

No. 20326

**FEDERAL REPUBLIC OF GERMANY
and
ARGENTINA**

Convention for the avoidance of double taxation with respect to taxes on income and property (with protocol). Signed at Buenos Aires on 13 July 1978

Authentic texts: German and Spanish.

Registered by the Federal Republic of Germany on 7 August 1981.

**RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
ARGENTINE**

Convention tendant à éviter la double imposition en matière d'impôts sur le revenu et d'impôts sur la fortune (avec protocole). Signée à Buenos Aires le 13 juillet 1978

Textes authentiques : allemand et espagnol.

Enregistrée par la République fédérale d'Allemagne le 7 août 1981.

[TRANSLATION — TRADUCTION]

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

The Federal Republic of Germany and the Argentine Republic,

Desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income and property, with a view to promoting investment activity and trade between the two States,

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 and also to income and capital gains obtained by and property belonging to such persons.

Article 2. TAXES COVERED BY THE CONVENTION

(1) This Convention shall apply, irrespective of the manner in which they are levied, to taxes on income and on property imposed on behalf of either of the Contracting States, one of the *Länder* or provinces of a Contracting State or one of their territorial subdivisions or local authorities.

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

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

(a) In the Federal Republic of Germany:

- The income tax (*Einkommensteuer*);
- The corporation tax (*Körperschaftsteuer*);
- The tax on property (*Vermögensteuer*); and
- The business tax (*Gewerbsteuer*)

(hereinafter referred to as “German tax”);

(b) In the Argentine Republic:

- The income tax (*Impuesto a las ganancias*);
- The special gains tax (*Impuesto a los beneficios eventuales*);
- The capital gains tax (*Impuesto al capital de las empresas*);
- The tax on property (*Impuesto al patrimonio neto*)

(hereinafter referred to as “Argentine tax”).

¹ Came into force on 25 November 1979, i.e., the thirtieth day after the exchange of the instruments of ratification, which took place at Bonn on 26 October 1979, in accordance with article 29.

(4) This Convention shall also apply to any taxes of the same or a substantially similar nature which are in the future levied in addition to or in place of the existing taxes.

(5) The provisions of this Convention concerning the taxation of income or property shall apply *mutatis mutandis* to the German business tax which is not computed on the basis of income or property.

Article 3. GENERAL DEFINITIONS

(1) For the purposes of 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 the Argentine Republic, depending on the context, and, when used in the geographical sense, the area in which the taxation law of the State concerned is in force;

(b) The term “person” means individuals and companies;

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

(d) The terms “a person resident in a Contracting State” and “a person resident in the other Contracting State” mean a person resident in the Federal Republic of Germany or a person resident in the Argentine Republic, depending on the context;

(e) The terms “enterprise of one of the Contracting States” and “enterprise of the other Contracting State” mean, respectively, an enterprise operated by a resident of a Contracting State and an enterprise operated by a resident of the other Contracting State;

(f) The term “national” means

(aa) In respect 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 and all bodies corporate, partnerships and other associations of persons established in accordance with the law in force in the Federal Republic of Germany;

(bb) In respect of the Argentine Republic, all nationals of the Argentine Republic and all bodies corporate, partnerships and other associations of persons established in accordance with the law in force in the Argentine Republic;

(g) The term “international traffic” means any transport by a ship or aircraft operated by an enterprise having its actual place of management in a Contracting State; an exception shall be made in those cases in which the ship or aircraft is operated solely between places in the other Contracting State;

(h) The term “competent authority” means, in the case of the Federal Republic of Germany, the Federal Minister of Finance, and, in the case of the Argentine Republic, the Ministry of the Economy (the State Secretariat for Finance).

(2) In the application of this Convention by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning that it has under the law in force in that Contracting State relating to the taxes which are the subject of this Convention.

Article 4. FISCAL DOMICILE

(1) For the Purposes of this Convention, the term “resident of a Contracting State” means a person whose domicile, permanent residence, habitual abode, place of business management or head office is situated in that State.

