

No. 10109

BELGIUM
and
FEDERAL REPUBLIC OF GERMANY

Agreement for the avoidance of double taxation and the regulation of certain other matters with respect to taxes on income and fortune, including the business tax and land taxes (with final protocol). Signed at Brussels on 11 April 1967

Authentic texts: French, Dutch and German.

Registered by Belgium on 23 December 1969.

BELGIQUE
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE

Convention en vue d'éviter les doubles impositions et de régler certaines autres questions en matière d'impôts sur le revenu et sur la fortune, y compris la contribution des patentes et les impôts fonciers (avec protocole final). Signée à Bruxelles le 11 avril 1967

Textes authentiques : français, néerlandais et allemand.

Enregistrée par la Belgique le 23 décembre 1969.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE KINGDOM OF BELGIUM
AND THE FEDERAL REPUBLIC OF GERMANY FOR
THE AVOIDANCE OF DOUBLE TAXATION AND THE
REGULATION OF CERTAIN OTHER MATTERS WITH
RESPECT TO TAXES ON INCOME AND FORTUNE,
INCLUDING THE BUSINESS TAX AND LAND TAXES

His Majesty the King of the Belgians and

The President of the Federal Republic of Germany,

Desiring to avoid double taxation and to regulate certain other matters with respect to taxes on income and fortune, including the business tax and land taxes,

Have decided to conclude an agreement and for that purpose have appointed as their Plenipotentiaries:

His Majesty the King of the Belgians:

His Excellency Mr. Pierre Harmel, Minister for Foreign Affairs of the Kingdom of Belgium;

The President of the Federal Republic of Germany:

His Excellency Mr. Georg Federer, Ambassador of the Federal Republic of Germany at Brussels,

Who, having exchanged their full powers, found in good and due form, have agreed as follows:

¹ Came into force on 30 July 1969, the fifteenth day following the exchange of the instruments of ratification, which took place at Bonn on 15 July 1969, in accordance with article 30.

I. SCOPE OF THE AGREEMENT

Article 1

PERSONAL SCOPE

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

Article 2

TAXES COVERED

(1) This Agreement shall apply to taxes on income and on fortune imposed on behalf of each Contracting State or of the *Länder*, political subdivisions or local authorities thereof, irrespective of the manner in which they are levied.

(2) There shall be regarded as taxes on income and on fortune all taxes imposed on total income, on total fortune, or on elements of income or of fortune, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

(3) The existing taxes to which the Agreement shall apply are, in particular:

1. In the case of Belgium:

(a) The tax on individuals (*l'impôt des personnes physiques*);

(b) The company tax (*l'impôt des sociétés*);

(c) The tax on legal persons (*l'impôt des personnes morales*);

(d) The non-residents' tax (*l'impôt des non-résidents*), including taxes collected in advance (*précomptes*) and supplements to taxes collected in advance (*compléments de précomptes*), surcharges (*centimes additionnels*) on the aforementioned taxes and advance collections, and the additional communal tax (*taxe communale additionnelle*) to the tax on individuals;

2. In the case of the Federal Republic of Germany:

- (a) The income tax (*Einkommensteuer*);
- (b) The corporation tax (*Körperschaftsteuer*);
- (c) The tax on fortune (*Vermögensteuer*);
- (d) The land tax (*Grundsteuer*);
- (e) The business tax (*Gewerbesteuer*)
irrespective of the manner in which they are levied.

(4) The provisions of the Agreement relating to the taxation of business profits shall also apply by analogy to the business tax levied on a basis other than profit or fortune.

(5) The Agreement shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes. At the end of each year, the competent authorities of the Contracting States shall notify each other of any changes which have been made in their respective taxation laws.

II. DEFINITIONS

Article 3

GENERAL DEFINITIONS

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

1. The term “Belgium”, when used in a geographical sense, means the territory of the Kingdom of Belgium; the term “Federal Republic of Germany”, when used in the same sense, means the territory in which the Basic Law for the Federal Republic of Germany is in force;

2. The terms “a Contracting State” and “the other Contracting State” mean Belgium or the Federal Republic of Germany, as the context requires;

3. The term “person” comprises an individual and a company;

4. The term “company” means any body corporate or any entity which is liable to taxation as such in respect of its income or its fortune in the State of which it is a resident, as well as general partnerships (*offenen Handelsgesellschaften*), limited partnerships (*Kommanditgesellschaften*) and

shipowning partnerships (*Partenreedereien*) under the law of the Federal Republic of Germany;

5. 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;

6. The term “competent authorities” means:

- (a) In the case of Belgium, the authority which is competent under its national laws, and
- (b) In the case of the Federal Republic of Germany, the Federal Minister of Finance.

