

No. 21228

**FINLAND
and
FEDERAL REPUBLIC OF GERMANY**

Agreement for the avoidance of double taxation with respect to taxes on income and on fortune and certain other taxes (with protocol). Signed at Helsinki on 5 July 1979

Authentic texts: Finnish and German.

Registered by Finland on 27 August 1982.

**FINLANDE
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE**

Convention tendant à éviter la double imposition en matière d'impôts sur le revenu et sur la fortune et d'autres impôts (avec protocole). Signée à Helsinki le 5 juillet 1979

Textes authentiques : finnois et allemand.

Enregistrée par la Finlande le 27 août 1982.

[TRANSLATION — TRADUCTION]

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

The Republic of Finland and the Federal Republic of Germany,
Desiring to conclude a new Agreement for the avoidance of double taxation
with respect to taxes on income and on fortune and certain other taxes,
Have agreed as follows:

Article 1. PERSONAL SCOPE

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

Article 2. TAXES COVERED

1. This Agreement shall apply to taxes on income and on fortune imposed on
behalf of each Contracting State or of its 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, as well as taxes on capital appreciation.

3. The existing taxes to which the Agreement shall apply are:

(a) In the Republic of Finland:

- (i) The State tax on income and fortune (*valtion tulo- ja varallisuusvero*);
- (ii) The communal tax (*kunnallisvero*); and
- (iii) The church tax (*kirkollisvero*)

including the seamen's tax and the tax withheld at source on income of non-residents;

(b) In the Federal Republic of Germany:

- (i) The income tax (*Einkommensteuer*);
- (ii) The corporation tax (*Körperschaftsteuer*);
- (iii) The fortune tax (*Vermögensteuer*);
- (iv) The trade tax (*Gewerbesteuer*); and
- (v) The real property tax (*Grundsteuer*).

4. The Agreement shall also apply to any identical or substantially similar
taxes which are imposed after the date of signature of the Agreement in addition to,
or in place of, the existing taxes. The competent authorities of the Contracting States
shall notify each other of any changes affecting the application of the Agreement
which are made in their taxation laws.

¹ Came into force on 4 June 1982, i.e., the thirtieth day following the date of the last of the notifications (effected on 5 May 1982) by which the Contracting States notified each other of the completion of the constitutional requirements, in accordance with article 30 (2).

Article 3. GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:

(a) The terms “a Contracting State” and “the other Contracting State” mean the Republic of Finland or the Federal Republic of Germany, as the context requires, and, when used in a geographical sense, the territory in which the taxation law of the State concerned is in force, including the area adjacent to the territorial waters of that State within which, under the law of that State and in accordance with international law, the rights of that State with respect to the exploration and exploitation of the natural resources of the sea-bed and subsoil may be exercised; as regards the communal tax, the term “Republic of Finland” does not include the province of Ahvenanmaa (Aland);

(b) The term “person” includes an individual and a company; it also includes a partnership (*Personengesellschaft*);

(c) The term “company” means any body corporate or any entity which is treated as a body corporate 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 “international traffic” means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(f) The term “competent authority” means:

- (i) In the case of the Republic of Finland, the Ministry of Finance or its authorized representative;
- (ii) In the case of the Federal Republic of Germany, the Federal Minister of Finance.

2. As regards the application of the Agreement by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the relevant laws of that State.

Article 4. FISCAL DOMICILE

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

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

(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 closer (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 a habitual abode;

(c) If he has a 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.

4. A partnership shall be deemed to be a resident of a Contracting State if it derives its status as a partnership from the law in force in that Contracting State; where by reason of this provision a partnership is a resident of both Contracting States, it shall be deemed to be a resident of the State in which its place of effective management is situated.

5. An undivided estate shall for the purposes of taxation in the Republic of Finland be deemed to be a resident of the Contracting State of which the deceased was a resident at the time of his death.

Article 5. PERMANENT ESTABLISHMENT

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

2. The term “permanent establishment” shall include especially:

- (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 12 months.

