

No. 22429

UNION OF SOVIET SOCIALIST REPUBLICS
and
FEDERAL REPUBLIC OF GERMANY

Convention for the avoidance of double taxation with respect to taxes on income and fortune (with protocol). Signed at Bonn on 24 November 1981

Authentic texts: Russian and German.

Registered by the Union of Soviet Socialist Republics on 31 October 1983.

UNION DES RÉPUBLIQUES SOCIALISTES
SOVIÉTIQUES
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE

Convention tendant à éviter la double imposition en matière d'impôts sur le revenu et la fortune (avec protocole). Signée à Bonn le 24 novembre 1981

Textes authentiques: russe et allemand.

Enregistrée par l'Union des Républiques socialistes soviétiques le 31 octobre 1983.

[TRANSLATION—TRADUCTION]

CONVENTION¹ BETWEEN THE UNION OF SOVIET SOCIAL-
IST REPUBLICS AND THE FEDERAL REPUBLIC OF GER-
MANY FOR THE AVOIDANCE OF DOUBLE TAXATION
WITH RESPECT TO TAXES ON INCOME AND FORTUNE

The Parties to the Convention,

Desiring to promote and develop their co-operation in commercial, industrial, technical and cultural areas,

With a view to the avoidance of double taxation,

In accordance with the provisions of the Final Act of the Conference on Security and Co-operation in Europe of 1 August 1975,²

Have agreed as follows:

Article 1. PERSONAL SCOPE

1. This Convention shall apply to persons who, for tax purposes, are residents of one or both of the Contracting States.

2. For the purposes of this Convention, the term “person” means an individual or a body corporate, including any other independent entities which are treated as bodies corporate for tax purposes.

3. For the purposes of this Convention, the expression “residents of one of the Contracting States” means any person who is liable to taxation therein by reason of his domicile or residence, its place of effective management or because of the fact that it was founded there.

4. Where, by reason of the provisions of paragraph 3 of this article, an individual is a resident of both Contracting States, the following shall apply:

- (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 vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
- (c) Should it not be possible by applying paragraphs (a) and (b) to establish in which Contracting State the person is a resident, then the competent authorities of the Contracting States shall settle the matter in accordance

¹ Came into force on 15 June 1983, i.e., the thirtieth day following the exchange of the instruments of ratification, which took place at Moscow on 16 May 1983, in accordance with article 24 (2).

² *International Legal Materials*, vol. 14 (1975), p. 1292 (American Society of International Law).

with the procedure for reaching agreement set out in article 22 of the Convention.

5. Where by reason of the provisions of paragraph 3 of this article a person other than an individual is a resident of both Contracting States, it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

Article 2. TAXES COVERED

1. This Convention shall apply to taxes on income and on capital imposed in the Contracting States in accordance with the legislation in force there, irrespective of the manner in which they are levied. These are

In the case of the Union of Soviet Socialist Republics:

- Income tax from foreign bodies corporate,
- Income tax from the population,
- Agricultural tax,
- Property owners' tax and
- Land tax;

In the case of the Federal Republic of Germany:

- Income tax,
- Corporation tax,
- Trade tax,
- Capital tax, and
- Land tax.

2. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the signature of the Convention in addition to, or in place of, the taxes described in paragraph 1 of this article.

Article 3. DEFINITIONS

1. For the purposes of this Convention:

(a) The terms "a Contracting State" and "the other Contracting State" mean the Union of Soviet Socialist Republics or the Federal Republic of Germany, as the context requires, and when used in a geographical sense,

- The territory of the Contracting State;
- The continental shelf adjacent to the territorial waters, to the extent that the Contracting State concerned exercises, in accordance with international law, sovereign rights to the exploration of the continental shelf and the exploitation of its natural resources;

(b) The term "international traffic" means any transport by a sea-going or inland vessel or aircraft operated by any person whose place of effective management is in either of the Contracting States, unless such transport takes place exclusively between localities within one of the two Contracting States;

(c) The term “competent authority” means

— In the case of the Union of Soviet Socialist Republics, the Ministry of Finance of the USSR or its authorized representative,

— For the Federal Republic of Germany, the Federal Minister of Finance.