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

Article 4

FISCAL DOMICILE

(1) For the purposes of this Agreement, the term “resident of a Contracting State” means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature; it also means any general partnership, limited partnership or ship-owning partnership under the law of the Federal Republic of Germany which has its place of effective management in that State, as well as any company or partnership under Belgian law — other than a company or partnership limited by shares (*société par actions*) — which has elected to have its profits subjected to the tax on individuals.

(2) Where by reason of the provisions of paragraph (1) an individual is a resident of both Contracting States, then this case shall be determined in accordance with the following rules:

1. He shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a

resident of the Contracting State with which his personal and economic relations are closest (centre of vital interests);

2. If the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

3. If he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;

4. If he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement;

5. Notwithstanding the provisions of items 1, 2 and 3 above:

(a) Wage-earners and salaried persons who are employed on means of transport operated in international traffic and whose only permanent home is aboard the said means of transport shall be deemed to be residents of the Contracting State in which the place of effective management of the enterprise operating the said means of transport is situated;

(b) Boatmen whose only permanent home is aboard a boat which they operate in inland waterways transport shall be deemed to be residents of the Contracting State of which they are nationals.

(3) Where by reason of the provisions of paragraph (1) a company is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

(4) If the place of effective management of a shipping enterprise or of an inland waterways transport enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State of which the sole or principal operator is a resident.

Article 5

PERMANENT ESTABLISHMENT

(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:
1. A place of management;
 2. A branch;
 3. An office;
 4. A factory;
 5. A workshop;
 6. A mine, quarry or other place of extraction of natural resources;
 7. A building site or construction or assembly project which exists for more than nine months.
- (3) The term “permanent establishment” shall not be deemed to include:
1. The use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 2. The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 3. The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 4. The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
 5. 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 — other than an agent of an independent status to whom paragraph (5) applies — acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment of the enterprise in the first-mentioned State if he has, and habitually exercises in that 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 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.

This provision shall not apply to an agent acting on behalf of an insurance enterprise who has and habitually exercises an authority to conclude contracts in the name of that enterprise.

(6) The fact that an enterprise of a Contracting State controls or is controlled by an enterprise of the other Contracting State, or an enterprise which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either enterprise a permanent establishment of the other.

III. TAXATION OF INCOME

Article 6

INCOME FROM IMMOVABLE PROPERTY

(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 landed 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, boats 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

BUSINESS PROFITS

(1) The profits of an enterprise of a Contracting State shall be taxable only in that 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 State but only so much of them as is attributable to that permanent establishment.

(2) Without prejudice to the application of paragraph (3), 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 acting wholly independently.

(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 State in which the permanent establishment is situated or elsewhere.

(4) Where there are no regular accounts or other records from which it is possible to determine how much of the profits of an enterprise of a Contracting State is attributable to its permanent establishment situated in the other Contracting State, the tax in that other State may be determined in accordance with the law of that other State, in particular, by taking as a basis the normal profits of similar enterprises of that other State carrying on the same or similar activities under the same or similar conditions.

(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) Where profits include items of income which are dealt with separately in other articles of this Agreement, then the provisions of this article shall

not affect the provisions of those articles as concerns the taxation of such items of income.

Article 8

PROFITS OF SHIPPING, INLAND WATERWAYS TRANSPORT AND AIR TRANSPORT ENTERPRISES AND RAILWAYS

- (1) Notwithstanding the provisions of article 7, paragraphs (1) to (6):
1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated;
 2. Profits from the operation of boats engaged in inland waterways transport shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
- (2) Paragraph (1) shall also apply to a railway of a Contracting State whose activities extend to the territory of the other State.

Article 9

INTERDEPENDENT ENTERPRISES

Where an enterprise of a Contracting State participates directly or indirectly in the management, control or financing of an enterprise of the other Contracting State, or where the same persons participate directly or indirectly in the management, control or financing 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

DIVIDENDS

- (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 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 State, but the tax so charged shall not exceed 15 per cent of the gross amount of the said dividends.

(3) Notwithstanding the provisions of paragraph (2), during such time as in the Federal Republic of Germany the corporation tax continues to be levied on distributed profits at a rate at least 20 percentage points lower than on undistributed profits, the tax levied on dividends in that State may amount to 25 per cent of the gross amount of the dividends, if:

1. The dividends are derived from a joint-stock company (*Kapitalgesellschaft*) which is a resident of the Federal Republic of Germany and are received by a company limited by shares or a limited-liability partnership (*société de personnes à responsabilité limitée*) which is a resident of Belgium, and if
2. The company or partnership which is a resident of Belgium holds directly or indirectly at least 25 per cent of the voting stock or voting shares of the joint-stock company which is a resident of the Federal Republic of Germany.

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

The provisions of paragraph (2) shall not limit the taxation of companies which are residents of Belgium in the event of redemption of their own stock or shares or division of the assets.