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

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

4. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom paragraph 5 applies—shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to con-

clude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

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

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.

Article 6. INCOME FROM IMMOVABLE PROPERTY

1. Income from immovable property, including income from agriculture and forestry, may be taxed in the Contracting State in which such property is situated.

2. (a) Subject to the provisions of subparagraphs (b) and (c), the term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property is situated.

(b) The term "immovable property" 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.

(c) Ships and aircraft shall not be regarded as immovable property.

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

4. Where the ownership of shares or corporal rights in a company entitles the holder of the shares or rights to the enjoyment of immovable property owned by the company, the income attributable to the immovable property may, provided that it is not taxable in the hands of the company and has not been received as a distribution of profits of the company, be taxed in the Contracting State in which the immovable property is situated.

5. 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 of an enterprise and to income for immovable property used for the performance of professional services. The provisions of paragraph 4 shall also apply to the income of an enterprise from a right of enjoyment of the kind referred to in that paragraph and to income from a right of that kind which is 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 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 has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles laid down in this article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of 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 the contrary.

7. Where profits include items of income which are dealt with in other articles of this Agreement, 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, then 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.

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

Where:

(a) An enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

(b) The same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State, and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

Article 10. 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 also 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 (excluding partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;
- (b) 25 per cent of the income of a sleeping partner (*stiller Gesellschafter*) within the meaning of paragraph 4;
- (c) 15 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. Notwithstanding the provisions of paragraph 2 (a), the tax on dividends paid to a company being a resident of the Republic of Finland by a company being a resident of the Federal Republic of Germany, at least 25 per cent of the capital of which is held by the first-mentioned company itself, or by it together with other persons directly or indirectly controlling it or being directly or indirectly under its control or under common control with it, shall not exceed 15 per cent as long as the rate of corporation tax in the Federal Republic of Germany on distributed profits is lower than that on undistributed profits and the difference between those two rates is not less than 15 percentage points.

4. The term "dividends" as used in this article means income from 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, and income derived by a sleeping partner (*stiller Gesellschafter*) within the meaning of the law of the Federal Republic of Germany from his participation as such and distributions on certificates of an investment trust.

5. The provisions of 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 in that other State professional services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of article 7 or article 14, as the case may be, shall apply.

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 profits of the company 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 shall be taxable only in that other State.

2. The term "interest" as used in this article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular income from government securities and income from bonds or debentures including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this article.

3. 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 in that other State professional services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of article 7 or article 14, as the case may be, shall apply.

4. 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 such case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12. ROYALTIES

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

2. However, royalties of the kind referred to in paragraph 3 (a) may also 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 5 per cent of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. The term "royalties" as used in this article means payments of any kind received as a consideration for:

- (a) The use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, or any industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience;
- (b) The use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematographic films, and films or tapes for television or radio broadcasting).

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 in that other State professional services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of article 7 or article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, 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 connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

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

Article 13. CAPITAL GAINS

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

2. Gains from the alienation of shares or other corporate rights of the kind referred to in article 6, paragraph 4, may be taxed in the Contracting State in which the immovable property owned by the company is situated.

3. 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 article 22, paragraph 4, shall be taxable only in the Contracting State in which such movable property is taxable according to the said article.

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

5. Where a Contracting State, in case of the removal abroad of an individual who is a resident of that State, levies a tax on any capital gain derived from a substantial holding in a company which is a resident of that State, then the other Contracting State shall, if it levies a tax on the gain derived from the alienation of the holding, treat the value of the holding on the date of departure of the individual from the first-mentioned State as the acquisition value of the holding for the purpose of determining the taxable gain from the alienation thereof.

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 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, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.

2. The term "professional services" includes, especially, independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and business consultants.

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

3. Notwithstanding the provisions of paragraphs 1 and 2, remuneration derived 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. 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 or other similar organ 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. Notwithstanding any other provision of this Agreement, income derived by a resident of a Contracting State from the activity of providing the services within the other Contracting State of a person referred to in paragraph 1 may be taxed in the Contracting State in which these services are performed, even if the person concerned is not a resident of a Contracting State.