2. As regards the application of the Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that Contracting State, particularly its legislation concerning the taxes to which the Convention applies.

Article 4. PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term “permanent establishment” means a fixed place of business through which a person resident in a Contracting State carries on, wholly or partly, the business of his enterprise in the other Contracting State.

2. A building site or assembly project is a permanent establishment only if it lasts more than 12 months.

3. Notwithstanding the preceding provisions of this article, the term “permanent establishment” shall be deemed not to include:

- (a) Mere supervision of the carrying out of construction and assembly work;
- (b) Facilities used solely for the purpose of storage, display or delivery of goods or merchandise belonging to the person;
- (c) Stocks of goods or merchandise belonging to the person which are maintained solely for the purpose of storage or delivery;
- (d) Stocks of goods or merchandise belonging to the person, which are maintained solely for the purpose of display. Sale of displayed articles subsequent to their display shall not be deemed to constitute a permanent establishment;
- (e) Stocks of goods or merchandise belonging to the person which are maintained solely for the purpose of treatment or processing by another person;
- (f) A fixed place of business which is maintained solely for the purpose of purchasing goods or merchandise, collecting information, or engaging in advertising for the person;
- (g) A fixed place of business which is maintained solely for the purpose of carrying out other activities for the person, which are of a preparatory or auxiliary character;
- (h) A fixed place of business which is maintained solely for the purpose of carrying out more than one of the activities described in subparagraphs (a) to (g), on the condition that the resulting overall activity of the fixed place of business is of a preparatory or auxiliary character.

4. Where a person resident in a Contracting State carries on business in the other Contracting State through a representative, a permanent establishment will be deemed to exist only if the representative:

- (a) Has an authority to conclude contracts in the name of the person,
- (b) Habitually exercises this authority in the other State, and
- (c) Does not act as an agent of independent status within the meaning of paragraph 5 of this article.

A permanent establishment shall not be deemed to exist when the agent merely carries out activities in accordance with paragraph 3 of this article.

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

6. The fact that a body corporate which is a resident of a Contracting State controls or is controlled by a body corporate which is a resident of the other Contracting State or which carries on business in that other State shall not of itself constitute either body corporate a permanent establishment of the other.

Article 5. BUSINESS PROFITS

1. The business profits of a person resident in a Contracting State shall be taxable in the other State only when that person carries on his business through a permanent establishment situated therein. In such cases the tax shall be levied only on that portion of the profits which is attributable to that permanent establishment.

2. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are connected with its activities, including executive and general administrative expenses, whether incurred in the State in which the permanent establishment is situated or elsewhere.

3. No income shall be attributed to a permanent establishment by reason of the mere purchase of goods or merchandise for the person.

4. The provisions of this article shall not affect the provisions laid down in respect of taxation in other articles of this Convention.

Article 6. PROFITS DERIVED FROM INTERNATIONAL TRAFFIC

1. Profits obtained from international traffic by a person whose place of effective management is situated in a Contracting State shall not be taxable in the other Contracting State.

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 7. DIVIDENDS

1. Dividends paid by a body corporate 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 body corporate paying the dividends is a resident, but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

3. The term "dividends" as used in this article means income from shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other rights assimilated to income from shares by the laws of the State of which the body corporate making the distribution of dividends is a resident.

4. The provisions of paragraphs 1 and 2 of this article shall not apply if the recipient of the dividends, being a resident of one of the Contracting States, carries on business in the other Contracting State, from which the dividends arise, through 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 5 of this Convention shall apply.

Article 8. 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. Such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but the tax shall not exceed 5 per cent of the gross amount of the interest. However interest arising in one of the Contracting States shall not be subject to taxation in that State when the other Contracting State, according to its law of that State, does not tax such interest in similar cases.