(2) Where, in accordance with the provisions of paragraph (1), an individual is a resident of both Contracting States, the following shall apply:

- (a) The person 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 the 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 his habitual abode;
- (c) If he has his 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 agreement between them.

(3) Where a person other than an individual is a resident of both Contracting States, he 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 at which the activity of the enterprise is wholly or partly carried on.

(2) The term “permanent establishment” shall include especially:

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

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

- (a) The use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
- (e) The maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character for the enterprise.

(4) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State — other than an agent of independent status to whom paragraph (5) 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. An insurance enterprise of a Contracting State shall, however, be treated as if it had a permanent establishment in the other Contracting State if it collects premiums there, or insures risks situated there, through a representative other than the persons referred to in paragraph (5).

(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.

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

(7) Notwithstanding the provisions of paragraph (3)(d) and paragraph (4), an enterprise of a Contracting State which has in the other Contracting State a fixed place of business or a representative within the meaning of paragraph (4) for the purchase of agricultural, forestry, stock-raising, mining and farm products for the enterprise shall, in connection with gains from the purchase of such goods for export from the other Contracting State at a price lower than would have been agreed between independent parties to a transaction, be treated as if it had a permanent establishment in the said other Contracting State.

Article 6. IMMOVABLE PROPERTY

(1) Income from immovable property shall be taxable only 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 deemed to be immovable property.

(3) 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. PROFITS OF ENTERPRISES

(1) The profits of an enterprise of a Contracting State shall not be taxable in the other Contracting State unless the enterprise carries on business in the said other Contracting State through a permanent establishment situated therein. If the enter-

prise carries on business as aforesaid, the profits of the enterprise shall be taxable 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 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) In so far as it is 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 is in accordance with the principles laid down in this article.

(5) Without prejudice to the provisions of article 5, paragraph (7), no profit shall be attributed to a permanent establishment on the sole ground that it purchases goods or merchandise for the enterprise.

(6) In the application of paragraphs (1) to (5), 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 proceed in a different manner.

(7) Where a resident of the Federal Republic of Germany has a permanent establishment in the Argentine Republic, the Argentine tax on the profits of the said permanent establishment, irrespective of whether the tax is collected from the permanent establishment itself, from the resident of the Federal Republic of Germany or from both, shall not exceed the tax which under Argentine law is levied on the profits of a company which is a resident of the Argentine Republic plus 15 per cent of such profits, determined after deduction of the said tax on the profits of a company.

(8) Where profits include income which is dealt with separately in other articles of this Convention, the provisions of those articles shall not be affected by the provisions of this article.

Article 8. SHIPS AND AIRCRAFT

(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) The provisions of paragraph (1) shall also apply to the shares which an enterprise of a Contracting State engaged in shipping or air transport holds in a pool, a joint business or an international agency.

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

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, 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 shall be taxable 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; the tax may not, however, exceed 15 per cent of the gross amount of the dividend.

(3) The term "dividends" as used in this article means income from shares, mining shares, founder's shares or other rights, not being debt-claims, participating in profits, or income from other corporate rights as simulated to income from shares by the taxation law of the State of which the company making the distribution is a resident, as well as the income of a sleeping partner from his participation as sleeping partner and distributions made in respect of shares in a joint investment fund.

(4) Paragraphs (1) and (2) shall not apply if the recipient of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State, of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs professional services through a fixed base situated therein, and the holding by virtue of which the dividends are paid is effectively connected with that permanent establishment or fixed base. In such case the provisions of article 7 or article 14 shall apply, as appropriate.

(5) 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, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid on the undistributed profits consist wholly or partly of profits or income arising in that other State.

