

No. 22263

FEDERAL REPUBLIC OF GERMANY
and
INDONESIA

Agreement for the avoidance of double taxation with respect to taxes on income and capital (with protocol and exchange of letters). Signed at Bonn on 2 September 1977

Authentic texts: German, English and Indonesian.

Registered by the Federal Republic of Germany on 1 August 1983.

RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
INDONÉSIE

Convention tendant à éviter la double imposition en matière d'impôts sur le revenu et la fortune (avec protocole et échange de lettres). Signée à Bonn le 2 septembre 1977

Textes authentiques : allemand, anglais et indonésien.

Enregistrée par la République fédérale d'Allemagne le 1^{er} août 1983.

AGREEMENT¹ BETWEEN THE FEDERAL REPUBLIC OF GERMANY
AND THE REPUBLIC OF INDONESIA FOR THE AVOIDANCE OF
DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME
AND CAPITAL

The Federal Republic of Germany and the Republic of Indonesia,
Desiring to conclude an Agreement for the Avoidance of Double Taxation with
respect to Taxes on Income and Capital,
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 capital imposed on behalf of each Contracting State or of its *Länder*, political subdivisions or local authorities, irrespective of the manner in which they are levied.

(2) There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, 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 this Agreement shall apply are, in particular:

a) In Indonesia:

- *pajak pendapatan* (income tax),
- *pajak perseroan* (company tax),
- *pajak kekajaan* (capital tax),
- *pajak atas bunga, dividen dan royalty* (tax on interest, dividend and royalty) (hereinafter referred to as “Indonesian tax”);

b) In the Federal Republic of Germany:

- the *Einkommensteuer* (income tax) including the *Ergänzungsabgabe* (surcharge) thereon,
- the *Körperschaftsteuer* (corporation tax) including the *Ergänzungsabgabe* (surcharge) thereon,
- the *Vermögensteuer* (capital tax), and
- the *Gewerbesteuer* (trade tax) (hereinafter referred to as “German tax”).

(4) This Agreement shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall, if necessary for the purposes of this Agreement, notify to each other any substantial changes which have been made in their respective taxation laws.

¹ Came into force on 23 October 1979, the day after the date of the exchange of the instruments of ratification, which took place at Jakarta on 22 October 1979, in accordance with article 28 (2).

(5) The provisions of this Agreement in respect of taxation of income or capital shall likewise apply to the German trade tax, computed on a basis other than income or capital.

Article 3. GENERAL DEFINITIONS

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

a) The term “Federal Republic of Germany” means the Federal Republic of Germany and, when used in a geographical sense, the territory in which the Basic Law for the Federal Republic of Germany is in force, as well as any area adjacent to the territorial waters of the Federal Republic of Germany designated, in accordance with international law as related to the rights which the Federal Republic of Germany may exercise with respect to the sea-bed and sub-soil and their natural resources, as domestic area for tax purposes.

b) The term “Indonesia” comprises the territory of the Republic of Indonesia as defined in its laws and parts of the continental shelf and adjacent seas, over which the Republic of Indonesia has sovereignty, sovereign rights or other rights in accordance with international law.

c) The terms “a Contracting State” and “the other Contracting State” mean the Federal Republic of Germany or the Republic of Indonesia as the context requires.

d) The term “person” includes an individual, a company and any body of persons treated as an entity for tax purposes.

e) The term “company” means any body corporate or any entity, which is treated as a body corporate for tax purposes.

f) 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.

g) The term “national” means:

aa) In respect of the Federal Republic of Germany any German in the meaning of Article 116, paragraph 1, of the Basic Law for the Federal Republic of Germany and any legal person, partnership and association deriving its status as such from the law in force in the Federal Republic of Germany.

bb) In respect of Indonesia any national of Indonesia and any legal person, partnership and association deriving its status as such from the law in force in Indonesia.

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 Republic of Indonesia the Minister of Finance or his duly authorized representative.

