

No. 9715

**JAPAN
and
FEDERAL REPUBLIC OF GERMANY**

Agreement for the avoidance of double taxation with respect to taxes on income and to certain other taxes (with exchange of notes). Signed at Bonn on 22 April 1966

Authentic texts : Japanese, German and English.

Registered by Japan on 16 July 1969.

**JAPON
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE**

Convention tendant à éviter la double imposition en matière d'impôts sur le revenu et de certains autres impôts (avec échange de notes). Signée à Bonn le 22 avril 1966

Textes authentiques : japonais, allemand et anglais.

Enregistrée par le Japon le 16 juillet 1969.

AGREEMENT¹ BETWEEN JAPAN AND THE FEDERAL
REPUBLIC OF GERMANY FOR THE AVOIDANCE OF
DOUBLE TAXATION WITH RESPECT TO TAXES ON
INCOME AND TO CERTAIN OTHER TAXES

Japan and the Federal Republic of Germany,
Desiring to conclude an Agreement for the avoidance of double taxation
with respect to taxes on income and to certain other taxes,

Have agreed as follows :

Article 1

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

Article 2

(1) The taxes which are the subject of this Agreement are :

In the Federal Republic of Germany :

- a) the income tax ;
- b) the corporation tax ; and
- c) the trade tax

(hereinafter referred to as " German tax ").

In Japan :

- a) the income tax ;
- b) the corporation tax ;
- c) the local inhabitant taxes ; and
- d) the enterprise tax

(hereinafter referred to as " Japanese tax ").

(2) This Agreement shall also apply to any other taxes of a character
substantially similar to those referred to in the preceding paragraph and
introduced in either Contracting State after the date of signature of this
Agreement.

¹ Came into force on 9 June 1967, i.e., the thirtieth day after the date of the exchange
of the instruments of ratification, which took place at Tokyo on 10 May 1967, in accordance
with article 29 (2).

(3) The provisions of this Agreement in respect of taxation of income or profits shall likewise apply to the German trade tax and to the Japanese local inhabitant taxes and the Japanese enterprise tax, computed on a basis other than income or profits.

Article 3

(1) In this Agreement, unless the context otherwise requires :

- a) the term “ Federal Republic ” means the Federal Republic of Germany, and, when used in a geographical sense, the territory in which the Basic Law for the Federal Republic of Germany is in force ;
- b) the term “ Japan ”, when used in a geographical sense, means all the territory in which the laws relating to Japanese tax are in force ;
- c) the terms “ a Contracting State ” and „ the other Contracting State ” mean Japan or the Federal Republic, as the context requires ;
- d) the term “ tax ” means Japanese tax or German tax, as the context requires ;
- e) the term “ person ” includes a company and any other body of persons ;
- f) the term “ company ” means any body corporate or any entity which is treated as a body corporate for tax purposes ;
- g) the terms “ enterprise of a Contracting State ” and “ enterprise of the other Contracting State ” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State ;
- h) the term “ nationals ” means :
 - 1. in respect of the Federal Republic : all Germans in the meaning of Article 116 paragraph 1 of the Basic Law for the Federal Republic of Germany and all legal persons, partnerships and associations deriving their status as such from the law in force in the Federal Republic ;
 - 2. in respect of Japan : all individuals possessing the nationality of Japan and all juridical persons created or organized under the law of Japan and all organizations without juridical personality treated for the purposes of Japanese tax as juridical persons created or organized under the law of Japan ;

i) the term "competent authority" means, in the case of Japan, the Minister of Finance or his authorized representative, and, in the case of the Federal Republic, the Federal Minister of Finance.

(2) As regards the application of this Agreement in a Contracting State any term not otherwise defined in this Agreement shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes to which this Agreement applies.

Article 4

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

(2) Where by reason of the provisions of paragraph 1 a person is a resident of both Contracting States, then the competent authorities shall determine by mutual agreement the Contracting State of which that person shall be deemed to be a resident for the purposes of this Agreement.

Article 5

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

(2) The term "permanent establishment" shall include especially:

- a) a place of management;
- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop;
- f) a mine, quarry or other place of extraction of natural resources;
- g) a building site or construction or assembly project which exists for more than twelve months.