(5) The term "dividends" as used in this article means income from shares, *jouissance* shares or *jouissance* rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights treated in the same way as income from shares under the taxation law of the State of which the company making the distribution is a resident.

The said term includes:

1. Income — even if paid in the form of interest — which is taxable as income from capital invested by partners in partnerships — other than partnerships limited by shares — which are residents of Belgium;
2. Income derived by a "*stiller Gesellschafter*" from his participation

which is treated in the Federal Republic of Germany as investment income.

(6) The rate limitations provided for in paragraphs (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 State may not — except in the case referred to in paragraph (6) — impose any tax on the dividends paid by that company to a resident of the first-mentioned State, or subject the company's undistributed profits to any additional taxation, even if the dividends distributed or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11

INTEREST

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

(2) However, such interest may be taxed in the Contracting State in which it arises, and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the amount of the interest.

(3) Notwithstanding the provisions of paragraph (2), interest shall not be taxed in the Contracting State in which it arises if it is paid to an enterprise of the other Contracting State.

The preceding sub-paragraph shall not apply in the case of:

1. Interest on bonds and debentures and other loan securities, with the exception of trade bills representing commercial debt-claims;
2. Interest paid by a company which is a resident of a Contracting State to a company, being a resident of the other Contracting State, which holds directly or indirectly at least 25 per cent of the voting stock or voting shares of the first-mentioned company.

(4) 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, subject to the provisions of the following sub-paragraph, debt-claims or deposits of every kind, as well as lottery bond prizes and all other income treated in the same way as income from money lent or deposited under the taxation law of the State in which the income arises.

The said term does not include interest which, in accordance with article 10, paragraph (5), second sub-paragraph, item 1, is treated as dividends.

(5) The rate limitation and the exemption provided for in paragraphs (2) and (3) 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 loan, debt-claim or deposit from which the interest arises is effectively connected. In such a case, the provisions of article 7 shall apply.

(6) Interest shall be deemed to arise in a Contracting State when the payer is that State itself, one of its *Länder*, political subdivisions or local authorities, or a resident of that 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 connexion with which the indebtedness on which the interest is paid was incurred, and the interest is borne as such by the permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

(7) 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 or deposit 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 rate limitation and the exemption provided for in paragraphs (2) and (3) shall apply only to the last-mentioned amount. In that case, the excess amount of the interest may be taxed in the Contracting State in which the interest arises, in accordance with the law of that State; but — without prejudice to the application of article 9 — the tax levied on the said excess amount shall not exceed that which would be applicable in the case of dividends.

Article 12

ROYALTIES

- (1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.
- (2) 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, not being immovable property within the meaning of article 6, or for information concerning industrial, commercial or scientific experience.
- (3) The provisions of paragraph (1) 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.
- (4) Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, one of its *Länder*, political subdivisions or local authorities, or a resident of that 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 connexion with which the contract giving rise to the royalties was concluded, and the royalties are borne as such by the permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.
- (5) 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 normal amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of paragraph (1) shall apply only to the last-mentioned amount. In that case, the excess amount of the royalties may be taxed in the Contracting State in which the royalties arise, in accordance with the

law of that State; but — without prejudice to the application of article 9 — the tax levied on the said excess amount shall not exceed that which would be applicable in the case of dividends.

(6) If, in the case referred to in paragraph (5), the enterprise paying the royalties is effectively dependent on or controlled by the enterprise receiving the royalties or vice versa, or if both the said enterprises are effectively dependent on or controlled by a third enterprise or by enterprises which are juridically distinct but are dependent members of a single group, the normal amount of the royalties may be determined on the basis of the cost of acquisition, improvement and protection of the rights, property or information giving rise to the royalties, plus a normal profit, where the said normal amount cannot be determined on the basis of other and more suitable criteria, in particular by comparison with royalties freely agreed upon between genuinely independent enterprises for similar uses, rights or information.

Article 13

CAPITAL GAINS

(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 the other State. The rules laid down in article 7, paragraphs (2) and (3), shall apply to the determination of the amount of such gains.

However, gains from the alienation of movable property of the kind referred to in article 22, paragraph (3), shall be taxable only in the Contracting State in which such movable property is taxable according to the said article.

(3) Gains from the alienation of any other property shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

PROFESSIONAL SERVICES

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

DEPENDENT PERSONAL SERVICES

(1) Salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that 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 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 taxable only in the first-mentioned State if:

1. It is paid in respect of an activity exercised in the other State for a period or periods not exceeding in the aggregate 183 days — including normal interruptions of work — in the calendar year, and
2. The remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
3. The remuneration is not borne as such by a permanent establish-

ment or a fixed base which the employer has in the other State.