3. Notwithstanding the provisions of paragraph 2 of this article, interest shall be taxable only in the Contracting State of which the recipient of the interest is a resident, if:

- (a) The recipient of the interest is the Government of one of the Contracting States, or for the Union of Soviet Socialist Republics, the Gosbank of the USSR, and for the Federal Republic of Germany, the Deutsche Bundesbank; or
- (b) The loan on which the interest is being paid has been guaranteed by the State or by an organization authorized by it for that purpose.

4. The term "interest" as used in this article means income from loans, bank deposits, Government securities and bonds or debentures, as well as all other income assimilated for purposes of taxation to income from money lent.

5. The provisions of paragraphs 1, 2 and 3 of this article shall not apply if the recipient of the interest, being a resident of one of the Contracting States, carries on business in the other Contracting State, from which the interest

arises, through a permanent establishment with which the debt-claim giving rise to the interest is effectively connected. In such case the provisions of article 5 of the Convention shall apply.

Article 9. INCOME FROM COPYRIGHT AND LICENCES

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

2. The term “royalties” as used in this article means payments of any kind received as a consideration for the alienation or use of, or the right to use:

- Copyright of literary, musical, artistic or scientific works, including cinematographic films, and also films or tape recordings for radio broadcasting or television;
- Inventions, trademarks, service marks, designs or models, plans, secret formulae or processes, whether or not protected by patents or copyright certificates;
- Programmes for electronic data processing installations;
- Industrial, commercial or scientific equipment;

or for information concerning industrial, commercial or scientific experience (know-how).

3. The provisions of this article shall apply also to the payments received as a consideration for the provision of technical services, when such payments are connected with the alienation, use, right to use, or information described in paragraph 2 of this article.

4. Paragraph 1 of this article 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 with which the right or property giving rise to the royalties is effectively connected. In such case, article 5 of the Convention shall apply.

Article 10. INCOME FROM IMMOVABLE PROPERTY AND ITS ALIENATION

1. Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State, or from the alienation of such property, may be taxed in that other Contracting State. Sea-going or inland vessels and aircraft shall not be regarded as immovable property.

2. For purposes of applying this Convention the term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated.

3. Paragraph 1 of this article shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

Article 11. INCOME FROM THE ALIENATION OF OTHER PROPERTY

1. Income derived from the alienation of movable property forming part of the property of a permanent establishment which a resident of a Con-

tracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment, may be taxed in the other Contracting State.

2. Income derived from the alienation of sea-going or inland vessels and aircraft which will be used in international traffic, and of movable property pertaining to the operation of such means of transport shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

3. Gains from the alienation of shares in the capital of a body corporate which is a resident of a Contracting State may be taxed in that State.

4. Income derived from the alienation of any property other than that mentioned in paragraphs 1, 2 and 3 of this article shall be taxable only in the Contracting State of which the seller is a resident.

Article 12. WAGES AND SALARIES

1. Salaries, wages and similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State.

2. Remuneration received by a resident of a Contracting State in respect of employment exercised in the other Contracting State shall not be taxable there if:

- (a) The recipient is present in the other State for a total of not more than 183 days in the fiscal year concerned; and
- (b) The remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) The remuneration is not borne by a permanent establishment which the employer has in the other State.

3. Notwithstanding the preceding provisions of this article, remuneration in respect of employment exercised on board a sea-going or inland vessel or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 13. GOVERNMENT SERVICE

Remuneration, including pensions, paid directly or indirectly by a Contracting State or a local authority thereof to any individual in respect of services rendered to that State or local authority in the discharge of functions of a governmental nature shall be taxable only in that State. If the remuneration is paid to a person, who is a permanent resident of the other Contracting State, the provisions of article 12 of this Convention shall apply.

Article 14. PENSIONS

Subject to the provisions of article 13 of this Convention, pensions and similar remuneration paid to a resident of one of the Contracting States in consideration of past employment shall be taxable only in that State.

Article 15. STUDENTS, OTHER PERSONS IN EDUCATION, AND TEACHERS

1. Payments which a student, scholarship holder, trainee or apprentice who is or was formerly a resident of a Contracting State and who is present in the other Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in the other State, provided that such payments arise from sources outside that other State.