Article 11. INTEREST

(1) Interest 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 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:

- (a) Ten per cent of the gross amount of the interest if it is paid in connection with the sale of industrial, commercial or scientific equipment on credit, for a loan of any kind granted by a bank or in connection with the financing of public works;
- (b) Fifteen per cent of the gross amount of the interest in all other cases;

- (3) Notwithstanding the provisions of paragraph (2), the following shall apply:
- (a) Interest arising in the Federal Republic of Germany and paid to the Argentine Government or the Banco Central of the Argentine Republic shall be exempt from German tax;
 - (b) Interest arising in the Argentine Republic and paid to the German Government, the Deutsche Bundesbank, the (Kreditanstalt für Wiederaufbau) or the Deutsche Gesellschaft für wirtschaftliche Zusammenarbeit (society for development) shall be exempt from Argentine tax.

The competent authorities of the Contracting States shall determine by agreement between them all other State institutions to which this paragraph shall be applicable.

(4) The term "interest" as used in this article means income from public loans, bonds or debentures, whether or not guaranteed by a mortgage on real property, with or without the right to share in benefits, and from credits of any kind, as well as any other income assimilated to income derived from loans by the taxation law of the State in which it arises.

(5) The provisions of paragraph (1) shall not apply if the recipient of the interest, being a resident of a Contracting State, carries on business in the other Contracting State, in which the interest arises, through a permanent establishment situated therein or performs professional services there through a fixed base situated therein and the holding by virtue of which the interest is paid is effectively connected with the said permanent establishment or fixed base. In such case, the provisions of article 7 or article 14 shall apply, as appropriate.

(6) Interest shall be deemed to arise in a Contracting State when the payer is that State itself, one of its *Länder* or provinces or a political subdivision thereof or a local authority or a resident of that State. Where, however, the person paying the interest, whether or not he is a resident of a Contracting State, has in a Contracting State permanent establishment in connection with which the indebtedness on which the interest was paid was incurred, and the interest is borne by that permanent establishment, 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 interest paid, having regard to the debt-claim for which it is paid, exceeds the amount with 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 such case, the excess part of the payments may be taxed according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

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 15 per cent of the gross amount of the royalties which arise out of:

- (a) The use of, or the right to use, any copyright of literary, artistic or scientific work if the recipient is the author or the heir of the author or inventor; or
- (b) The use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, or information concerning industrial, commercial or scientific experience.

In so far as the transfer of technology requires approval under Argentine law, the restriction of the interest rate referred to in subparagraph (b) above shall be applied to royalties arising in the Argentine Republic only if the contract out of which the said royalties arise has been approved by the Argentine authorities.

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

(4) The provisions of paragraphs (1) and (2) shall not apply if the recipient of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State, in which the royalties arise, through a permanent establishment situated therein or performs professional services in that other Contracting State through a fixed base situated therein, and the rights or items of property in respect of which the royalties are paid are effectively connected with the said permanent establishment or fixed base. In such case, the provisions of article 7 or article 14 shall apply, as appropriate.

(5) Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, one of its *Länder* or provinces or a political subdivision thereof or a local authority or a resident of that State. Where, however, the person paying the royalties, whether or not he is a resident of a Contracting State, has in a Contracting State a permanent establishment in connection with which the obligation to pay the royalties was incurred and the royalties are borne by that permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

(6) Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount that 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 such case, the excess part of the payments may be taxed according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13. GAINS FROM THE ALIENATION OF PROPERTY

(1) Gains from the alienation of immovable property, as defined in article 6, paragraph (2), shall be taxable in the Contracting State in which the said 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, shall be taxable in the said other State. However, gains from the alienation of movable property of the kind referred to in article 22, para-

graph (3), shall be taxable only in the Contracting State in which such movable property is taxable according to that article.

(3) Gains from the alienation of shares in a company which is a resident of a Contracting State shall be taxable in that State.

(4) Gains from the alienation of ships, aircraft and motor vehicles registered in a Contracting State shall be taxable in that State.