(2) For the purposes of this Agreement:

a) 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.

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

aa) He shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to

him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (centre of vital interests);

- bb*) If the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
- cc*) If he has an habitual abode in both Contracting States or in neither of them, the competent authorities of the two Contracting States shall settle the question by mutual agreement.

c) Where by reason of the provisions of sub-paragraph *a*) 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. If the competent authorities of the two Contracting States consider that a place of effective management is present in both Contracting States, they shall settle the question by mutual agreement.

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

Article 4. 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 farm or plantation;
- g*) A mine, an oil-well, quarry or other place of extraction of natural resources;
- h*) A building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activity continues for a period of 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 or display 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 or display;
- c*) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d*) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;

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

(4) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom paragraph (6) applies—shall be deemed to be a permanent establishment in the first-mentioned State if

a) He has, and habitually exercises in the first-mentioned 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; or

b) He maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise.

(5) An insurance enterprise of a Contracting State shall, except with regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through an employee or through a representative who is not an agent of an independent status within the meaning of paragraph (6).

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

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

Article 5. IMMOVABLE PROPERTY

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

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

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

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

Article 6. 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) Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph (2) shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall however, be such that the result be in accordance with the principles laid down in this Article.

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

(6) For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

(7) Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 7. 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 likewise apply in respect of participations in pools, in a joint business or in an international operations agency of any kind by enterprises engaged in the operation of ships or in international traffic.

Article 8. 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 9. DIVIDENDS

(1) Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

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

a) 10 percent of the gross amount of the dividends if the recipient is a company which owns directly at least 25 percent of the capital of the company paying the dividends;

b) In all other cases, 15 percent of the gross amount of the dividends.

(3) Notwithstanding the provisions of paragraph (2) German tax on dividends paid to a company being a resident of the Republic of Indonesia by a company being a resident of the Federal Republic of Germany, at least 25 percent of the capital of which is owned directly or indirectly by the former company itself, or by it together with other persons controlling it or being under common control with it, shall not exceed 25 percent of the gross amount of such dividends and the surcharge on that tax as long as the rate of German corporation tax on distributed profits is lower than that on undistributed profits and the difference between those two rates is 15 percentage points or more.

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

(5) The term "dividends" [as] used in this Article means income from shares, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident, and income derived by a sleeping partner from his participation as such and distributions on certificates of an investment-trust.

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

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

Article 10. INTEREST

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

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

(3) Notwithstanding the provisions of paragraph (2), interest arising in a Contracting State and paid to the other Contracting State shall be taxable only in that other State.

(4) The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises.

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

(6) Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a *Land*, a political subdivision or a local authority thereof or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

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

Article 11. 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, 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 10 percent of the gross amount of such royalties.

(3) The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan secret formula or process, or for the use of, or the right to use, industrial, commer-

cial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

(4) The provisions of paragraphs (1) and (2) shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise a permanent establishment with which the right or property giving rise to the royalties is effectively connected. In such a case, the provisions of Article 6 shall apply.

(5) Royalties shall be deemed to arise in a Contracting State when the payer is the State itself, a *Land*, a political subdivision or a local authority thereof 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 that case, the excess part of the payments shall remain taxable according to the law of each Contracting State due regard being had to the other provisions of this Agreement.

Article 12. CAPITAL GAINS

(1) Gains from the alienation of immovable property, as defined in paragraph (2) of Article 5, may be taxed in the Contracting State in which such property is situated.

(2) Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State. However, gains from the alienation of movable property of the kind referred to in paragraph (3) of Article 21 shall be taxable only in the Contracting State in which such movable property is taxable according to the said Article.

(3) Gains from the alienation of any property other than those mentioned in paragraphs (1) and (2) shall be taxable only in the Contracting State of which the alienator is a resident.

Article 13. 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 accountants.