(3) The term "permanent establishment" shall not be deemed to include:

- a) the use of facilities solely for the purpose of storage, display or delivery 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, display or delivery;

- 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, or for collecting information, for the enterprise ;
- e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

(4) 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 5 applies—shall be deemed to be a permanent establishment in the first-mentioned Contracting State if he has, and habitually exercises in that Contracting State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

(5) An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

(6) 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 Contracting State (whether through a permanent establishment or otherwise), shall not of itself constitute for either company a permanent establishment of the other.

Article 6

(1) Income from immovable property may be taxed in the Contracting State in which such property is situated.

(2) The term “immovable property” shall be defined in accordance with the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting immovable property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources ; ships and aircraft shall not be regarded as immovable property.

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

(4) The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

Article 7

(1) The profits of an enterprise of a Contracting State shall be exempt from tax of the other Contracting State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other Contracting State but only so much of them as is attributable to that permanent establishment.

(2) 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.

(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 permanent establishment including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere.

(4) Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles laid down in this Article.

(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 purposes 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) For the purposes of this Article the *Offene Handelsgesellschaft* or the *Kommanditgesellschaft*, deriving its status as such from the law in force in the Federal Republic, and having its head or main office in the Federal Republic, shall be treated as a body corporate which is a resident of the Federal Republic.

(8) 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.

Article 8

(1) Profits from the operation of ships or aircraft in international traffic carried on by an enterprise of a Contracting State shall be exempt from tax of the other Contracting State.

(2) The provisions of paragraph 1 shall likewise apply in respect of participations in polls, in a joint business or in an international operations agency of any kind by enterprises engaged in the operation of aircraft in international traffic.

(3) Ships and aircraft owned and operated in international traffic by an enterprise carried on by a resident of the Federal Republic shall be exempt from the fixed assets tax in Japan and ships and aircraft owned and operated in international traffic by an enterprise carried on by a resident of Japan shall be exempt from the capital tax in the Federal Republic.

Article 9

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 are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued 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.

Article 10

(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 Contracting State.

(2) However, such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of that Contracting State, but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

(3) Notwithstanding the provisions of paragraph 2,

a) German tax on dividends paid by a company which is a resident of the Federal Republic to a company which is a resident of Japan may exceed 15 per cent but shall not exceed 25 per cent of the gross amount of the dividends, if the company receiving such dividends owned at any time during the period of twelve months immediately preceding the date of payment of the dividends, directly or indirectly, 25 per cent or more of the voting shares of the company paying such dividends ;

b) Japanese tax on dividends paid by a company which is a resident of Japan to a company which is a resident of the Federal Republic shall not exceed 10 per cent of the gross amount of the dividends, if the company receiving such dividends owned during the period of twelve months immediately preceding the date of payment of the dividends, directly or indirectly, 25 per cent or more of the voting shares of the company paying such dividends.

(4) The provisions of paragraphs 2 and 3 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

(5) The term " dividends " as used in this Article means income from shares, mining shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation law of the Contracting State of which the company making the distribution is a resident, and shall include, in the case of the Federal Republic, the income derived by a stiller Gesellschafter from his participation as such.

(6) The provisions of paragraphs 1, 2 and 3 shall not apply if the recipient of the dividends, being a resident of a Contracting State, has in the other Contracting State, of which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provisions of Article 7 shall apply.

(7) Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting State may not impose any tax on the dividends paid the company to persons who are not residents of that other Contracting State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other Contracting State.

Article 11

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

(2) However, such interest may be taxed in the Contracting State in which it arises, and according to the law of that Contracting State, but the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

(3) Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to a resident of the other Contracting State on bonds issued in the market of that other Contracting State shall be exempt from tax of the first-mentioned Contracting State, if such bonds are issued by, or the payments of principal or interest of such bonds are guaranteed by, the Government of that first-mentioned Contracting State (including a Land in the case of the Federal Republic).

- (4) Notwithstanding the provisions of paragraph 2,
- a) interest arising in the Federal Republic and paid to the Bank of Japan or to the Export-Import Bank of Japan shall be exempt from German tax;
 - b) interest arising in Japan and paid to the Deutsche Bundesbank or to the Kreditanstalt für Wiederaufbau shall be exempt from Japanese tax.

(5) The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind 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.

(6) The provisions of paragraphs 1, 2, 3 and 4 shall not apply if the recipient of the interest, being a resident of a Contracting State, has in the other Contracting State in which the interest arises a permanent establishment with which the debt-claim from which the interest arises is effectively connected. In such a case, the provisions of Article 7 shall apply.

