

No. 15744

**FEDERAL REPUBLIC OF GERMANY
and
TUNISIA**

**Convention for the avoidance of double taxation with respect
to taxes on income and on fortune (with final protocol).
Signed at Tunis on 23 December 1975**

Authentic texts: German and French.

Registered by the Federal Republic of Germany on 16 June 1977.

**RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
TUNISIE**

**Convention en vue d'éviter les doubles impositions en
matière d'impôts sur le revenu et sur la fortune (avec
protocole final). Signée à Tunis le 23 décembre 1975**

Textes authentiques : allemand et français.

Enregistré par la République fédérale d'Allemagne le 16 juin 1977.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE FEDERAL REPUBLIC OF GERMANY
AND THE REPUBLIC OF TUNISIA FOR THE AVOIDANCE OF
DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME
AND ON FORTUNE

The Federal Republic of Germany and the Republic of Tunisia,
Desiring to avoid double taxation with respect to taxes on income and on fortune,
Have agreed as follows:

Article 1. PERSONAL SCOPE

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

Article 2. TAXES COVERED

1. This Convention shall apply to taxes on income and on fortune imposed on behalf of each Contracting State or of its *Länder*, political subdivisions or local authorities, 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 Convention shall apply are, in particular:

(a) in the case of Tunisia:

the business tax (*l'impôt de la patente*),

the tax on profits from non-commercial occupations (*l'impôt sur les bénéfices des professions non commerciales*),

the tax on salaries and wages (*l'impôt sur les traitements et les salaires*),

the agricultural tax (*l'impôt agricole*),

the tax on income from securities (*l'impôt sur le revenu des valeurs mobilières*),

the tax on income from debt-claims deposits, security deposits and current accounts [*l'impôt sur le revenu des créances, dépôts, cautionnements et comptes courants (IRC)*], and

the State tax on personal income (*la contribution personnelle d'Etat*), hereinafter referred to as "Tunisian tax";

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

the income tax (*Einkommensteuer*) including the surcharge (*Ergänzungsabgabe*) thereon,

the corporation tax (*Körperschaftsteuer*) including the surcharge (*Ergänzungsabgabe*) thereon,

¹ Came into force on 19 November 1976, i.e. on the fifteenth day following the date (4 November 1976) of the exchange of the instruments of ratification, which took place at Bonn, in accordance with article 29 (2).

the fortune tax (*Vermögensteuer*), and
the trade tax (*Gewerbsteuer*),
hereinafter referred to as “German tax”.

4. The Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes.

Article 3. GENERAL DEFINITIONS

1. In this Convention, unless the context otherwise requires:

(a) The terms “a Contracting State” and “the other Contracting State” mean the Federal Republic of Germany or Tunisia, as the context requires, and, when used in a geographical sense, mean the territory in which the taxation law is in force;

(b) The term “person” comprises an individual and a company;

(c) The term “company” means any body corporate or any entity which is treated as a person for tax purposes;

(d) 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;

(e) The term “competent authority” means:

— in the case of Tunisia, the Minister of Finance;

— in the case of the Federal Republic of Germany, the Federal Minister of Finance;

(f) The term “national” means:

— in the case of the Federal Republic of Germany, any German in the meaning of paragraph 1 of article 116 of the Basic Law for the Federal Republic of Germany and any legal person, partnership or association deriving its status as such from the law in force in the Federal Republic of Germany;

— in the case of Tunisia, any individual possessing Tunisian nationality and any legal person, partnership or association deriving its status from the law in force in Tunisia.

2. As regards the application of the Convention 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 State relating to the taxes which are the subject of the Convention.

Article 4. FISCAL DOMICILE

1. For the purposes of this Convention, 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.

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:

(a) 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);

(b) 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;

- (c) 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;
- (d) 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.

3. Where by reason of the provisions of paragraph 1 a person other than an individual 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.

Article 5. PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, 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 or associated supervisory activity when such site, project or activity exists for more than six months, or when the construction or assembly project or supervisory activity following the sale of machinery or equipment exists for less than six months and the cost of construction or assembly or supervision exceeds 10 per cent of the price of the machinery or equipment.

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 6 applies — shall be deemed to be a permanent establishment 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 insurance enterprise of a Contracting State shall be deemed to have a permanent establishment in the other State when it collects premiums in that other State or insures risks situated there through an employee or a representative who is not a person to whom paragraph 6 below applies.

6. 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.

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

Article 6. INCOME FROM IMMOVABLE PROPERTY

1. Income from immovable property including income from agriculture or forestry 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 any 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. 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 purpose of the permanent establishment, including actual executive and general administrative expenses so incurred, whether in the State concerned or elsewhere.

4. In so far 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. 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.