(5) Gains from the alienation of any property other than those mentioned in paragraphs (1) to (4) shall be taxable only in the Contracting State of which the alienator is a resident. Where a person is a resident of both Contracting States by virtue of article 4, paragraph 1, and is deemed to be a resident of one of the two Contracting States by virtue of paragraph (2) or (3) of that article, gains derived in a third State from the alienation of property shall be taxable in the other Contracting State, provided that the gains derived from alienation are not taxed in the first-mentioned State.

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

(2) The term "professional services" includes, especially, independent scientific, literary, artistic, educational or teaching activities and the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15. EMPLOYMENT

(1) Subject to the provisions of articles 16, 18 and 19, salaries, wages and 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 exercised there, such remuneration as derived therefrom shall be taxable only 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 not exceeding in the aggregate 183 days in the calendar year concerned,
- (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 fixed base which the employer has in the other State.

(3) Notwithstanding the provisions of paragraphs (1) and (2), remuneration in respect of an employment exercised on board 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. DIRECTORS' FEES

Directors' fees and 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. ARTISTS AND ATHLETES

(1) Notwithstanding the provisions of articles 7, 14 and 15, income derived by public entertainers, such as theatre, motion-picture, radio or television artists, and musicians, and by athletes, from their personal activities as such, or income derived by an enterprise by making available the services of professional artists or athletes, may be taxed in the Contracting State in which such activities are exercised.

(2) The provisions of paragraph (1) shall not apply if the visit of the professional artists or athletes to a Contracting State is supported wholly or substantially from public funds of the other Contracting State, one of its *Länder* or provinces or a political subdivision or local authority thereof.

Article 18. PUBLIC FUNDS

(1) Remuneration, including pensions, paid by, or out of funds created by, a Contracting State, one of its *Länder* or provinces or a political subdivision or local authority thereof, directly or through a special fund created by the said State, *Land*, province, political subdivision or local authority, to any individual in respect of an employment shall not be taxable in the other Contracting State unless the employment is or was exercised in the said other Contracting State by a national of that State who was not a national of the first-mentioned State. In such case the remuneration shall not be taxable in the first-mentioned Contracting State.

(2) Notwithstanding the provisions of paragraph (1), articles 15, 16 and 17 shall apply to remuneration in respect of an employment in connection with any business carried on for profit-making purposes by a Contracting State, one of its *Länder* or provinces or a political subdivision or local authority thereof.

(3) The provisions of paragraph (1) shall apply *mutatis mutandis* to remuneration paid, as part of a development assistance programme of a Contracting State, one of its *Länder* or provinces or a political subdivision or local authority thereof, from resources made available solely by that State, *Land*, province, political subdivision or local authority, to specialists or volunteers sent to the other Contracting State with the consent of the said other State.

Article 19. RETIREMENT ANNUITIES AND PENSIONS

(1) Subject to the provisions of article 18, retirement annuities and similar remuneration paid to a resident of a Contracting State in consideration of past employment exercised in the other Contracting State may be taxed in that other State.

(2) Pensions paid in a Contracting State under a public social security system may be taxed in that State.

Article 20. TEACHERS, STUDENTS AND PERSONS ENGAGED IN EDUCATION

(1) Remuneration which a professor or other teacher who is, or during the period immediately preceding was, a resident of a Contracting State and who visits the other Contracting State for a period not exceeding two years for the purpose of engaging in advanced studies or research activity or for the purpose of teaching at a

university, college, school or other educational establishment receives for such work shall not be taxed in the said other Contracting State, provided that the person concerned derived the remuneration from outside that other State.

(2) If an individual is a resident of a Contracting State or was a resident thereof immediately before visiting the other Contracting State and is temporarily present in that other State solely as a student at a university, college, school or other similar educational establishment of the said other State, or as an apprentice (including volunteers and practitioners (*Volontäre* and *Praktikanten*) in the Federal Republic of Germany), he shall, as from the date of his first arrival in the said other State in connection with the visit in question, be exempt from the taxation of the said other State:

- (a) In respect of remittances received from abroad for his maintenance, education or training, and
- (b) For a period not exceeding, in the aggregate three years, in respect of all remuneration up to 6,000 DM, or its equivalent in Argentine currency, per calendar year for employment exercised in the said other Contracting State in order to supplement the resources available to him for his maintenance, education or training.