Article 18. PENSIONS AND SIMILAR PAYMENTS

1. Subject to the provisions of article 19, paragraph 2, 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.

2. Notwithstanding the provisions of article 1, payments received by a resident of a Contracting State under the statutory social security scheme of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State. The same shall apply to periodic or non-periodic payments made by a Contracting State or a local authority thereof to a resident of the other Contracting State as compensation for injury or damage sustained as a result of hostilities or political persecution.

3. Maintenance payments, including payments for the maintenance of children, paid by a resident of a Contracting State to a resident of the other Contracting State shall be exempt from tax in that other State if the maintenance payments are not deductible in the first-mentioned State for the purpose of calculating the taxable income of the person liable for the payment.

Article 19. GOVERNMENT SERVICE

1. (a) Remuneration, other than a pension, paid by a Contracting State or a local authority thereof to an individual in respect of services rendered to that State or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

- (i) Is a national of that State; or
- (ii) Did not become a resident of that State solely for the purpose of rendering the services.

2. Any pension paid by, or out of funds created by, a Contracting State or a local authority thereof to an individual in respect of services rendered to that State or authority shall be taxable only in that State.

3. The provisions of articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a local authority thereof.

4. The provisions of paragraph 1 shall also apply to remuneration paid, in the case of the Federal Republic of Germany, by the Deutsche Bundesbank (German Federal Bank), the Deutsche Bundesbahn (German Federal Railways) and the Deutsche Bundespost (German Federal Post Office), and, in the case of the Republic of Finland, by the Suomen Pankki (Bank of Finland), the Kansaneläkelaitos (Social Security Institute), the Valtionrautatiet (Finnish State Railways) and the Posti- ja lennätinlaitos (Postal and Telegraph Service).

Article 20. STUDENTS

1. Payments which a student of a business, technical, agricultural or forestry apprentice (including a *Praktikant*) who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

2. A student at a university or other institution of higher education in a Contracting State or a business, technical, agricultural or forestry apprentice (including a *Praktikant*) who is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned and who is or was immediately before visiting that other Contracting State a resident of the first-mentioned Contracting State shall not be taxed in the other Contracting State in respect of remuneration for services rendered in that other State in connection with his studies 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 shall be taxable only in that State.

Article 22. FORTUNE

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

2. Fortune represented by shares or other corporate rights of the kind referred to in article 6, paragraph 4, may be taxed in the Contracting State in which the immovable property owned by the company is situated.

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

4. 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.

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

Article 23. ELIMINATION OF DOUBLE TAXATION

1. Where a resident of the Republic of Finland derives income or owns fortune which, in accordance with the provisions of this Agreement, may be taxed in the Federal Republic of Germany, the Republic of Finland shall, subject to the provisions of paragraph 3, allow:

(a) As a deduction from the taxes on the income of that person, an amount equal to the taxes on income paid in the Federal Republic of Germany (and also, in the case of a partnership which is a resident of the Republic of Finland, the amount of the taxes on such income levied in the Federal Republic of Germany on partners who are residents of the Republic of Finland);

(b) As a deduction from the tax on the fortune of that person, an amount equal to the fortune tax paid in the Federal Republic of Germany.

2. The deduction in either case shall not, however, exceed that part of the taxes on income or on fortune, as computed before the deduction is given, which is appropriate, as the case may be, to the income or the fortune which may be taxed in the Federal Republic of Germany.

3. In the case of dividends paid by a company which is a resident of the Federal Republic of Germany to a company which is a resident of the Republic of Finland,

the Republic of Finland shall grant exemption from tax for the same period and to the same extent as the dividends would have been exempt under the taxation laws of the Republic of Finland if both the payer and the recipient of the dividends had been residents of the Republic of Finland.

