case may request the submission of unresolved issues to arbitration. Within 10 days after the conclusion of each such mutual determination, the competent authorities will:

- (a) provide written notification to the person who presented the case of the mutual determination and the start date of the two-year period (the mutual determination will specify which of the two competent authorities will provide this notification); and
- (b) provide written notification to the Depositary that a mutual determination has been reached with respect to an individual case under subparagraph b) of paragraph 1 of Article 36 (such notification, which must be provided to the Depositary by both competent authorities, should not contain any information that could identify the person who presented the case).

Section 15. Reservation with respect to the scope of cases that will be eligible for arbitration under the provisions of Part VI of the Convention

Pursuant to subparagraph a) of paragraph 2 of Article 28 of the Convention, the following reservations have been made with respect to the scope of cases that will be eligible for arbitration under the provisions of Part VI of the Convention:

(a) By Australia

Australia reserves the right to exclude from the scope of Part VI of the Convention any case to the extent that it involves the application of Australia's general anti-avoidance rules contained in Part IVA of the *Income Tax Assessment Act 1936* and section 67 of the *Fringe Benefits Tax Assessment Act 1986*. Australia also reserves the right to extend the scope of the exclusion for Australia's general anti-avoidance rules to any provisions replacing, amending or updating those rules. Australia will notify the Depositary of the Convention any such provisions that involve substantial changes.

(b) By Canada

- i. Canada reserves the right to limit the scope of issues eligible for arbitration under the provisions of Part VI of the Convention to the following:
 - 1. Issues arising under provisions akin to Article 4 (Resident) of the OECD Model Tax Convention, but only insofar as the issue relates to the residence of an individual;
 - 2. Issues arising under provisions akin to Article 5 (Permanent Establishment) of the OECD Model Tax Convention;
 - 3. Issues arising under provisions akin to Article 7 (Business Profits) of the OECD Model Tax Convention;
 - 4. Issues arising under provisions akin to Article 9 (Associated Enterprises) of the OECD Model Tax Convention;
 - 5. Issues arising under provisions akin to Article 12 (Royalties) of the OECD Model Tax Convention, but only insofar as such a provision might apply in transactions involving related persons to which provisions akin to Article 9 of the OECD Model Tax Convention might apply; and

6. Any other provisions subsequently agreed by the Contracting Jurisdictions through an exchange of diplomatic notes.
- ii. Canada reserves the right to exclude from the scope of Part VI of the Convention any issues pertaining to the application of anti-abuse provisions whether contained in the Convention, a Covered Tax Agreement, or the domestic law of a Contracting Jurisdiction.

Section 16. Entry into effect and termination

16.1 This Memorandum of Understanding takes effect on the later of the two signature dates by the competent authorities of Canada and Australia. This Memorandum of Understanding remains in effect until terminated by either competent authority giving at least 6 months written notice to the other.

16.2 Arbitrations that have commenced prior to the termination date will be concluded in accordance with this Memorandum of Understanding.

The foregoing represents the understanding reached between the competent authorities and does not constitute a treaty.

For the competent authority of
Australia

Jon Todd

Signature of representative

Jonathan Todd

Printed name of representative

Assistant Commissioner

Official title of representative

20 July 2026

Date

For the competent authority of
Canada

Robert Greene

Signature of representative

Robert Greene

Printed name of representative

Director General

Official title of representative

31 July 2026

Date