2. Remuneration which a university lecturer or other teacher who is, or immediately before his departure was, a resident of one Contracting State and who visits the other Contracting State for a period not exceeding two years for purposes of advanced study or research or to occupy a teaching position at a university, college or other educational institution receives for such activity shall not be taxed in the other State.

Article 16. ARTISTS AND ATHLETES

1. Income derived by professional artists (such as theatre, motion picture, radio or television artists and musicians) and by athletes, resident in a Contracting State from their personal activities as such in the other Contracting State may not be taxed in the other Contracting State if their public appearances are paid for in the main from the public funds of one of the Contracting States.

2. If the conditions of paragraph 1 of this article are not met, then notwithstanding the provisions of articles 5 and 12 of this Convention, income may be taxed in the Contracting State where the activities in question were carried out.

Article 17. OTHER INCOME

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

Article 18. PROPERTY

1. Immovable property as defined in article 10 of this Convention owned by a resident of a Contracting State and situated in the other Contracting State may be taxed in that other Contracting State.

2. Movable property forming part of a permanent establishment maintained by a resident of a Contracting State in the other Contracting State may be taxed in the other State.

3. Sea-going or inland vessels and aircraft operated in international traffic, and movable property pertaining to the operation of such means of transport, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Shares in the capital of a body corporate resident in one of the Contracting States may be taxed in that State.

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

Article 19. ELIMINATION OF DOUBLE TAXATION

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

- (a) Unless the provisions of subparagraph (b) apply, there shall be excluded from the basis upon which tax of the Federal Republic of Germany is imposed any item of income derived from the Union of Soviet Socialist Republics and any elements of fortune situated in the Union of Soviet Socialist Republics which, according to this Convention, may be taxed in the Union of Soviet Socialist Republics. The Federal Republic of Germany shall, however, retain the right to take into account in the determination of its rate of tax the items of income and elements of fortune so excluded;
- (b) In so far as the Union of Soviet Socialist Republics may tax income in accordance with articles 7, 8 and 16 of this Convention, taxes paid in the Union of Soviet Socialist Republics shall be allowed as a credit against income and corporate taxes to be imposed on such income under the provisions of the tax law of the Federal Republic of Germany.

2. In the case of a resident of the Union of Soviet Socialist Republics, double taxation shall be eliminated in accordance with the legislation of the USSR.

Article 20. EQUAL TREATMENT IN RESPECT OF TAXES

A Contracting State shall not levy on a resident of the other Contracting State a higher or more burdensome tax than that State would levy on a resident of a third State with which it has not concluded a convention for the avoidance of double taxation.

Article 21. EXCHANGE OF INFORMATION

The competent authorities of the Contracting States shall exchange, as necessary, information concerning changes in their tax legislation.

Article 22. PROCEDURE FOR REACHING AGREEMENT

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States have resulted or will result for him in taxation not in accordance with this Convention, the competent authorities of both Contracting States shall endeavour to resolve the case by mutual agreement with a view to the avoidance of taxation not in accordance with this Convention.

2. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also, following

established procedure, consult together for the elimination of double taxation in cases not provided for in the Convention.

3. The competent authorities of the Contracting States may communicate with each other directly for the purpose of applying the provisions of the Convention.

Article 23

In conformity with the Quadripartite Agreement of 3 September 1971,¹ the Convention shall be extended to Berlin (West) in accordance with established procedure.

Article 24. ENTRY INTO FORCE

1. This Convention is subject to ratification; the instruments of ratification shall be exchanged at Moscow as soon as possible.

2. The Convention shall enter into force on the thirtieth day after the exchange of instruments of ratification and its provisions shall have effect:

- (a) In respect of taxes withheld at the source on items of income paid after 1 January 1980; and
- (b) In respect of the remaining taxes for the 1980 assessment period and for subsequent assessment periods.

3. The provisions of this Convention shall not affect other Conventions which have been or may be concluded between the Contracting States in which taxation questions are regulated in any manner. However, should this Convention provide for more advantageous tax arrangements, then this Convention shall apply.