6. The provisions of the preceding paragraphs as well as those of article 5 shall also apply to the shares of a partner in the profits of an enterprise constituted in Tunisia in the form of a “*de facto company*” (*société de fait*) or in the form of “special partnership” (*association en participation*) and in the Federal Republic of Germany in the form of a “*Personengesellschaft*”.

7. Where profits include items of income which are dealt with separately in other articles of this Convention, then the provisions of those articles shall not be affected by the provisions of this article.

Article 8. SHIPPING AND AIR TRANSPORT

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. If the place of effective management of a shipping enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.

3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9. ASSOCIATED ENTERPRISES

1. 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.

2. Where profits on which an enterprise of a Contracting State has been taxed in that State are also included in the profits of an enterprise of the other Contracting State and taxed accordingly, and the profits so included are profits which would have accrued to the enterprise of the other State if the conditions agreed between the two enterprises had been those which would have been made between independent enterprises, then the first-mentioned State shall make an appropriate adjustment to the amount of the tax which it has charged on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention relating to the nature of the income and to this end the competent authorities of the Contracting States shall if necessary consult each other.

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:

- (a) 10 per cent of the gross amount of the dividends if the recipient is a company which holds directly at least 25 per cent of the capital of the company paying the dividends;
- (b) in all other cases, 15 per cent of the gross amount of the dividends.

3. Notwithstanding the provisions of paragraph 2, as long as in the Federal Republic of Germany the rate of corporation tax on distributed profits is at least 15 points lower than that on undistributed profits, the tax charged on dividends in that State may be as high as 27 per cent of the gross amount of the dividends, where

- (a) the dividends are paid by a company with share capital which is a resident of the Federal Republic of Germany to a company which is a resident of Tunisia, and where
- (b) the company which is a resident of Tunisia by itself or together with other persons controlling it or themselves under control with it holds directly or indirectly at least 25 per cent of the capital of the company with share capital which is a resident of the Federal Republic of Germany.

4. The provisions of paragraphs 1 and 2 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 in respect of which the dividends are paid is effectively connected. In such a case, the provisions of article 7 shall apply.

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 assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident.

6. 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 impose any tax on the dividends paid by the company to persons who are not residents of that other 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 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 10 per cent of the gross amount of the interest.

3. 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 State in which the income arises.

4. The provisions of paragraphs 1 and 2 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.

5. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a *Land*, a political subdivision, a local authority 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 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.

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 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 Convention.

7. Notwithstanding the provisions of paragraph 2, interest on loans and credits granted by a Contracting State to a resident of the other Contracting State shall be exempt from tax in the State in which it arises.

Article 12. ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable in that other State.

2. However, such royalties may be taxed in the Contracting State in which they arise and according to the law of that State, but the tax so charged shall not exceed:

- (a) 10 per cent of the gross amount of royalties received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, excluding cinematographic and television films, and for information concerning agricultural, industrial, commercial or scientific experience, and of payments for economic or technical surveys;
- (b) 15 per cent of the gross amount of royalties received as a consideration for grant of licences for the use of any patent, design, model, plan, secret formula or process, or trade-mark, or for the right to use cinematographic or television films.

3. 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.

4. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a *Land*, a political subdivision, a local authority 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 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.

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 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 Convention.

Article 13. CAPITAL GAINS

1. Gains from the alienation of immovable property, as defined in paragraph 2 of article 6, 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. However, gains from the alienation of movable property of the kind referred to in paragraph 3 of article 22 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 shares of a company which is a resident of a Contracting State may be taxed in that State.

4. Gains from the alienation of any property other than that mentioned in paragraphs 1 to 3 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14. INDEPENDENT PERSONAL 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. However, such income may be taxed in the other Contracting State if:

- (a) the person concerned has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in such a case only the portion of the income that is attributable to that fixed base shall be taxable in that other State; or
- (b) he is present in the other Contracting State for the purpose of performing such activities for a period or periods of in the aggregate at least 183 days in the fiscal year; in such a case, only the portion of the income that is attributable to the activities performed shall be taxable in that other State.

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. 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 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:

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

3. Notwithstanding the preceding provisions of this article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16. DIRECTOR'S FEES

Director's fees and other similar payments 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 State.

Article 17. ARTISTES AND ATHLETES

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. Where income in respect of personal activities exercised by an artiste or athlete in his capacity as such accrues to another person, that income may, notwithstanding the provisions of articles 7, 14 and 15, be taxed in the Contracting State in which the artiste or athlete exercises his activities.

3. The provisions of paragraphs 1 and 2 shall not apply to income arising from activities exercised in a Contracting State by non-profit organizations of the other Contracting State or by members of their staff, except where the latter are acting on their own account.