4. Notwithstanding any other provision of the Agreement, an individual who is a resident of the Federal Republic of Germany may be taxed in the Republic of Finland if under Finnish taxation law, as it applies to the Finnish taxes specified in article 2, he is deemed to be a resident of the Republic of Finland. The Republic of Finland shall allow as a deduction from Finnish tax, in accordance with the provisions of paragraph 1, the taxes on income or on fortune levied in the Federal Republic of Germany. The provisions of this paragraph shall apply only to individuals of Finnish nationality.

5. Tax shall be determined in the case of a resident of the Federal Republic of Germany as follows:

(a) Unless the provisions of subparagraphs (b) and (c) apply, there shall be excluded from the basis upon which tax is imposed in the Federal Republic of Germany any item of income arising in the Republic of Finland and any element of fortune situated within the Republic of Finland which, in accordance with the provisions of the foregoing articles, may be taxed in the Federal Republic of Germany. The Federal Republic of Germany shall nevertheless, in calculating the rate of tax on items of income and elements of fortune not so excluded, take into account the items of income and elements of fortune so excluded.

(b) Subject to the provisions of the taxation law of the Federal Republic of Germany regarding credit for foreign taxes, there shall be allowed as a credit against the income tax levied in the Federal Republic of Germany the income tax (including communal tax) levied in the Republic of Finland on the following items of income:

- (i) Dividends not dealt with in subparagraph (c);
- (ii) Royalties which, in accordance with article 12, paragraph 2, and items of income which, in accordance with articles 16 and 17, may be taxed in the Republic of Finland;
- (iii) Income from immovable property, as defined in article 6, and gains from the alienation of such property, unless it forms part of the business property of a permanent establishment situated in the Republic of Finland and is used for the purpose of carrying on business in the Republic of Finland.

(c) Subparagraph (a) shall also apply to dividends paid by a joint-stock company (*Kapitalgesellschaft*) which is a resident of the Republic of Finland to a joint-stock company which is a resident of the Federal Republic of Germany and which owns at least 25 per cent of the voting stock of the first-mentioned company. There shall also be excluded from the basis upon which the tax levied in the Federal Republic of Germany is imposed any holdings the dividends of which are excluded or, if paid, would be excluded, in accordance with the provisions of the preceding sentence, from the basis upon which the tax levied in the Federal Republic of Germany is imposed.

6. In the case of partnerships which, in accordance with article 4, paragraph 4, are residents of a Contracting State and whose income or elements of fortune are taxed in the hands of the partners, the credits and exemptions provided for in paragraphs 1 to 5 in respect of income arising or elements of fortune situated in the other Contracting State shall also be granted to partners who are not residents of the first-mentioned State.

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 State in the same circumstances are or may be subjected.

2. The term "national" also includes any legal person, partnership or association deriving its status as such from the law in force in a Contracting State.

3. The taxation of 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 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.

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 Agreement, 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 Agreement.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of applying the provisions of this Agreement.

Article 26. EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement and of the domestic laws of the Contracting States concerning taxes covered by this Agreement in so far as the taxation thereunder is in accordance with this Agreement. Any information so exchanged shall be treated as secret and shall be disclosed only to persons or

authorities, including courts, involved in the assessment or collection of, or the enforcement or prosecution in respect of, the taxes covered by the Agreement.

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 administrative practice of that or of the other Contracting State;
- (b) To supply information which is 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

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

Article 28. BERLIN CLAUSE

In conformity with the Quadripartite Agreement of 3 September 1971,¹ this Agreement shall be extended to Berlin (West) in accordance with established procedures, provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Government of the Republic of Finland within three months from the date of entry into force of this Agreement.

Article 29. TERRITORIAL EXTENSION

1. This Agreement may, as regards the communal tax, be extended, either in its entirety or with any necessary modifications, to the province of Ahvenanmaa (Åland). Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be agreed between the Contracting States in notes to be exchanged through the diplomatic channel.

2. Unless otherwise agreed by both Contracting States, the denunciation of the Agreement by one of them under article 31 shall also terminate, in the manner provided for in that article, the application of the Agreement to the province of Ahvenanmaa (Åland) as regards the communal tax.