(3) If an individual is a resident of a Contracting State or was a resident thereof immediately before visiting the other Contracting State and is temporarily present in that other State solely for the purpose of study, research or training as the recipient of a grant, allowance or award from a scientific, educational, religious or charitable organization or under a technical assistance programme carried on by the Government of a Contracting State, he shall, as from the date of his first arrival in the said other State in connection with that visit, be exempt from tax in that State:

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

Article 21. INCOME NOT EXPRESSLY MENTIONED

(1) Any income of a resident of a Contracting State which is not expressly mentioned in the foregoing articles of this Convention shall be taxable only in that State.

(2) The provisions of article 13, paragraph (5), second sentence, shall apply *mutatis mutandis* to income derived from third States.

Article 22. PROPERTY

(1) Immovable property as defined in article 6, paragraph (2), may be taxed in the Contracting State in which the said property is situated.

(2) Movable property forming part of the business property of a permanent establishment of an enterprise or 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 used for 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) The following elements of property of a resident of a Contracting State may be taxed in the other Contracting State:

- (a) Shares in a company which is a resident of that other Contracting State;
- (b) Ships, aircraft and motor vehicles registered in the said other Contracting State.

(5) All other elements of property of a resident of a Contracting State shall be taxable only in that State. Article 13, paragraph (5), second sentence, shall apply *mutatis mutandis* to property situated in third States.

(6) Where, by virtue of the preceding provisions of this article, a Contracting State may tax an element of property, it shall, in determining the basis for assessment, permit the deduction of at least the debts actually connected with that element of property, provided that the tax is levied on the net value of the element of property.

Article 23. METHODS FOR ELIMINATION OF DOUBLE TAXATION

(1) In the case of a resident of the Federal Republic of Germany, the following elements of income derived from the Argentine Republic, which are taxable in the Argentine Republic in accordance with the provisions of this Convention, shall be excluded from the basis for the assessment of the German tax:

- (a) Income derived from immovable property which constitutes business property situated in the Argentine Republic and gains from the alienation of such property;
- (b) Profits of enterprises and gains covered by article 7 and article 13, paragraph (2);
- (c) Dividends covered by article 10 and paid to a company which is a resident of the Federal Republic of Germany by a company which is a resident of the Argentine Republic and at least 25 per cent of whose capital is held directly by the German company;
- (d) Remuneration covered by article 15 and article 18, paragraphs (1) and (3).

The Federal Republic of Germany shall, however, retain the right to take the exempted income into account in determining the tax rate.

The foregoing provisions shall apply *mutatis mutandis* to all elements of property situated in the Argentine Republic which are taxable in the Argentine Republic in accordance with this Convention if the income from the said elements of property is or should be excluded from the basis for the assessment of the German tax.

(2) Except where paragraph (1) is applicable, the Argentine tax which has been paid under Argentine law and in accordance with this Convention shall be credited to the German income tax and corporation tax to be levied on income derived from the Argentine Republic and to the German property tax to be levied on property situated in the Argentine Republic. The amount to be so credited may not, however, exceed that portion of the German tax determined before such crediting which is levied on the said income or property.

(3) For the purposes of computing the credit referred to in paragraph (2), the Argentine tax shall amount to:

- (a) Twenty per cent of the gross amount paid in the case of dividends and of the royalties covered by article 12, paragraph (2) (b);
- (b) Fifteen per cent of the gross amount paid in the case of interest.

(4) In the case of a resident of the Argentine Republic, any items of income derived from the Federal Republic of Germany and any items of property situated in the Federal Republic of Germany which are taxable in the Federal Republic of Germany in accordance with this Convention shall be excluded from the basis for the assessment of the Argentine tax. The Argentine Republic shall, however, retain the right to take the exempted items of income and property into account in determining the tax rate.