Article 14. DEPENDENT PERSONAL SERVICES

(1) Subject to the provisions of Articles 15 to 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, and
- b) The remuneration is paid by, or on behalf of, an employer who is not a resident of the other state, and
- c) The remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

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

Article 15. 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 16. ARTISTES AND ATHLETES

Notwithstanding, the provisions of Articles 6, 13 and 14 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, or income derived from the furnishing by an enterprise of the services of such public entertainers or athletes, may be taxed in the Contracting State in which these activities or services are exercised.

Article 17. PUBLIC FUNDS

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

(2) The provisions of paragraph (1) shall not apply to remuneration or pensions in respect of an employment in connection with any business carried on by a Contracting State, a *Land*, a political subdivision or a local authority thereof for the purpose of profits.

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

Article 18. PENSIONS

Pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

Article 19. TEACHERS, STUDENTS AND TRAINEES

(1) Remuneration which a professor or teacher who is, or immediately before 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 carrying out advanced study or research or for teaching at a university, college, school or other educational institution receives for such work shall not be taxed in that other State, provided that such remuneration is derived by him from outside that other State.

(2) An individual who was a resident of a Contracting State 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 institution in that other State or as a business apprentice (including in the case of the Federal Republic of Germany a *Volontär* or a *Praktikant*) shall, from the date of his first arrival in that other State in connection with such a visit, be exempt from tax in that other State

- a) On all remittances from abroad for purposes of his maintenance, education or training; and
- b) For a period or periods of such a visit not exceeding in the aggregate three years, on any remuneration not exceeding 6,000 DM or the equivalent in Indonesian currency for the calendar year for personal services rendered in that other Contracting State with a view to supplementing the resources available to him for such purposes.

(3) An individual who was a resident of a Contracting State 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 a recipient of a grant, allowance or award from a scientific, educational, religious or charitable organisation or under a technical assistance programme entered into by the Government of a Contracting State shall, from the date of his first arrival in that other State in connection with that visit, be exempt from tax in that other State

- a) On the amount of such grant, allowance or award; and
- b) On all remittances from abroad for the purposes of his maintenance, education or training.

(4) An individual who was a resident of a Contracting State immediately before visiting the other Contracting State and who is sent to that other State for a period not exceeding one year, solely for the purpose of acquiring technical, professional or business experience, shall, if his visit in that other State does not exceed that period, be exempt from tax in that State on

- a) All remittances from abroad for purposes of his maintenance, education or training; and

- b) Any remuneration not exceeding in the aggregate 6,000 DM or the equivalent in Indonesian currency for the personal services rendered in that other State inherent to such acquisition of technical, professional or business experience and not constituting normal pursuance of employment.

Article 20. INCOME NOT EXPRESSLY MENTIONED

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

Article 21. CAPITAL

(1) Capital represented by immovable property, as defined in paragraph (2) of Article 5, may be taxed in the Contracting State in which such property is situated.

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

(3) Ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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

Article 22. RELIEF FROM DOUBLE TAXATION

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

a) Unless the provisions of sub-paragraph *b)* apply, there shall be excluded from the basis upon which German tax is imposed, any item of income derived from Indonesia and any item of capital situated within Indonesia, which, according to this Agreement, may be taxed in Indonesia. The Federal Republic of Germany, however, retains the right to take into account in the determination of its rate of tax the items of income and capital so excluded. In the case of income from dividends the foregoing provisions shall apply only to such dividends as are paid to a company being a resident of the Federal Republic of Germany by a company being a resident of Indonesia at least 25 percent of the capital of which is owned directly by the German company. There shall also be excluded from the basis upon which German tax is imposed any shareholding, the dividends of which, if paid, would be excluded from the basis upon which tax is imposed according to the immediately foregoing sentence.

b) Subject to the provisions of German tax law regarding credit for foreign tax, there shall be allowed as a credit against German income and corporation tax, including the surcharge thereon, payable in respect of the following items of income derived from Indonesia the Indonesian tax paid under the laws of Indonesia and in accordance with this Agreement on:

