No. 29513

FEDERAL REPUBLIC OF GERMANY
and
INDONESIA

Agreement for the avoidance of double taxation with respect to taxes on income and capital (with protocol). Signed at Bonn on 30 October 1990

Authentic texts: German, Indonesian and English.

Registered by Germany on 28 January 1993.

RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
INDONÉSIE

Accord tendant à éviter la double imposition en matière d'impôts sur le revenu et sur la fortune (avec protocole). Signé à Bonn le 30 octobre 1990

Textes authentiques : allemand, indonésien et anglais.

Enregistré par l'Allemagne le 28 janvier 1993.

AGREEMENT[1] 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 a new Agreement for the Avoidance of Double Taxation with Respect to Taxes on Income and Capital with a view to encourage mutual investment and trade

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 a Contracting State, of a Land or a political subdivision or local authority thereof, 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, the payroll tax, and taxes on capital appreciation.

(3) The existing taxes to which this Agreement shall apply are in particular:

(*a*) In the Federal Republic of Germany:

The *Einkommensteuer* (income tax),

The *Körperschaftsteuer* (corporation tax),

The *Vermögensteuer* (capital tax) and

The *Gewerbesteuer* (trade tax)

(hereinafter referred to as "German tax");

(*b*) In Indonesia: The income tax imposed under the *Undang-undang Pajak Penghasilan* 1984 (Law No. 7 of 1983) and to the extent provided in such income tax law, the company tax imposed under the *Ordonansi Pajak Perseroan* 1925 (State Gazette No. 319 of 1925 as lastly amended by Law No. 8 of 1970) and the tax imposed under the *Undang-undang Pajak atas Bunga, Dividen dan Royalty* 1970 (Law No. 10 of 1970)

(hereinafter referred to as "Indonesian tax").

(4) The Agreement shall also apply to any identical or substantially similar taxes on income which are imposed after the date of signature of the Agreement in

[1] Came into force on 28 December 1991, i.e., one month after the exchange of the instruments of ratification, which took place at Bonn on 28 November 1991, in accordance with article 28 (2).

addition to, or in place of, those referred to in paragraph 3. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

Article 3. GENERAL DEFINITIONS

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

(*a*) The term "Federal Republic of Germany", if used in a geographical sense, means the area in which the tax law of the Federal Republic of Germany is in force, as well as the areas of the sea, the sea-bed and its subsoil adjacent to the territorial sea of the Federal Republic of Germany, over which the Federal Republic of Germany exercises sovereign rights and jurisdiction in accordance with international law and with its national legislation;

(*b*) The term "Indonesia" comprises the territory of the Republic of Indonesia as defined in its laws and such parts of the continental shelf and the 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 Indonesia or the Federal Republic of Germany as the context requires;

(*d*) The term "person" means an individual and a company;

(*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 within 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 the Republic of Indonesia any national of Indonesia and any legal person, partnership and association deriving its status as such from the law in force in the Republic of Indonesia;

(*h*) The term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(*i*) The term "competent authority" means in the case of the Federal Republic of Germany the Federal Ministry of Finance, and in the case of the Republic of Indonesia the Minister of Finance or his authorized representative.

(2) As regards the application of the Agreement by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State concerning the taxes to which the Agreement applies.

Article 4. RESIDENT

(1) For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

(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 State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

(*b*) If the 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 State, he shall be deemed to be a resident of the State in which he has an habitual abode;

(*c*) If he has an habitual abode in both States or in 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 company is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

Article 5. PERMANENT ESTABLISHMENT

(1) For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

(2) The term "permanent establishment" includes especially

(*a*) A place of management;

(*b*) A branch;

(*c*) An office;

(*d*) A factory;

(*e*) A workshop, and

(*f*) A mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

(3) A building site or construction or installation project constitutes a permanent establishment only if it lasts more than six months.

(4) Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not 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 of 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;

(*f*) The maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs *a*) to *e*), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

(5) Notwithstanding the provisions of paragraphs 1 and 2, where a person — other than an agent of an independent status to whom paragraph 7 applies — is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

(*a*) Has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or

(*b*) Has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

(6) 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 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 7.

(7) 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, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

(8) 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 derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

(2) 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. 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 independent personal 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) Subject to the provisions of paragraph 3, 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 determining 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 the absence of appropriate accounting or other data permitting the determination of the profits to be attributed to a permanent establishment, the tax may be assessed in the Contracting State in which the permanent establishment is situated in accordance with the laws of that State, in particular regard being had to the normal profits of similar enterprises engaged in the same or similar conditions, provided that, on the basis of the available information, the determination of the profits of the permanent establishment is consistent with the principles stated 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 8. SHIPPING AND AIR TRANSPORT

(1) Profits from the operation of ships or aircraft in international traffic derived by a resident of a Contracting State shall be taxable only in that State.