- (3) Notwithstanding the provisions of paragraphs (1) and (2):
1. Salaries, wages and other remuneration derived by persons who work in the frontier zone of a Contracting State and have their permanent home, to which they normally return each day, in the frontier zone of the other Contracting State shall be taxable only in that other State;
 2. Remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic, or aboard a boat engaged in inland waterways transport, shall be deemed to pertain to an activity exercised in the Contracting State in which the place of effective management of the enterprise is situated and may be taxed in that State.
- (4) The provisions of this article shall not apply to income to which articles 16, 18, 19 and 20 apply.

Article 16

DIRECTORS OF COMPANIES LIMITED BY SHARES OR JOINT-STOCK COMPANIES

- (1) Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or similar organ of a company limited by shares or other joint-stock company which is a resident of the other Contracting State may be taxed in that other State.
- (2) The provisions of paragraph (1) shall also apply to remuneration derived by a general partner (*associé commandité*) in a partnership limited by shares (*sociétés en commandite par actions*) which is a resident of Belgium or by a member of the board (*Vorstandsmitglied*) or chief executive (*Geschäftsführer*) of a joint-stock company which is a resident of the Federal Republic of Germany.
- (3) Remuneration paid to a person referred to in paragraphs (1) and (2) in respect of a daily activity exercised in a permanent establishment situated in the Contracting State of which the company is not a resident may be taxed in that State if the remuneration is borne as such by the permanent establishment.

Article 17

INDEPENDENT ARTISTS AND ATHLETES

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

Article 18

PENSIONS

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 taxable only in that State.

Article 19

PUBLIC REMUNERATION AND PENSIONS

(1) Remuneration, including pensions, paid by, or out of funds created by, a Contracting State or a *Land*, a political subdivision, a local authority or a public corporation thereof in respect of services rendered to that State, *Land*, political subdivision, local authority or corporation may be taxed in that State.

This provision shall not apply if the recipient of such income is a national of the other State but is not at the same time a national of the first-mentioned State.

(2) Paragraph (1) shall not apply to remuneration or pensions in respect of services rendered in connexion with any trade or business carried on by a Contracting State or a *Land*, a political subdivision, a local authority or a public corporation thereof.

However, it shall apply to remuneration and pensions paid by the following authorities and organizations to their employees:

(a) In the case of Belgium:

The Société nationale des Chemins de fer belges;

The Banque Nationale de Belgique;
The Régie des Télégraphes et des Téléphones;

(b) In the case of the Federal Republic of Germany:

The Deutsche Bundesbank;
The Deutsche Bundesbahn;
The Deutsche Bundespost.

(3) Pensions and other recurring or non-recurring payments which are paid pursuant to the social legislation of a Contracting State by that State or a *Land*, a political subdivision, a local authority or a public corporation thereof may be taxed in that State.

(4) Compensation paid in the form of pensions, annuities and other recurring or non-recurring payments by a Contracting State or a *Land*, a political subdivision or a local authority thereof in respect of damages sustained as a result of hostilities or political persecution shall be taxable only in that State.

Article 20

TEACHERS AND STUDENTS

(1) Any remuneration paid to professors and other teachers who are residents of a Contracting State and who are temporarily present in the other Contracting State for the purpose of teaching or carrying on scientific research at a university or other non-profit educational or research institution in that State for a period not exceeding two years shall be taxable only in the first-mentioned State.

(2) Payments which a student, apprentice or business trainee who is or was formerly a resident of a Contracting State and who is present in the other Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that other State, provided that such payments are made to him from sources outside that other State.

Article 21

INCOME NOT EXPRESSLY MENTIONED

A resident of a Contracting State shall not be liable to tax in the other

Contracting State in respect of items of income which are not expressly mentioned in the foregoing articles.

IV. TAXATION OF FORTUNE

Article 22

(1) Fortune represented by immovable property, as defined in article 6, paragraph (2), may be taxed in the Contracting State in which such property is situated.

(2) Subject to the provisions of paragraph (3), fortune represented by movable property forming part of the business property of a permanent establishment of an enterprise, or by movable property pertaining to a fixed base used for the performance of professional services may be taxed in the Contracting State in which the permanent establishment or fixed base is situated.

(3) Ships and aircraft operated in international traffic and boats engaged in inland waterways transport and movable property pertaining to the operation of such ships, aircraft and boats, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated; the same shall apply to the plant of railways as specified in article 8, paragraph (2).

(4) All other elements of fortune of a resident of a Contracting State shall be taxable only in that State.

V. METHODS FOR AVOIDANCE OF DOUBLE TAXATION

Article 23

(1) In the case of residents of the Federal Republic of Germany, double taxation shall be avoided as follows:

1. Income arising in Belgium — with the exception of income as specified in item 2 below and in article 12, paragraphs (5) and (6) — and elements of fortune situated in Belgium which, according to the foregoing articles, may be taxed in that State shall be exempt from taxes in the Federal Republic of Germany. This exemption shall not limit the right of the Federal

Republic of Germany to take into account, in determining the rate of its taxes, the income and elements of fortune so exempted.