Article 30. ENTRY INTO FORCE

1. The Governments of the two Contracting States shall notify each other that the constitutional requirements for the entry into force of the Agreement have been complied with.

2. The Agreement shall enter into force on the thirtieth day following the date of the later of the notifications referred to in paragraph 1 and its provision shall apply:

- (a) In the Republic of Finland, in respect of taxes on income and on fortune, to taxes levied for taxable years beginning on or after 1 January 1981;
- (b) In the Federal Republic of Germany, to taxes levied for assessment periods beginning on or after 1 January 1981;

¹ United Nations, *Treaty Series*, vol. 880, p. 115.

(c) In both Contracting States, in respect of taxes withheld at source on dividends, interests and royalties, to income derived after the expiry of a period of 30 days from the date of entry into force of this Agreement, and, in respect of other income taxable at source, to income derived on or after 1 January 1981.

3. Upon the entry into force of the Agreement, the Convention between the Republic of Finland and the German Reich for the Prevention of Double Taxation in the Matter of Direct Taxes, signed at Helsinki on 25 September 1935,¹ shall cease to have effect and shall not thenceforth apply to the taxes to which, in accordance with the provisions of paragraph 2, this Agreement applies.

Article 31. TERMINATION

This Agreement shall remain in force until denounced by one of the Contracting States. Either Contracting State may denounce the Agreement, through the diplomatic channel, by giving notice of termination at least six months before the end of any calendar year after the expiry of a period of three years from the date of its entry into force. In such event, the Agreement shall cease to apply:

- (a) In the Republic of Finland, in respect of taxes on income and on fortune, to taxes levied for taxable years beginning on or after 1 January of the calendar year following the calendar year in which notice of termination is given;
- (b) In the Federal Republic of Germany, to taxes levied for assessment periods beginning on or after 1 January of the calendar year following the calendar year in which notice of termination is given;
- (c) In both Contracting States, to taxes withheld at source on income derived on or after 1 January of the calendar year following the calendar year in which notice of termination is given.

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

DONE at Helsinki on 5 July 1979, in duplicate in the Finnish and German languages, both texts being equally authentic.

For the Republic of Finland:

MATTI TUOVINEN

For the Federal Republic of Germany:

KLAUS SIMON

PROTOCOL

On the occasion of the signing of the Agreement between the Republic of Finland and the Federal Republic of Germany for the avoidance of double taxation with respect to taxes on income and on fortune and certain other taxes, the undersigned, being duly authorized by their Governments, have agreed on the following provisions, which shall form an integral part of the aforementioned Agreement:

¹ League of Nations, *Treaty Series*, vol. CLXXII, p. 359.

1. (a) In the case of a partnership which is a resident of the Republic of Finland, the following shall apply:

- (i) Income from sources within the Federal Republic of Germany may be taxed in that State; however, in so far as it is attributable to the participation in the partnership of a non-resident of the Federal Republic of Germany, articles 6 to 17 and article 21 of the Agreement shall apply; such income may be taxed in the Republic of Finland, but a deduction shall be allowed in accordance with article 23, paragraphs 1 and 6, of the Agreement;
- (ii) Income from sources within the Republic of Finland may be taxed in that State; however, in so far as it is attributable to the participation in the partnership of a non-resident of the Republic of Finland, articles 6 to 17 and article 21 of the Agreement shall apply; such income shall, for the purpose of taxation in the Federal Republic of Germany, be treated in accordance with article 23, paragraphs 5 and 6, of the Agreement;
- (iii) Income from sources other than those referred to in subparagraphs (i) and (ii) which:
 - Is attributable to the participation in the partnership of a non-resident of the Federal Republic of Germany shall be taxable only in the Republic of Finland;
 - Is attributable to the participation in the partnership of a resident of the Federal Republic of Germany shall be taxable only in that State.