(7) Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself (including a *Land* in the case of the Federal Republic), a local authority or a resident of that Contracting 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 in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

(8) Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, 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 recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12

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

(2) However, such royalties may be taxed in the Contracting State in which they arise, and according to the law of that Contracting State, but the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

(3) The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

(4) The provisions of paragraphs 1 and 2 shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise a permanent establishment with which the right or property giving rise to the royalties is effectively connected. In such a case, the provisions of Article 7 shall apply.

(5) Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself (including a *Land* in the case of the Federal Republic), a local authority or a resident of that Contracting 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 in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

(6) Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13

(1) Gains from the alienation of immovable property, as defined in Article 6 paragraph 2, may be taxed in the Contracting State in which such property is situated.

(2) Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in that other Contracting State. However, gains derived by a resident of a Contracting State from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft shall be exempt from tax of the other Contracting State.

(3) Gains derived by a resident of a Contracting State from the alienation of any property other than those mentioned in paragraphs 1 and 2 shall be exempt from tax of the other Contracting State.

Article 14

(1) Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character

shall be exempt from tax of the other Contracting State unless he has a fixed base regularly available to him in that other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in that other Contracting State but only so much of it as is attributable to that fixed base.

(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

(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 exempt from tax of the other Contracting 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 Contracting 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 exempt from tax of that other Contracting State if:

- a) the recipient is present in that other Contracting State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned, and
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other Contracting State, and
- c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in that other Contracting State.

(3) Notwithstanding the provisions of paragraphs 1 and 2, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that Contracting State.

Article 16

Remuneration 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 Contracting State.

Article 17

(1) Notwithstanding the provisions of Articles 14 and 15, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

(2) Notwithstanding anything contained in this Agreement, where the services of a public entertainer or an athlete mentioned in paragraph 1 are provided in a Contracting State by an enterprise of the other Contracting State, the profits derived from providing those services by such enterprise may be taxed in the first-mentioned Contracting State if the public entertainer or the athlete performing the services controls, directly or indirectly, such enterprise.

Article 18

Subject to the provisions of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be exempt from tax of the other Contracting State.

Article 19

(1) Remuneration, including pensions, paid by, or out of funds created by, the Federal Republic, a *Land* or a local authority thereof to any individual in respect of an employment, present or past, may be taxed in the Federal Republic. Such remuneration shall be exempt from Japanese tax if the recipient is a German national.

(2) Remuneration, including pensions, paid by, or out of funds to which contributions are made by, Japan or a local authority thereof to any individual in respect of an employment, present or past, may be taxed in Japan. Such remuneration shall be exempt from German tax if the recipient is a national of Japan.

(3) The provisions of Articles 15, 16, 17 and 18 shall apply to remuneration or pensions in respect of an employment in connection with any business carried on by a Contracting State, a *Land* or a local authority thereof for the purpose of profits.

(4) The provisions of paragraph 1 shall likewise apply to remuneration or pensions paid by the Deutsche Bundesbahn and the Deutsche Bundespost.

(5) The provisions of paragraph 2 shall likewise apply to remuneration or pensions paid by the Japan National Railways, the Nippon Telegraph and Telephone Public Corporation and the Japan Monopoly Corporation.

(6) Pensions, annuities and other recurring or nonrecurring payments which are paid to any individual by the Federal Republic, a *Land* or a local authority thereof as compensation for an injury or damage sustained as a result of hostilities or political persecution shall be exempt from Japanese tax.

(7) Payments, recurring or non-recurring, to any individual by Japan, which are paid under the laws concerning payments of repatriates benefit, relief for families with unrepatriated members or relief for war invalids and war bereaved, shall be exempt from German tax.

(8) The application of the provisions of this Article shall not be limited by the provisions of Article 1.

Article 20

(1) A professor or teacher who makes a temporary visit to a Contracting State for a period not exceeding two years for the purpose of teaching at a university, college, school or other educational institution and who is, or immediately before such visit was, a resident of the other Contracting State shall be exempt from tax of the first-mentioned Contracting State in respect of remuneration for such teaching.

(2) The application of the provisions of this Article shall not be limited by the provisions of Article 1.