- aa)* Dividends to which sub-paragraph *a)* does not apply;
- bb)* Interest to which paragraph (2) of Article 10 applies;
- cc)* Royalties to which paragraph (2) of Article 11 applies;

dd) Remuneration to which Article 15 applies;

ee) Income to which Article 16 applies.

c) If in the cases *aa*), *bb*) and *cc*) of sub-paragraph *b*) above, Indonesian tax on dividends, on interest, or on royalties is wholly relieved or reduced below the rates of tax provided for in Article 9, paragraph (2), Article 10, paragraph (2), or Article 11, paragraph (2), by special incentive measures under Indonesian Law designed to promote economic development in Indonesia, there shall be allowed as a credit against German income tax and corporation tax, including the surcharge thereon, on such dividends, interest or royalties, an amount corresponding to the rate of tax provided for in the foregoing mentioned provisions of this Agreement. The credit allowed under the foregoing sentence shall, however, not exceed the amount of Indonesian tax which would have been payable but for such reduction.

(2) Tax shall be determined in the case of a resident of Indonesia as follows:

a) Indonesia may include in the basis upon which Indonesian tax is imposed the items of income or capital, which according to the provisions of this Agreement may be taxed in the Federal Republic of Germany.

b) Subject to the provisions of sub-paragraph *c*) Indonesia shall allow a reduction from the tax computed in conformity with sub-paragraph *a*) equal to such part of that tax which bears the same proportion to the aforesaid tax as the part of the income or capital which is included in the basis of that tax and may be taxed in the Federal Republic of Germany according to the provisions of this Agreement bears to the total income or capital which forms the basis for Indonesian tax.

c) Where a resident of Indonesia derives income which, in accordance with the provisions of Article 9, paragraph (2), Article 10, paragraph (2), or Article 11, paragraph (2), may be taxed in the Federal Republic of Germany, Indonesia shall allow as a deduction from the Indonesian tax on the income of that person an amount equal to the tax paid in the Federal Republic of Germany on that income. Such deduction shall not, however, exceed that part of the Indonesian tax computed in conformity with the sub-paragraph *a*) which is appropriate to the income derived from the Federal Republic of Germany.

Article 23. NON-DISCRIMINATION

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

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

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

(3) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burden-

some than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

Article 24. 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 this Agreement.

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

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

Article 25. EXCHANGE OF INFORMATION

(1) The competent authorities of the Contracting States shall exchange such information (being information which such authorities have in proper order at their disposal) as is necessary for the carrying out of this Agreement, particularly for the prevention of fraud or legal avoidance with respect to the provisions of this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes which are the subject of this 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 the administrative practice of that or of the other Contracting State;
- b) To supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c) To supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

Article 26. DIPLOMATIC AND CONSULAR PRIVILEGES

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

(2) Insofar as, due to such privileges granted to a person under the general rules of international law or under the provisions of special international agreements, income or capital are not subject to tax in the receiving State, the right to tax shall be reserved to the sending State.

(3) For the purposes of this Agreement, persons who are members of a diplomatic or consular mission of a Contracting State in the other Contracting State or in a third State, as well as persons connected with such persons, and who are nationals of the sending State, shall be deemed to be residents of the sending State if they are subjected therein to the same obligations in respect of taxes on income and capital as are residents of that State.

Article 27. LAND BERLIN

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

Article 28. ENTRY INTO FORCE

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

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

- a) In the Federal Republic of Germany in respect of taxes which are levied for any assessment period beginning on or after January 1, 1976;
- b) In the Republic of Indonesia in respect of taxes which are levied for any assessment period beginning on or after January 1, 1976;
- c) In both Contracting States in respect of taxes withheld at source on dividends, interest and royalties paid after December 31, 1975.