2. The tax levied in Belgium in accordance with this Agreement:

(a) On dividends to which the rule laid down in article 10, paragraph (2), applies, with the exception of income from capital invested in a general partnership or a limited partnership which is a resident of Belgium, and

(b) On interest to which the rule laid down in article 11, paragraph (2), applies

shall be allowed as a deduction from the tax on the same income levied in the Federal Republic of Germany. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is proportionate to the income which may be taxed in Belgium.

3. Notwithstanding item 2 (a), dividends of a company limited by shares being a resident of Belgium which are received by a joint-stock company, being a resident of the Federal Republic of Germany and holding at least 25 per cent of the voting stock or voting shares of the first-mentioned company, shall be subject to the rule laid down in item 1, provided that not more than 20 per cent of the profits of the first-mentioned company is composed of gross dividends, less foreign tax, arising in third States.

For the purposes of the preceding sub-paragraph, dividends which, by virtue of an agreement between the Federal Republic of Germany and a third State for the avoidance of double taxation, would be exempt from taxes in the Federal Republic of Germany if they had been paid under the same conditions directly to the joint-stock company being a resident of the Federal Republic of Germany shall not be deemed to be dividends arising in a third State.

The aforementioned stock or shares of a company being a resident of Belgium shall, under the same conditions, be exempt from the tax on fortune levied in the Federal Republic of Germany.

(2) In the case of residents of Belgium, double taxation shall be avoided as follows:

1. Income arising in the Federal Republic of Germany — with the

exception of income as specified in items 2 and 3 — and elements of fortune situated in the Federal Republic of Germany which, according to the foregoing articles, may be taxed in that State shall be exempt from taxes in Belgium. Except in the case of income as specified in article 19, paragraph (4), this exemption shall not limit the right of Belgium to take into account, in determining the rate of its taxes, the income and elements of fortune so exempted.

2. In the case of dividends to which the rule laid down in article 10, paragraph (2) or (3), applies, in the case of interest to which the rule laid down in article 11, paragraph (2) or (7), applies and in the case of excess amounts of royalties as specified in article 12, paragraph (5) or (6), the fixed quota of foreign tax provided for under Belgian law shall be allowed as a deduction, under the conditions laid down by the said law, from the tax on individuals in respect of dividends or from the tax on individuals or the company tax in respect of such interest or excess amounts of royalties as may be taxed in the Federal Republic of Germany in accordance with German law and with article 11, paragraph (2) or (7), or article 12, paragraph (5) or (6).

3. (a) Where a company which is a resident of Belgium owns stock or shares in a joint-stock company which is a resident of the Federal Republic of Germany, dividends paid by the last-mentioned company to the first-mentioned company which are subject to the rule laid down in article 10, paragraph (2) or (3), shall be exempt from the company tax in Belgium, to the extent that exemption would be granted if both companies were residents of Belgium; this provision shall not preclude the levying, in respect of such dividends, of the movable property tax collected in advance (*précompte mobilier*) payable under Belgian law, but the said dividends — with the exception of distributions upon liquidation and bonus shares — shall be exempt, to the same extent, from the said tax collected in advance at the time when they are passed on to the shareholders of the company which is a resident of Belgium.

(b) Where stock or shares in a joint-stock company which is a resident of the Federal Republic of Germany and which is liable to the corporation tax in that State have been held throughout the said company's financial year by a company which is a resident of Belgium as sole owner, the last-mentioned company may also be exempted from the movable property tax collected in advance payable under Belgian law in respect of dividends on the said stock or shares, provided that it makes written application for such exemption within the prescribed time for the submission of its annual tax

return; in such a case, the dividends so exempted may not, when they are passed on to the shareholders of the last-mentioned company, be deducted from the distributed dividends which are subject to the movable property tax collected in advance. This provision shall not apply if the Belgian company has formally elected to have its profits subjected to the tax on individuals.

VI. SPECIAL PROVISIONS

Article 24

NON-DISCRIMINATION

(1) The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

(2) The term "nationals" means:

1. In the case of Belgium, all individuals possessing Belgian nationality;
2. In the case of the Federal Republic of Germany, all Germans within the meaning of article 116, paragraph 1, of the Basic Law for the Federal Republic of Germany;
3. All companies deriving their status as such from the law in force in a Contracting State.

(3) Stateless persons shall not be subjected in a Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that State in the same circumstances are or may be subjected.

(4) 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 State than the taxation levied on enterprises of that other State carrying on the same activities.

This provision shall not be construed as obliging a Contracting State to grant, in connexion with the taxation on the permanent establishment of an enterprise carried on by an individual who is a resident 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.

(5) 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 State are or may be subjected.