Article 24. NON-DISCRIMINATION

(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 Contracting State in the same circumstances are or may be subjected.

(2) The taxation of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably 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 any other personal circumstances which it grants to its own residents.

(3) Enterprises of a Contracting State whose capital 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 carrying on the same activities are or may be subjected.

(4) Except in the cases covered by article 9, article 11, paragraph (7), and article 12, paragraph (6), interest, royalties and other sums paid by an enterprise of a Contracting State to a resident of the other Contracting State shall be deductible, for the purposes of determining the taxable profits of the enterprise, under the same conditions as payments made to a resident of the first-mentioned State. Subject to the provisions of article 22, paragraph (6), debts owed by an enterprise of a Contracting State to a resident of the other Contracting State shall accordingly be deductible in the determination of the taxable property of the enterprise in the same way as debts owed to a resident of the first-mentioned State.

(5) 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 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) If the said competent authority considers the objection justified and is not itself able to arrive at a satisfactory solution, it shall endeavour to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with this 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 this Convention. They may also consult together for the avoidance of double taxation in cases not provided for in the Convention.

(4) The competent authorities of the Contracting States may communicate with each other direct for the purpose of implementing the provisions of this Convention.

Article 26. EXCHANGE OF INFORMATION

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for the application of this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons, authorities or courts other than those concerned with the assessment or collection of the taxes covered by the Convention, or with the consideration of appeals or the prosecution of offences in respect of the said taxes.

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

- (a) To carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;
- (b) To supply particulars which are not obtainable under the laws or in the normal administrative procedure of that or of the other Contracting State;
- (c) To supply information which would disclose any trade, business, industrial or professional secret or trade process, or information whose disclosure would be contrary to public order.

Article 27. DIPLOMATIC AND CONSULAR PRIVILEGES

(1) This Convention shall not affect the diplomatic and consular tax privileges granted under the general rules of international law or under the provisions of special agreements.

(2) In so far as, by reason of such privileges granted to a person under the general rules of international law or under the provisions of special international agreements, income or property is not taxed in the receiving State, the right to tax shall be reserved to the sending State.

(3) For the purposes of this Convention, members of a diplomatic or consular mission of a Contracting State accredited to the other Contracting State or to a third State or their family members who are nationals of the sending State shall be deemed to be residents of the sending State if they are subject therein to the same liability with respect to taxes on income and property as resident of that 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 the Argentine Republic within three months after the entry into force of this Convention.

Article 29. ENTRY INTO FORCE

(1) This Convention is subject to ratification, and the instruments of ratification shall be exchanged at Bonn, Federal Republic of Germany, as soon as possible.

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

- (a) In the Federal Republic of Germany, in respect of taxes levied for taxation periods beginning on or after 1 January 1976;
- (b) In the Argentine Republic, in respect of taxes levied for taxable years beginning on or after 1 January 1976;
- (c) In both Contracting States, in respect of taxes withheld at source on amounts paid after 31 December 1975.

Article 30. TERMINATION

This Convention shall continue in effect indefinitely, but either of the Contracting States may, on or before 30 June of any calendar year after the expiry of five years following the date of its entry into force, give written notice of termination to the other Contracting State through the diplomatic channel, and in such case, this Convention shall cease to have effect:

- (a) In the Federal Republic of Germany, in respect of taxes levied for taxable periods following the taxable period during which the notice of termination is given;
- (b) In the Argentine Republic, in respect of taxes levied for taxable years following the taxable year during which the notice of termination is given;
- (c) In both Contracting States, in respect of taxes withheld at source on amounts paid after 31 December of the year during which the notice of termination is given.

DONE at Buenos Aires on 13 July 1978, in duplicate in the German and Spanish languages, both texts being equally authentic.

For the Federal Republic of Germany:

JOACHIM JAENICKE

For the Argentine Republic:

MONTES

PROTOCOL

At the signing of the Convention between the Federal Republic of Germany and the Argentine Republic for the avoidance of double taxation with respect to taxes on income and property, the undersigned, being duly authorized thereto, have agreed on the following provisions, which constitute an integral part of the Convention.