Article 29. TERMINATION

This Agreement shall continue in effect indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting State, through diplomatic channels, written notice of termination and, in such event, this Agreement shall cease to be effective:

- a) In the Federal Republic of Germany in respect of taxes which are levied for any assessment period following that in which the notice of termination is given;
- b) In the Republic of Indonesia in respect of taxes which are levied for any year of assessment following that in which the notice of termination is given;
- c) In both Contracting States in respect of taxes withheld at source on dividends, interest and royalties paid after December 31 of the year in which the notice of termination is given.

ZU URKUND DESSEN haben die hierzu gehörig befugten Unterzeichneten dieses Abkommen unterschrieben.

GESCHEHEN ZU Bonn am 2. September 1977 in zwei Urschriften, jede in deutscher, indonesischer und englischer Sprache, wobei jeder Wortlaut verbindlich ist. Bei unterschiedlicher Auslegung des deutschen und des indonesischen Wortlauts ist der englische Wortlaut maßgebend.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Agreement.

DONE at Bonn on the second day of September 1977 in duplicate in the German, Indonesian and English languages, all three texts being equally authentic. In case of divergent interpretation of the German and Indonesian texts the English text shall prevail.

Für die Bundesrepublik Deutschland:
For the Federal Republic of Germany:

GENSCHER

HIEHLE

Für die Republik Indonesien:
For the Republic of Indonesia:

ADAM MALIK

PROTOCOL

The Federal Republic of Germany and the Republic of Indonesia

Have agreed at the signing at Bonn on September 2, 1977, of the Agreement between the two States for the avoidance of double taxation with respect to taxes on income and capital upon the following provisions which shall form an integral part of the said Agreement.

(1) *To Article 4, paragraph (4)*

An agent of a German enterprise acting as a “representative of a foreign trading company” in the Republic of Indonesia in accordance with the respective provisions of the Indonesian Laws and Regulations shall not constitute a permanent establishment as far as his activities are confined to the limits provided for in afore-mentioned provisions of the Indonesian Laws and Regulations.

(2) *To Article 4, paragraph (6)*

Where a broker, or agent carries on activities wholly or almost wholly for the enterprise, he shall not be considered to have an independent status within the meaning of Article 4, paragraph (6). For the purpose of the foregoing provisions the term “enterprise” shall be understood to extend to any other enterprise which is controlled by the first-mentioned enterprise or has a controlling interest in that enterprise.

(3) *To Articles 5 to 20*

Where, under any provision of Articles 5 to 20 of the Agreement, income derived from a Contracting State, except interest to which paragraph (3) of Article 10 applies, is relieved from tax in that State and, under the law in force in the other Contracting State, such income is subject to tax by reference to the amount thereof which is remitted to or received in that other State and not by reference to the full amount thereof, then the relief to be allowed under the agreement in the first-mentioned State shall apply only to so much of the income as is remitted to or received in the other State.

(4) *To Article 7*

It is understood that profits from the operation of ships in the meaning of Article 7 can only be derived by an enterprise which carries out shipping business on its own account and responsibility.

(5) *To Article 10, paragraph (2)*

Indonesian tax charged on interest arising in Indonesia and paid to the Deutsche Gesellschaft für wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) shall not exceed 5 percent of the gross amount of such interest.

(6) *To Article 10, paragraph (3)*

Interest paid to a Contracting State as referred to in Article 10, paragraph (3), shall, in respect of interest paid to

- 1) The Federal Republic of Germany, include interest paid to
 - a) The Deutsche Bundesbank,
 - b) The Kreditanstalt für Wiederaufbau,
- 2) The Republic of Indonesia, include interest paid to Bank of Indonesia.

(7) *To Article 15*

The term "a member of the board of directors of a company" shall include in the case of Indonesia "*anggota pengurus*" and "*komisaris*".

(8) *To Article 17, paragraph (3)*

Remuneration is not borne by the institution mentioned in Article 17, paragraph (3), if that institution has granted a loan from which such remuneration has to be paid at the expense of the recipient of the loan.