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

Article 25

MUTUAL AGREEMENT PROCEDURE

(1) Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in double taxation not in accordance with the Agreement, he may, without prejudice to the remedies provided by the national laws of those States, make written application for a review of the said taxation to the competent authority of the Contracting State of which he is a resident. Even where the taxation found to be not in accordance with the Agreement can no longer be annulled or reduced under the laws of the Contracting State in which it was imposed, such application may still be submitted within two years from the date of notification or of deduction at the source of the second taxation. If the person concerned has, under the laws of a Contracting State, contested the taxation imposed on him in that State, the aforementioned time-limit shall not expire until one year after the date on which the taxation has become final.

(2) The competent authority referred to in paragraph (1) shall endeavour, if the objection appears to it to be justified and if it is not itself 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 double taxation not in accordance with the Agreement.

(3) The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the application of the Agreement.

(4) The competent authorities of the Contracting States shall agree on the administrative measures required for the implementation of the provisions of the Agreement, and in particular on the evidence to be produced by residents of each State in order to enjoy in the other State the tax exemptions or reductions provided for in this Agreement.

Article 26

EXCHANGE OF INFORMATION

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of the Agreement and of the domestic laws of the Contracting States concerning taxes covered by the Agreement, in so far as the taxation thereunder is in accordance with the Agreement.

Any information so obtained shall be treated as secret; it shall be disclosed — other than to the taxpayer or his agent — only to the persons or authorities concerned with the assessment or collection of the taxes which are the subject of the Agreement and with appeals relating thereto, and to the judicial authorities for the purpose of criminal prosecution.

(2) In no case shall the provisions of paragraph (1) be construed so as to impose on a Contracting State the obligation:

1. To carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;
2. 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;
3. 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 (*ordre public*).

Article 27

ASSISTANCE FOR THE COLLECTION OF TAXES

(1) The Contracting States undertake to afford each other aid and assistance for the notification and collection of the taxes referred to in article 2, namely, the principal, increases, surcharges, interest, costs and fines not of a criminal character.

(2) Upon application by the competent authority of a Contracting State, notification and collection of the tax claims referred to in paragraph (1) which are payable in that State shall be undertaken by the competent authority of the other Contracting State, in accordance with the laws and regulations applicable to the notification and collection of like tax claims of the last-mentioned State. The said claims shall not be given precedence in the State applied to, and the latter shall not be required to levy execution by measures which are not authorized by the laws and regulations of the applicant State.

(3) The applications referred to in paragraph (2) shall be accompanied by an official copy of the enforceable instruments, together with an official copy of any decisions which have acquired final effect.

(4) In the case of tax claims which are still subject to appeal, the competent authority of a Contracting State may, in order to safeguard the rights of that State, request the competent authority of the other Contracting State to take the conservatory measures provided by the law of the last-mentioned State; the provisions of paragraphs (1) to (3) shall apply to such measures *mutatis mutandis*.

(5) Article 26, paragraph (1), second sub-paragraph, shall also apply to any information furnished pursuant to this article to the competent authorities of the State applied to.

Article 28

MISCELLANEOUS PROVISIONS

(1) Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions and consulates under the general rules of international law or under the provisions of special agreements.

(2) Nothing in this Agreement shall affect the provisions of article 18, paragraph 2, and article 31, paragraph 2, of the Agreement between the Federal Republic of Germany and the Kingdom of Belgium concerning the establishment of adjoining national frontier control offices, frontier control on trains in motion and the designation of joint and interchange railway stations for traffic across the Belgian-German frontier, signed at Brussels on 15 May 1956.

Article 29

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 Belgium within three months from the date of entry into force of this Agreement.

VII. FINAL PROVISIONS

Article 30

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

(2) The Agreement shall enter into force on the fifteenth day following the date of the exchange of instruments of ratification and shall apply:

1. In Belgium:

- (a) To taxes payable by deduction at the source in respect of income accruing or paid after 31 December 1965;
- (b) To other taxes levied on income for taxable periods ending after 31 December 1965;

2. In the Federal Republic of Germany:

- (a) To taxes payable by deduction at the source in respect of income accruing after 31 December 1965;
- (b) To other taxes levied for the year 1966 and subsequent years.

Article 31

The Agreement shall continue in effect indefinitely, but either Contracting State may, on or before the thirtieth day of June of any calendar

year beginning with the fifth year after the year of its ratification, give written notice of termination, through the diplomatic channel, to the other Contracting State. In the event of notice of termination given before the first day of July of any such year, the Agreement shall apply for the last time:

1. In Belgium:

- (a) To taxes payable by deduction at the source in respect of income accruing or paid on or before the thirty-first day of December of the year in which notice of termination is given;
- (b) To other taxes levied on income for taxable periods ending on or before the thirty-first day of December of the same year;

2. In the Federal Republic of Germany:

- (a) To taxes payable by deduction at the source in respect of income accruing on or before the thirty-first day of December of the year in which notice of termination is given;
- (b) To other taxes levied for the same year.