(2) 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 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 the Contracting State of which the company paying the dividends is a resident and according to the laws 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 partnerships) which owns directly at least 25 per cent of the capital of the company paying the dividends;

(*b*) In all other cases, 15 per cent of the gross amount of the dividends

if the recipient is the beneficial owner of the dividends.

(2) The term "dividends" as used in this Article means

(*a*) Dividends on shares including income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, and

(*b*) Other income which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident, and, for the purpose of taxation in the Federal Republic of Germany, income derived by a sleeping partner ("stiller Gesellschafter") from his participation as such and distributions on certificates of an investment fund or investment trust.

(3) The provisions of paragraph 1 shall not apply if the beneficial owner 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 independent personal 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.

(4) 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, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

(5) Notwithstanding any other provisions of this Agreement where a company which is a resident of a Contracting State has a permanent establishment in the other Contracting State, the profits of the permanent establishment may be subjected to an additional tax in that other State in accordance with its law, but the additional tax so charged shall not exceed 10 per cent of the amount of such profits after deducting therefrom income tax and other taxes on income imposed thereon in that other State.

Article 11. INTEREST

(1) Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the Contracting State in which it arises and according to the laws of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the interest if the recipient is the beneficial owner of the interest.

(2) Notwithstanding the provisions of paragraph 1

(*a*) Interest arising in the Federal Republic of Germany and paid to the Government or the Central Bank of Indonesia shall be exempt from German tax;

(*b*) Interest arising in the Republic of Indonesia and paid in consideration of a loan guaranteed by Hermes-Deckung or paid to the Government of the Federal Republic of Germany, the Deutsche Bundesbank, the Kreditanstalt für Wiederaufbau or the Deutsche Finanzierungsgesellschaft für Beteiligungen in Entwicklungsländern shall be exempt from Indonesian tax.

(3) The competent authorities of the Contracting States may agree from time to time to grant exemption as provided for in paragraph 2 to other financial institutions, the capital of which is wholly owned by the Government of the other Contracting State.

(4) The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by a 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, as well as income assimilated to

income from money lent by the taxation laws of the State in which the income arises, including interest on deferred payment sales.

(5) The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner 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 independent personal 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.

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

(7) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, 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 beneficial owner 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 laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12. ROYALTIES AND FEES FOR TECHNICAL SERVICES

(1) Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties or of the fees for technical services the tax so charged shall not exceed:

(*a*) In the case of royalties as defined in paragraph 2 sub-paragraph *a*) 15 per cent of the gross amount of such royalties,

(*b*) In the case of royalties as defined in paragraph 2 sub-paragraph *b*) 10 per cent of the gross amount of such royalties and

(*c*) In the case of fees for technical services 7.5 per cent of the gross amount of such fees.

(2) The term "royalties" as used in this Article means payments of any kind received as a consideration

(*a*) For the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematographic films and films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or

(*b*) For the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.

(3) The term "fees for technical services" as used in this Article means payments of any kind to any person, other than payments to an employee of the person making the payments, in consideration for any services of a managerial, technical or consultancy nature rendered in the Contracting State of which the payer is a resident.

(4) The provisions of paragraph 1 of this Article shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right, property or contract in respect of which the royalties or fees for technical services 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 and fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a Land, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the obligation to make the payments was incurred, and the payments are borne by that permanent establishment or fixed base, then the royalties or fees for technical services shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

(6) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties or fees for technical services paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner 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 laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13. Capital Gains

(1) Gains derived by a resident of a Contracting State from the alienation of immovable property situated in the other Contracting State may be taxed in that other State.

(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 independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

(3) Gains derived by a resident of a Contracting State from the alienation of aircraft operated in international traffic or movable property pertaining to the operation of such aircraft shall be taxable only in that State.

(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.

Article 14. INDEPENDENT PERSONAL SERVICES

(1) Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent 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 or he is present in that other State for a period or periods exceeding in the aggregate 120 days in the fiscal year concerned. If he has such a fixed base or remains in that other State for the aforesaid period or periods, the income may be taxed in that other State but only so much of it as is attributable to that fixed base or is derived in that other State during the aforesaid period or periods.

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

Article 15. DEPENDENT PERSONAL SERVICES

(1) Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

(2) Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

(*a*) The recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned, and

(*b*) The remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

(*c*) The remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

(3) Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that State.