(9) *To Article 22*

Notwithstanding the provisions of Article 22, paragraph (1), sub-paragraph *a*), of the Agreement, the provisions of paragraph (1), sub-paragraph *b*), of that Article shall apply likewise to the profits of, and to the capital represented by property forming part of the business property of, a permanent establishment; to dividends paid by, and to the shareholding in, a company; or to gains referred to in Article 12, paragraphs (1) and (2), of the Agreement; provided that the resident of the Federal Republic of Germany concerned does not prove that the receipts of the permanent establishment or company are derived exclusively or almost exclusively

- a*) From producing or selling goods and merchandise, giving technical advice or rendering engineering services, or doing banking or insurance business, within the Republic of Indonesia, or
- b*) From dividends paid by one or more companies, being residents of Indonesia, more than 25 percent of the capital of which is owned by the first-mentioned company, which themselves derive their receipts exclusively or almost exclusively from producing or selling goods or merchandise, giving technical advice or rendering engineering services, or doing banking or insurance business, within the Republic of Indonesia.

(10) *To Article 28*

Notwithstanding the provision of Article 28, the provisions of Article 7, Article 12, paragraph (2), last sentence, and Article 21, paragraph (3), shall have effect from the assessment period beginning on or after January 1, 1970.

ZU URKUND DESSEN haben die hierzu gehörig befugten Unterzeichneten dieses Protokoll unterschrieben.

GESCHEHEN zu Bonn am 2. September 1977 in zwei Urschriften, jede in deutscher, indonesischer und englischer Sprache, wobei jeder Wortlaut verbindlich ist. Bei unterschiedlicher Auslegung des deutschen und des indonesischen Wortlauts ist der englische Wortlaut maßgebend.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Protocol.

DONE at Bonn on the second day of September 1977 in duplicate, in the German, Indonesian and English languages, all three texts being authentic. In case of divergent interpretation of the German and Indonesian texts the English text shall prevail.

Für die Bundesrepublik Deutschland:
For the Federal Republic of Germany:

GENSCHER

HIEHLE

Für die Republik Indonesien:
For the Republic of Indonesia:

ADAM MALIK

II

[INDONESIAN TEXT — TEXTE INDONÉSISIEN]

MINISTER FOR FOREIGN AFFAIRS
REPUBLIC OF INDONESIA

MINISTER FOR FOREIGN AFFAIRS
REPUBLIC OF INDONESIA

Bonn, September 2, 1977

Bonn, 2 September 1977

Excellency,

I have the honour to acknowledge receipt of your Letter of today's date which reads according to the agreed English version as follows:

"With reference to Article 3 of the Agreement between the Federal Republic of Germany and the Republic of Indonesia for the Avoidance of Double Taxation with respect to Taxes on Income and Capital, to be signed today, I have the honour to confirm that the conclusion of the said Agreement shall not prejudice the position of our two countries with regard to any question of the Law of the Sea which [is] under discussion of the Third United Nations Conference on the Law of the Sea".

Please accept, Excellency, the assurances of my highest consideration.

His Excellency the Minister of Foreign Affairs of the Federal Republic of Germany
Mr. Hans-Dietrich Genscher

Yang Mulia,

Saya mendapat kehormatan untuk memberitahukan bahwa saya telah menerima Surat Yang Mulia tertanggal hari ini, yang menurut teks dalam bahasa Inggeris yang telah disepakati berbunyi sebagai berikut:

"With reference to Article 3 of the Agreement between the Federal Republic of Germany and the Republic of Indonesia for the Avoidance of Double Taxation with respect to Taxes on Income and Capital, to be signed today, I have the honour to confirm that the conclusion of the said Agreement shall not prejudice the position of our two countries with regard to any question of the Law of the Sea which [is] under discussion of the Third United Nations Conference on the Law of the Sea."

Sudilah Yang Mulia, menerima penghargaan saya yang setinggi-tingginya.

[Signed — Signé]¹

Yang Mulia Menteri Luar Negeri
Republik Federasi Jerman Tn. Hans-Dietrich Genscher

¹ Signed by Adam Malik — Signé par Adam Malik.