IN WITNESS WHEREOF the Plenipotentiaries of the two States have signed this Agreement and have thereto affixed their seals.

DONE at Brussels, on 11 April 1967, in duplicate in the German, French and Dutch languages, the three texts being equally authentic.

For the Kingdom of Belgium:

Pierre HARMEL

For the Federal Republic of Germany:

Georg FEDERER

FINAL PROTOCOL

On signing the Agreement concluded this day between the Federal Republic of Germany and the Kingdom of Belgium for the avoidance of double taxation and the regulation of certain other matters with respect to taxes on income and fortune, including the business tax and land taxes, the

undersigned Plenipotentiaries have agreed upon the following provisions, which form an integral part of this Agreement.

(1) *Ad* article 4, paragraph (1)

The term “the law of that State” means the law of that State as amended or supplemented by any relevant international agreements.

(2) *Ad* article 5, paragraph (2), item 7

If in an agreement for the avoidance of double taxation concluded by Belgium with an adjacent State the minimum period of existence of a building site or construction or assembly project constituting a permanent establishment is set at twelve months, that period shall be substituted for the period of nine months specified in article 5, paragraph (2), item 7.

(3) *Ad* article 6

During such time as the supplement to the immovable property tax collected in advance (*complément de précompte immobilier*) payable in Belgium on the cadastral income from immovables which are taxable in Belgium in accordance with article 6 is levied at a fixed rate exceeding 10 per cent:

1. The said supplement to the immovable property tax collected in advance payable by residents of the Federal Republic of Germany who are subject to the non-residents' tax in accordance with articles 148 and 149 of the *Code des impôts sur les revenus* shall be refunded to the extent that it exceeds the non-residents' tax payable by the persons concerned;
2. The said supplement to the immovable property tax collected in advance payable by other residents of the Federal Republic of Germany shall, if necessary, be limited in such a way that the total charge constituted by the said supplement and by that part of the immovable property tax collected in advance which is allowed as a deduction from the tax on individuals does not exceed the quota of the non-residents' tax, calculated notionally on the total income arising or received in Belgium, which would be proportionate to the said cadastral income.

(4) *Ad* article 7, paragraph (4)

In the case referred to in this provision, the competent authorities of the two Contracting States may also reach agreement with a view to determining the profits to be attributed to the permanent establishment of an insurance enterprise, on the basis of an apportionment of its total profits to its various establishments, in accordance with criteria established by mutual agreement.

(5) *Ad* article 10, paragraph (2)

Notwithstanding this provision, during such time as in accordance with Belgian law the movable property tax collected in advance payable on dividends paid by a company which is a resident of Belgium is calculated at the rate of 15 per cent on eighty-five-seventieths of the gross amount thereof, less that part of any dividends received by the said company which is deemed to be passed on, the tax levied in that State on such dividends paid to a resident of the Federal Republic of Germany shall be not more than 15 per cent of the taxable amount so determined. Dividends paid by a company which is a resident of Belgium to a resident of the Federal Republic of Germany shall be exempt from the supplement to the movable property tax collected in advance provided for under Belgian law.

(6) *Ad* article 11, paragraph (2)

Interest arising in Belgium and paid to a resident of the Federal Republic of Germany shall, when subject to the rule laid down in this provision, be exempt from the supplement to the movable property tax collected in advance provided for under Belgian law.

(7) *Ad* article 11, paragraph (3)

Interest shall be deemed to be paid to an enterprise when it is included in the profits referred to in article 7; this shall apply, in particular, to interest paid to public banking institutions which are residents of a Contracting State, including the Banque Nationale de Belgique and the Deutsche Bundesbank.

(8) *Ad* article 10, paragraph (3), item 2, and article 11, paragraph (3), second sub-paragraph, item 2

A company or partnership which is a resident of a Contracting State

shall, in particular, be deemed to hold indirectly stock or shares in a company which is a resident of the other Contracting State if — and in the proportion that — it participates in the capital of a third company which holds the said stock or shares.

(9) *Ad* articles 11 and 12

Where interest or royalties paid by a company which is a resident of the Federal Republic of Germany to a resident of Belgium are deemed to be dividends under the law of the Federal Republic of Germany, the rate of the tax levied by deduction at the source in the last-mentioned State shall be limited in accordance with article 10, paragraph (2).

(10) *Ad* article 13, paragraph (3), and article 22, paragraph (4)

It is understood that these provisions shall also apply to gains from the alienation of stock or shares in a company limited by shares or other joint-stock company and to the fortune represented by such stock or shares if the said stock or shares do not form part of the business property of a permanent establishment which a resident of a Contracting State has available to him in the other Contracting State.