Article 21

(1) Payments received for the purpose of his maintenance, education or training by a student or business apprentice who is present in a Contracting State solely for the purpose of his education or training and who is, or immediately before being so present was, a resident of the other Contracting State shall be exempt from tax of the first-mentioned Contracting State, provided that such payments are made to him from outside that first-mentioned Contracting State.

(2) The application of the provisions of this Article shall not be limited by the provisions of Article 1.

Article 22

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Agreement shall be exempt from tax of the other Contracting State.

Article 23

(1) Tax in the Federal Republic shall be determined in the case of a resident of the Federal Republic as follows :

a) Unless the provisions of sub-paragraph *b* apply, there shall be excluded from the basis upon which German tax is imposed any item of income from sources within Japan which, according to this Agreement, may be taxed in Japan, provided that such provision shall, in respect of remuneration referred to in Article 16, apply only if such remuneration is taxable in Japan. The Federal Republic, however, retains the right to take into account in the determination of its rate of tax the items of income so excluded. The first sentence of this sub-paragraph shall in the case of income from dividends apply only to dividends paid to a company limited by shares (*Kapitalgesellschaft*) being a resident of the Federal Republic by a company limited by shares being a resident of Japan, at least 25 per cent of the voting shares of which are owned by the first-mentioned company. If according to the foregoing provisions income from sources within Japan is to be excluded from the basis upon which German tax is imposed, then the property situated in Japan giving rise to such income, if any, shall be excluded from the basis upon which the capital tax is imposed.

b) Tax payable under the laws of Japan and in accordance with this Agreement on the following items of income shall, subject to the provisions of German tax law regarding credit for foreign tax, be allowed as a credit against such German tax on income as is payable in respect of the following items of income :

1. dividends within the meaning of Article 10 paragraph 5, not dealt with in sub-paragraph *a* ;
2. interest within the meaning of Article 11 paragraph 5 ;
3. royalties within the meaning of Article 12 paragraph 3 ;
4. income to which the provisions of Article 17 paragraph 2 apply ;
5. remuneration, including pensions, to which the provisions of Article 19 paragraph 2 apply if the recipient is an individual who is not a national of Japan.

(2) Subject to the provisions of the law of Japan regarding the allowance as a credit against Japanese tax of tax payable in any country other than Japan, German tax payable, whether directly or by deduction, in accordance with the provisions of this Agreement shall be allowed as a credit against Japanese tax.

Article 24

(1) The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected there-

with which is other or more burdensome than the taxation and connected requirements to which nationals of that other Contracting State in the same circumstances are or may be subjected.

(2) The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities.

This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

(3) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned Contracting State are or may be subjected.

(4) In this Article the term "taxation" means taxes of every kind and description.

(5) The application of the provisions of this Article shall not be limited by the provisions of Article 1.

Article 25

(1) Where a resident of a Contracting State considers that the actions taken in one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, notwithstanding the remedies provided by the laws of those Contracting States, present his case to the competent authority of the Contracting State of which he is a resident.

(2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not able to arrive at an appropriate 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 not in accordance with this Agreement.

(3) 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 this Agreement. They may also consult

together for the elimination of double taxation in cases not provided for in this Agreement.

(4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Agreement.

Article 26

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes to which this Agreement applies.

(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 or the administrative practice of that or of the other Contracting State ;
- b) to supply particulars which are 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 27

Nothing in this Agreement shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

Article 28

This Agreement shall also apply to *Land* Berlin, provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Government of Japan within three months from the date of entry into force of this Agreement.

Article 29

(1) This Agreement shall be ratified and the instruments of ratification shall be exchanged at Tokyo as soon as possible.

(2) This Agreement shall enter into force on the thirtieth day after the date of exchange of the instruments of ratification and shall have effect :

In the Federal Republic :

as respects German tax levied for the assessment period in which this Agreement enters into force and for the subsequent assessment periods ;

In Japan :

as respects income derived during the taxable years ending on or after the first day of January in the calendar year in which this Agreement enters into force and as respects fixed assets tax levied for the fiscal year in which this Agreement enters into force and for the subsequent fiscal years.