Article 18. PENSIONS

Notwithstanding the provisions of paragraph 1 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. GOVERNMENT SERVICE

1. Remuneration paid by a Contracting State or a *Land* or a political subdivision or local authority thereof to an individual in respect of an employment shall be taxable only in that State. If, however, the employment is exercised in the other Contracting State by a national of that State not being a national of the first-mentioned State, the remuneration paid shall be taxable only in that other State.

2. The provisions of articles 15, 16 and 17 shall apply to remuneration paid in respect of an employment exercised in connexion with a profit-making trade or business carried on by a Contracting State or a *Land* or a political subdivision or local authority thereof.

3. The provisions of paragraph 1 shall likewise apply in respect of remuneration paid, under a development assistance programme of a Contracting State or a *Land* or a political subdivision or local authority thereof, out of funds exclusively supplied by that State or *Land* or political subdivision or local authority thereof to experts seconded to the other Contracting State with the consent of that other State.

Article 20. STUDENTS, APPRENTICES AND RECIPIENTS OF AWARDS

1. An individual who was a resident of a Contracting State immediately before visiting the other Contracting State and who is temporarily present in that other State solely as a student at a university, college, school or other similar educational institution in that other State or as an apprentice (including, in the case of the Federal Republic of

Germany, a *Volontär* or *Praktikant*) shall, from the date of his first arrival in that other State in connexion with that visit, be exempt from all tax in that other State

- (a) on remittances from abroad for the purpose of his maintenance, education or training, and
- (b) for a period not exceeding five years, on any remuneration not exceeding 6,000 Deutsche Mark or the equivalent in Tunisian dinars for the calendar year in respect of employment exercised in that other State with a view to supplementing the resources available for his maintenance, education or training.

2. An individual who was a resident of a Contracting State immediately before visiting the other Contracting State and who is temporarily present in that other State solely for the purpose of study, research or training for which he receives a grant, an allowance or an award from a scientific, educational, religious or charitable organization or under a technical assistance programme entered into by the Government of a Contracting State shall, from the date of his first arrival in that other State in connexion with that visit, be exempt from all tax in that other State on

- (a) the amount of such grant, allowance or award, and
- (b) remittances from abroad for the purpose of his maintenance, education or training.

Article 21. INCOME NOT EXPRESSLY MENTIONED

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing articles of this Convention shall be taxable only in that State.

Article 22. FORTUNE

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

2. 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 movable property pertaining to the operation of such ships and aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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

Article 23. METHODS FOR ELIMINATION OF DOUBLE TAXATION

1. In the case of a resident of the Federal Republic of Germany, double taxation shall be avoided as follows:

- (a) income derived from Tunisia — excluding income to which subparagraph (b) below applies — and elements of fortune situated in Tunisia which, in accordance with the foregoing articles, may be taxed in Tunisia shall be exempt from German tax. Such exemption shall not limit the right of the Federal Republic of Germany to take into account, when determining the rate of German tax, the income and the elements of fortune so exempted. In the case of dividends as defined in paragraph 5 of article 10, the first sentence shall apply only where the dividends are paid by a joint-stock company being a resident of Tunisia to a company with share capital (*Kapitalgesellschaft*) being a resident of the Federal Republic of Germany which holds directly at least 25 per cent of the voting shares in the first-mentioned company. Holdings in the Tunisian company shall, under the same conditions, be exempt from German fortune tax.

- (b) the tax imposed in Tunisia in accordance with the provisions of this Convention shall be deducted from the income tax or the corporation tax, including the surcharge thereon, imposed by the Federal Republic of Germany on the following items of income:
- (aa) dividends to which paragraph 2 of article 10 applies and to which subparagraph (a) of this article does not apply;
 - (bb) interest to which paragraph 2 of article 11 applies;
 - (cc) royalties to which paragraph 2 of article 12 applies;
 - (dd) capital gains to which paragraph 3 of article 13 applies;
 - (ee) director's fees and other similar payments to which article 16 applies;
 - (ff) remuneration to which paragraph 1 of article 17 applies and which according to that provision is not exempt from German tax;
 - (gg) income from immovable property to which article 6 applies and fortune to which paragraph 1 of article 22 applies, except where the property from which the income is derived forms part of a permanent establishment, within the meaning of article 7, situated in Tunisia or of a fixed base, within the meaning of article 14, situated in Tunisia.
- (c) For the purposes of credit allowed under (aa), (bb), (cc) of subparagraph (b) above, as long as the dividends, interest or royalties are exempted from tax or taxed at rates lower than the rates provided for in paragraph 2 (b) of article 10, paragraph 2 of article 11 or paragraph 2 of article 12 with a view to promoting the economic development of Tunisia, the amount of Tunisian tax allowed a credit shall be the amount of Tunisian tax which may be imposed under paragraph 2 of article 10, paragraph 2 of article 11 or paragraph 2 of article 12, respectively.