(b) In the case of a partnership which is a resident of the Federal Republic of Germany, the following shall apply:

- (i) Income from sources within the Republic of Finland may be taxed in that State; however, in so far as it is attributable to the participation in the partnership of a non-resident of the Republic of Finland, articles 6 to 17 and article 21 of the Agreement shall apply, provided that such income shall be subject to tax in the Federal Republic of Germany; such income shall, for the purpose of taxation in the Federal Republic of Germany, be treated in accordance with article 23, paragraphs 5 and 6, of the Agreement;
- (ii) Income from sources within the Federal Republic of Germany may be taxed in that State; however, in so far as it is attributable to the participation in the partnership of a non-resident of the Federal Republic of Germany, articles 6 to 17 and article 21 of the Agreement shall apply; such income may be taxed in the Republic of Finland, but a deduction shall be allowed in accordance with article 23, paragraphs 1 and 6, of the Agreement;
- (iii) Income from sources other than those referred to in subparagraphs (i) and (ii) which:
 - Is attributable to the participation in the partnership of a non-resident of the Republic of Finland shall be taxable only in the Federal Republic of Germany;
 - Is attributable to the participation in the partnership of a resident of the Republic of Finland shall be taxable only in that State.

(c) The foregoing shall apply *mutatis mutandis* to the taxation of fortune.

2. Article 18, paragraph 2, shall also apply to Finnish national pensions.

3. In applying the provisions of article 23, paragraph 1, of the Agreement, the Republic of Finland shall also allow as a deduction the amount of trade tax levied in the Federal Republic of Germany.

4. If a company which is a resident of the Federal Republic of Germany distributes income from sources within the Republic of Finland, the provisions of article 23, paragraph 5, shall not preclude the compensatory imposition of corporation tax (*Ausschüttungsbelastung*) in accordance with the provisions of the taxation law of the Federal Republic of Germany.

5. The provisions of article 23, paragraph 5 (a), of the Agreement shall apply only to profits of a permanent establishment derived from the following activities carried on in the Republic of Finland: production or processing of goods or similar activities, exploration, exploitation or treatment of minerals, quarrying, primary production, construction or assembly, transport, storage or the supply of information, consultancy or the provision of services, banking or insurance, sale of goods or merchandise, or such other activities as are agreed by the Contracting States in notes exchanged for that purpose.

The provisions of article 23, paragraph 5 (b), of the Agreement shall apply to other profits of the permanent establishment. In addition, the provisions of article 23, paragraph 5 (a), of the Agreement shall not apply to assets used in obtaining such other profits.

6. The provisions of article 23, paragraph 5 (c), shall not prevent the Federal Republic of Germany from applying its provisions for the prevention of tax evasion to income arising or accruing in a third State, even where the income is received by or channelled through, or the elements of fortune underlying it are held through, a resident of the Republic of Finland.

However, the Federal Republic of Germany shall allow as a credit against its tax on such income under the aforementioned provisions the amount of Finnish taxes levied on such income or on the distribution of such income.

7. The provisions of article 26, paragraph 2 (c), of the Agreement refer only to information the disclosure of which is prohibited under the laws of the Contracting State supplying the information, and to information the disclosure of which would be contrary to public policy. It is understood and agreed that information may be exchanged under the provisions of article 26 of the Agreement even in the absence of any prior compelling reason.

8. The provisions of article 26 of the Agreement shall in no way limit the application of the Convention of 25 September 1935 between the Republic of Finland and the German Reich concerning Legal Protection and Assistance in Matters relating to Taxation.

9. Notwithstanding the provisions of article 30, paragraph 2 (b), of the Agreement, the provisions of article 22, paragraph 5, of the Agreement shall apply retroactively, for assessment periods beginning on or after 1 January 1974, to the fortune tax of the Federal Republic of Germany in respect of participation by residents of the Republic of Finland in a private limited-liability company which is a resident of the Federal Republic of Germany.

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

DONE at Helsinki on 5 July 1979, in duplicate in the Finnish and German languages, both texts being equally authentic.

For the Republic of Finland:

MATTI TUOVINEN

For the Federal Republic of Germany:

KLAUS SIMON