Article 25. TERMINATION

1. This Convention is concluded for an indefinite period and shall remain in force until it is denounced by one of the Contracting States.

2. Either Contracting State may denounce the Convention, through diplomatic channels, by giving the other Contracting State written notice to that effect on or before the thirtieth day of June of any calendar year after the expiry of the third year following the date in which the Convention entered into force. In such event, the Convention shall be void and shall cease to have effect:

- (a) In respect of taxes withheld at the source on items of income paid after 31 December of the year in which notice of denunciation was given; and
- (b) In respect of the remaining taxes levied for assessment periods starting after 31 December of the year in which notice of denunciation was given.

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

DONE at Bonn on 24 November 1981 in two original copies, each in the Russian and the German languages, both texts being equally authentic.

For the Union of Soviet
Socialist Republics:

[V. SEMENOV]

For the Federal Republic
of Germany:

[D. VON WUERZEN]

[D. VON STADEN]

PROTOCOL

The Contracting States, on the occasion of the signing at Bonn on 24 November 1981 of the Convention between the Union of Soviet Socialist Republics and the Federal Republic of Germany for the avoidance of double taxation with respect to taxes on income and fortune, have agreed on the following provisions which shall form an integral part of the Convention.

1. *Ad article 4 and following*

The concept of “business” within the meaning of this Convention shall include entrepreneurial and independent activities.

2. *Ad article 5*

(a) If a resident of one of the Contracting States carries on business in the other Contracting State by means of a permanent establishment situated therein, there shall be attributed to such permanent establishment in each of the Contracting States, unless otherwise provided in article 5, paragraph 2, the income which it could have obtained had it carried on the activities entirely independently.

(b) There shall be attributed to a building site or assembly project within the Contracting State in which the permanent establishment is located only such income as is a direct result of those activities. Income deriving from a delivery of goods, either related to or independent of those activities, from the head office or another permanent establishment of the enterprise, or from a third person, shall not be attributed to the building site or assembly project.

(c) Income deriving from planning, projection, construction, or research work, as well as technical services, carried out in a Contracting State by a resident of that Contracting State in connection with a permanent establishment situated in the other Contracting State shall not be attributed to the permanent establishment.

3. *Ad article 7*

For the Federal Republic of Germany the term “dividends” includes income which a silent partner receives from his investment as a silent partner, and also payments made on shares in investment capital.

4. *Ad articles 7 and 8*

Notwithstanding the provisions of these articles, those items of income dealt with therein which originate in the Federal Republic of Germany shall be taxed in accordance with the tax law of the Federal Republic of Germany, when they:

(a) Result from rights or debt-claims participating in profits (including income of a silent partner from his holding, income from profit-sharing fixed-term loans and

profit-sharing debentures within the meaning of the tax law of the Federal Republic of Germany); and

(b) Are deductible in determining the income of the debtor.

5. *Ad articles 8 and 9*

Where payments are higher than those which have been agreed between mutually independent persons, the excess amount may be taxed in accordance with the law of each of the Contracting States and taking into account the other provisions of this Convention.

6. *Ad article 12*

Remuneration for the performance of functions on a supervisory board or administrative board and similar payments received by a resident in a Contracting State in his capacity as a member of the supervisory or administrative board of a body corporate situated in the other Contracting State may be taxed in that other State.

7. *Ad article 13*

Employment in an organization or an enterprise which carries on business shall not be regarded as constituting the exercise of government functions.

8. *Ad article 19*

In respect of the application of the Convention in the Federal Republic of Germany the following shall apply:

If a body corporate situated in the Federal Republic of Germany uses income from sources within the Union of Soviet Socialist Republics to make payments, article 19, paragraph 1, shall not exclude the levying of corporate tax in accordance with the provisions of the tax law of the Federal Republic of Germany.

DONE at Bonn on 24 November 1981 in two original copies, each in the Russian and German languages, both texts being equally authentic.

For the Union of Soviet
Socialist Republics:

[V. SEMENOV]

For the Federal Republic
of Germany:

[D. VON WUERZEN]
[D. VON STADEN]