2. Where a resident of Tunisia derives income or owns fortune which, in accordance with the provisions of this Convention, may be taxed in the Federal Republic of Germany, Tunisia shall deduct from the tax which it imposes on the income of the resident an amount equal to the income tax paid in the Federal Republic of Germany. In the case of income to which paragraph 3 of article 10 applies, the tax deducted may not exceed the rate specified in paragraph 2 of the same article.

The deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in the Federal Republic of Germany.

Article 24. NON-DISCRIMINATION AND INVESTMENT INCENTIVES

1. 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. 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.

3. 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 to residents of the other Contracting State any personal allowances, reliefs and reductions

for taxation purposes on account of civil status or family responsibilities or other personal circumstances which it grants to its own residents.

4. 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.

5. In this article the term "taxation" means taxes of every kind and description to which article 2 of this Convention applies.

6. The provisions of this Convention must not stand in the way of the application of more favourable fiscal arrangements for investment provided by the legislation of one of the Contracting States.

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 taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those 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 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 taxation not in accordance with the Convention.

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 the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a commission consisting of representatives of the competent authorities of the Contracting States.

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 this Convention. 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 which are the subject of the Convention.

2. In no case shall the provisions of paragraph 1 be construed so as to force one of the Contracting States:

- (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 (*ordre public*).

Article 27. DIPLOMATIC AND CONSULAR OFFICIALS

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

2. In so far as, owing to such privileges granted under the general rules of international law or under the provisions of special international agreements, income or fortune is not subject to tax in the receiving State, the right to tax shall be reserved to the sending State.

Article 28. “LAND BERLIN”

This Convention 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 Tunisia within three months from the date of entry into force of this Convention.

Article 29. ENTRY INTO FORCE

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Bonn as soon as possible.

2. The Convention shall enter into force on the fifteenth day after the date of exchange of the instruments of ratification and it shall have effect in each of the two States:

- (a) in respect of taxes due at source on income credited or paid on or after the first day of January of the year immediately following the year in which the exchange of instruments of ratification takes place;
- (b) in respect of other taxes on income derived during any assessment period ending on or after the thirty-first day of December of the year in which that exchange takes place.

Article 30. TERMINATION

This Convention 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 five years after the year in which the exchange of instruments of ratification takes place, denounce it, by giving written notice of termination to the other Contracting State through the diplomatic channel. In the event of denunciation before the first day of July in any year, the Convention shall have effect for the last time in each of the two States:

- (a) in respect of taxes due at source on income credited or paid on or before the thirty-first day of December of the year of termination;
- (b) in respect of all other taxes on income derived during any period of assessment ending before the thirty-first day of December of the same year.

DONE at Tunis on 23 December 1975, in duplicate in the German and French languages, both texts being equally authentic.

For the Federal Republic of Germany:

NAUPERT

For the Republic of Tunisia:

KALALI

FINAL PROTOCOL

On signing the Convention concluded this day between the Federal Republic of Germany and the Republic of Tunisia for the avoidance of double taxation with respect to taxes on income and on fortune, the undersigned Plenipotentiaries have agreed on the following provisions which shall form an integral part of this Convention.

1. *With reference to article 11*

It is understood that, in the case of the Federal Republic of Germany, paragraph 7 shall apply to

the Deutsche Bundesbank,

the Kreditanstalt für Wiederaufbau, and

the Deutsche Gesellschaft für wirtschaftliche Zusammenarbeit mbH (Entwicklungsgesellschaft).

2. *With reference to article 23*

Notwithstanding the provisions of paragraph 1 (a) of article 23 of the Convention, the provisions of paragraph 1 (b) of that article shall apply to the profits of a permanent establishment, to the property forming part of the assets of such an establishment, to dividends paid by, and to shareholdings in, a company and, likewise, to the profits to which paragraphs 1 and 2 of article 13 of the Convention apply, unless the resident of the Federal Republic of Germany concerned provides proof that the receipts of the permanent establishment or company are derived exclusively or almost exclusively:

- (a) from one of the following activities carried out in Tunisia: the production or the sale of goods or merchandise, the provision of services, or banking or insurance operations; or
- (b) from dividends received by that company and paid by one or more companies being resident in Tunisia whose income is derived exclusively or almost exclusively from one of the following activities carried out in Tunisia: the production or the sale of goods or merchandise, the provision of services, or banking or insurance operations.

For the Federal Republic of Germany:

NAUPERT

For the Republic of Tunisia:

KALALI