1. *Ad article 2:*

The Convention shall also apply to the following temporarily levied taxes:

- (a) In the Federal Republic of Germany: the surcharge on the corporation tax (*Körperschaftsteuer*);
- (b) In the Argentine Republic: the emergency tax on enterprises (*Impuesto de emergencia a las empresas*) and the emergency tax on remuneration for personal work done on own account or as an employee (*Impuesto de emergencia a las retribuciones del trabajo personal con o sin relación de dependencia*).

The Convention shall not apply to the Argentine tax on the transfer of profits under the Act on Foreign Investments. In the case of a resident of the Federal Republic of Germany, however, the tax may not be heavier or more burdensome than the tax provided for in Argentine Act No. 21.382, article 15.

2. *Ad article 8 and article 22, paragraph (3):*

The provisions of these articles shall apply *mutatis mutandis* to all taxes, charges and royalties levied in the territory of those Argentine provinces which are subject to national jurisdiction on the exercise of gainful activities (*el ejercicio de actividades*

lucrativas). Notwithstanding the provisions of article 29, this clause shall have effect for any taxable year for which the statute of limitations has not yet run.

The Argentine Government shall invite the provinces to grant a similar tax exemption.

3. *Ad article 22:*

Where a company which is a resident of a Contracting State is exempt in that State from the tax on property, there shall be credited against the tax on property to which a shareholder is subject in the said State the company's property tax which would have been payable in the absence of such exemption, if, and to the extent that, the law of the said State provides for the crediting of the last-mentioned tax against the tax on property to which the shareholder is subject.

4. *Ad articles 10 and 11:*

Notwithstanding the provisions of these articles, dividends and interest arising in the Federal Republic of Germany may be taxed in accordance with the provisions of the legislation of that State if:

- (a) They are based on rights or debt-claims with a share in profits (including the income of a sleeping partner from his participation or income from *partiarische Darlehen* or *Gewinnobligationen* within the meaning of the tax law of the Federal Republic of Germany), and
- (b) The said amounts are deductible for the computation of the gain derived by the debtor.

5. *Ad article 23:*

(a) Notwithstanding the provisions of paragraph (1), only the provisions of paragraph (2), with exclusion of those of paragraph (3), shall be applied to the profits of a permanent establishment and to property constituting the business property of a permanent establishment, to the dividends paid by a company, to the holding of shares in a company and to the profits referred to in article 13, paragraphs (1) and (2), of the Convention, provided that the resident of the Federal Republic of Germany demonstrates that at least 90 per cent of the income of the permanent establishment or of the company originates in the production, sale or renting of goods or merchandise (including cases in which such goods or merchandise are sold or rented, in the course of commercial transactions carried on in the Argentine Republic, to customers outside the Argentine Republic), in technical counselling or in the rendering of commercial or technical services, or in banking or insurance operations, within the Argentine Republic, or in interests or royalties originating in the Argentine Republic and related to the aforementioned activities, or in interest paid by the Argentine Republic or a political subdivision thereof, or in interest or dividends paid by a company which is a resident of the Argentine Republic, if the said company derives at least 90 per cent of its income from the aforementioned activities.

(b) Where a company which is a resident of the Federal Republic of Germany distributes dividends originating in income derived from sources in the Argentine Republic, paragraphs (1) to (3) shall not preclude the restoration of the tax on the distribution of dividends in accordance with the taxation law of the Federal Republic of Germany.

6. *Ad article 30:*

The competent authorities of the Contracting States shall, at the proposal of either State, meet at any time after the expiry of a period of four years following the

date of entry into force of the Convention in order to consider the need to amend it on the basis of the experience acquired in its implementation during the preceding years and the changes made in their national taxation laws.

For the Federal Republic of Germany:

JOACHIM JAENICKE

For the Argentine Republic:

MONTES