(11) *Ad* article 15, paragraph (3), item 1

The frontier zone of each Contracting State shall be bounded by an imaginary line, on either side of the common frontier of the two States, running at a distance of twenty kilometres from the frontier, it being understood that municipalities intersected by the said imaginary line shall be included in the frontier zone.

(12) 1. *Ad* article 23, paragraph (1), item 1

This provision shall not apply to income which may be taxed in Belgium according to article 9.

2. *Ad* article 23, paragraph (1), items 1 and 2

(a) Where the resident of the Federal Republic of Germany is a general partnership, a limited partnership or a ship-owning partnership, the provisions of article 23, paragraph (1), items 1 and 2, shall apply to the partners, whether they are residents of the Federal Republic of Germany or not, to the extent that the said partners are liable to taxation in that State in respect of the income which they derive from the partnership or in respect of their participation in its fortune;

(b) Where the resident of the Federal Republic of Germany is a partner

in a general partnership or limited partnership which is a resident of Belgium, the provisions of article 23, paragraph (1), item 1, shall apply to that part of its profits which may be taxed in the Federal Republic of Germany under the law of that State and which, in accordance with the Agreement and with Belgian law, may be taxed in Belgium in the name of the partnership or of the said partner;

3. *Ad* article 23, paragraph (1)

In the case of the excess amount of interest referred to in article 11, paragraph (7), and in the case of the excess amount of royalties referred to in article 12, paragraphs (5) and (6), double taxation shall be avoided in the Federal Republic of Germany in accordance with the provisions of the Agreement applicable to the income to which the excess amount may be assimilated under the law of that State.

Article 23, paragraph (1), item 3, shall not apply to payments having the character of expenses which are deductible for the purpose of the application of the tax referred to in article 2, paragraph (3), item 1 (b).

(13) A. *Ad* article 23, paragraph (2), item 1

This provision shall not apply to income which may be taxed in the Federal Republic of Germany according to article 9.

B. *Ad* article 23, paragraph (2), items 1 and 2

1. Where the resident referred to in article 23, paragraph (2), is a company or partnership — other than a company or partnership limited by shares — which is a resident of Belgium:

(a) The exemption provided for in item 1 shall also apply to the members of the said company or partnership, whether they are residents of Belgium or not, to the extent that the income or elements of fortune of the said company or partnership which may be taxed in the Federal Republic of Germany according to the Agreement may also be taxed in Belgium under Belgian law — otherwise than as income from invested capital — in the name of the said members;

(b) The deduction provided for in item 2 shall also apply to the same extent to the members of the said company or partnership if the company has elected to have its profits subjected to the tax on individuals.

2. The exemption provided for in article 23, paragraph (2), item 1, shall not apply to the income of a resident of Belgium who is a partner in a general partnership, a limited partnership or a ship-owning partnership which is a resident of the Federal Republic of Germany if such income is not income which may be taxed in the last-mentioned State under the law of that State.

(14) *Ad* article 23, paragraph (1), item 1, and paragraph (2), item 1

Where, according to the national law of a Contracting State, losses suffered by an enterprise of that State through a permanent establishment situated in the other State are, for the purpose of the taxation of the said enterprise, actually deducted from its profits which may be taxed in the first-mentioned State, the exemption provided for in article 23, paragraph (1), item 1, and paragraph (2), item 1, shall not apply in the first-mentioned State to the profits for other taxable periods attributable to that permanent establishment, to the extent that the said profits have also been exempted from taxes in the other State as offsetting the said losses.

(15) *Ad* article 24

The provisions of this article shall not be construed:

1. So as to prevent:

- (a) A Contracting State from taxing at the fixed or minimum rates provided for under its national law and applicable to non-residents of that State, whether they are nationals of that State or not, income which in accordance with the Agreement may be taxed in that State in the name of residents of the other State;
- (b) A Contracting State from taxing at the rate prescribed by its national law the total amount of the profits attributable to the permanent establishment which a company being a resident of the other State or a body of persons having its place of management in that other State has available to it in the first-mentioned State, provided that the said rate does not exceed the maximum rate applicable to the total amount or to a part of the profits of companies which are residents of the first-mentioned State;

2. So as to oblige a Contracting State to apply to dividends received by a permanent establishment carried on in that State by a company which is a resident of the other State the same rules which would be applied under the national law of the first-mentioned State to

dividends received by a company which is a resident of the first-mentioned State.

(16) The Minister of Finance of the two Contracting States shall communicate with each other directly for the purposes of the Agreement.

(17) Nothing in the Agreement shall be construed so as to prevent a Contracting State from applying the provisions of its national law for the prevention of fiscal evasion and fiscal fraud.

DONE at Brussels, on 11 April 1967, in duplicate in the German, French and Dutch languages, the three texts being equally authentic.

For the Kingdom of Belgium:
Pierre HARMEL

For the Federal Republic of Germany:
Georg FEDERER