Article 30

This Agreement shall continue in effect indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five 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 such event, this Agreement shall cease to be effective :

In the Federal Republic :

as respects German tax levied for the assessment periods following the assessment period in which the notice of termination is given ;

In Japan :

as respects income derived during the taxable years ending on or after the first day of January in the calendar year next following that in which the notice of termination is given and as respects fixed assets tax levied for the fiscal years following the fiscal year in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

DONE at Bonn on this 22nd day of April 1966, in six originals, two each in the Japanese, German and English languages. The Japanese and German texts are equally authentic and, in case there is any divergence of interpretation between the Japanese and German texts, the English text shall prevail.

For Japan :

Fujio UCHIDA

For the Federal Republic
of Germany :

CARSTENS
FALK

EXCHANGE OF NOTES

I

(Japanese Note)

Bonn, the 22nd of April 1966

Excellency,

I have the honour to refer to the Agreement between Japan and the Federal Republic of Germany for the Avoidance of Double Taxation with respect to Taxes on Income and to certain other Taxes which was signed today and to confirm, on behalf of the Government of Japan, the following understanding reached between the two Governments :

1. With reference to paragraph 1 of Article 2,

it is understood that a resident of Japan, under present German tax law, is not subject to German Church tax (*Kirchensteuer*) on the basis of, or with respect to, such part of his income that is not subject to German income tax (*Einkommensteuer*) or German corporation tax (*Körperschaftsteuer*) by virtue of the present Agreement.

2. With reference to paragraph 2 of Article 4,

where an individual is a resident of both Contracting States, the question shall be settled by mutual agreement taking into consideration the rules as set out in paragraph 2 of Article 4 of the OECD Model Convention.

3. With reference to paragraph 2 sub-paragraph *g* of Article 5,

it is understood that an enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it carries on supervisory activity in that other Contracting State for more than twelve months in connection with a construction, installation or assembly project which is being undertaken in that other Contracting State.

4. With reference to paragraph 3 of Article 10,

having in mind that the provisions of the said paragraph are based on the fact that in both Contracting States the rates of tax on companies' distributed profits are different from those on companies' undistributed profits,

the two Governments agree to undertake the review of the said provisions in future when any of the rates of tax on companies' profits are substantially revised in either Contracting State and the said provisions become inappropriate after such revision.

5. With reference to paragraph 5 of Article 10,

it is understood that the term "dividends", in the case of the Federal Republic, includes distributions on investment trust certificates.

6. With reference to paragraph 2 of Article 11,

the two Governments agree that if Japan, in an agreement with any other state with an economic structure comparable to that of the Federal Republic of Germany, would in future limit its taxation at the source of interest at a rate lower than the one provided for in the said provision, the two Governments will undertake to review the said provision with a view to providing the same treatment.

7. With reference to paragraph 2 of Article 12,

the two Governments agree that if Japan, in an agreement with any other state with an economic structure comparable to that of the Federal Republic of Germany, would in future limit its taxation at the source of royalties at a rate lower than the one provided for in the said provision, the two Governments will undertake to review the said provision with a view to providing the same treatment.

8. With reference to Articles 12 and 13,

it is understood that, in respect of the question whether a payment is to be treated according to Article 12 or according to Article 13 of the Agreement, Article 13 applies only to the gains from a genuine alienation of a patent or similar property without leaving the alienator any right on that property.

9. With reference to Article 16,

the term "a member of the board of directors of a company" is understood to comprise, in the case of the Federal Republic of Germany, a member of the *Vorstand* or *Aufsichtsrat* of a German *Aktiengesellschaft* and a member of the corresponding bodies or a *Geschäftsführer* of a German *Gesellschaft mit beschränkter Haftung*.

I have further the honour to request Your Excellency to be good enough to confirm the foregoing understandings on behalf of Your Excellency's Government.

This note is written in the Japanese, German and English languages, and in case there is any divergence of interpretation, the English text shall prevail.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

F. UCHIDA

His Excellency Dr. Karl Carstens
The State Secretary of the
German Federal Foreign Office

II

(German Note)

Bonn, the 22nd of April 1966

Excellency,

I have the honour to acknowledge receipt of Your Excellency's Note of today's date which reads as follows :

[See note I]

I have further the honour to confirm the understandings contained in Your Excellency's Note, on behalf of the Government of the Federal Republic of Germany.

This note is written in the German, Japanese and English languages, and in case there is any divergence of interpretation, the English text shall prevail.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

CARSTENS

His Excellency Mister Fujio Uchida
Ambassador of Japan
Bonn