Article 16. DIRECTORS' FEES

Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17. ARTISTES AND ATHLETES

(1) Notwithstanding the provisions of Articles 7, 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture,

radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

(2) Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

(3) Notwithstanding the provisions of paragraphs 1 and 2 income derived by an artiste or athlete from his personal activities as such shall be exempt from tax in the Contracting State in which these activities are exercised if the activities are exercised within the framework of a visit which is substantially supported by the other State, a Land, a political subdivision, a local authority or public institution thereof.

Article 18. PENSIONS

Subject to the provisions of Article 19, pensions and other similar remuneration arising in a Contracting State and paid to a resident of the other Contracting State in consideration of past employment may be taxed in the first-mentioned State.

Article 19. GOVERNMENT SERVICE

(1) Remuneration including pensions paid by a Contracting State, a Land, a political subdivision or a local authority thereof to an individual in respect of services rendered to that State, Land, subdivision or authority shall be taxable only in that State. However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State, if the individual is a resident of that State and not a national of the first-mentioned State.

(2) The provisions of Articles 15, 16, 17 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State, a Land, a political subdivision or a local authority thereof.

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

Article 20. TEACHERS, RESEARCHERS AND STUDENTS

(1) An individual who visits a Contracting State at the invitation of that State or of a university, college, school, museum or other cultural institution of that State or under an official programme of cultural exchange for a period not exceeding two years solely for the purpose of teaching, giving lectures or carrying out research at such institution and who is, or was immediately before that visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned State on his remuneration for such activity, provided that such remuneration is derived by him from outside that State.

(2) Payments which a student, apprentice or business trainee 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 first-mentioned State, provided that such payments are made to him from sources outside that State.

Article 21. OTHER INCOME

(1) Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

(2) Notwithstanding the provisions of paragraph 1, if a resident of a Contracting State derives income from sources within the other Contracting State in the form of lottery prizes, awards and income from the lease of movable property, such income may be taxed in the other Contracting State.

Article 22. CAPITAL

(1) Capital represented by immovable property, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

(2) Capital represented by 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 by 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 independent personal services, may be taxed in that other State.

(3) Ships and aircraft operated in international traffic by a resident of a Contracting State and movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

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

Article 23. 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 foreign tax credit is to be allowed under sub-paragraph *b*), there shall be exempted from German tax any item of income arising in the Republic of Indonesia and any item of capital situated within Indonesia, which, according to this Agreement, may be taxed in the Republic of Indonesia. The Federal Republic of Germany, however, will take into account in the determination of its rate of tax the items of income and capital so exempted.

In the case of dividends exemption shall apply only to such dividends as are paid to a company (not including partnerships) being a resident of the Federal Republic of Germany by a company being a resident of the Republic of Indonesia at least 25 per cent of the capital of which is owned directly by the German company.

There shall be exempted from taxes on capital any shareholding the dividends of which are exempted or, if paid, would be exempted 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, corporation and capital tax payable in respect of the following items of income arising in the Republic of Indonesia and the items of capital situated there the Indonesian tax paid under the laws of Indonesia and in accordance with this Agreement on:

(*aa*) Dividends not dealt with in sub-paragraph *a*);

(*bb*) Interest;

(*cc*) Royalties and fees for technical services;

(*dd*) Director's fees;

(*ee*) Income of artistes and athletes;

(*ff*) Income in the meaning of Article 21 paragraph 2.

(*c*) For the purpose of credit referred to in letter *bb*) of subparagraph *b*) the Indonesian tax shall be deemed to be 10 per cent of the gross amount of the interest, if the Indonesian tax is reduced to a lower rate according to domestic law, irrespective the amount of tax actually paid.

(*d*) The provisions of sub-paragraph *a*) shall not apply to the profits of, and to the capital represented by movable and immovable property forming part of the business property of a permanent establishment and to the gains from the alienation of such property; to dividends paid by, and to the shareholding in, a company; 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

(*aa*) From producing or selling goods or merchandise, giving technical advice or rendering engineering services, or doing banking or insurance business, within Indonesia or

(*bb*) From dividends paid by one or more companies, being residents of Indonesia, more than 25 per cent 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 Indonesia.

In such a case Indonesian tax payable under the laws of Indonesia and in accordance with this Agreement on the above-mentioned items of income and capital shall, subject to the provisions of German tax law regarding credit for foreing tax, be allowed as a credit against German income or corporation tax payable on such items of income or against German capital tax payable on such items of capital.

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

(*a*) The Republic of Indonesia, when imposing tax on residents of the Republic of Indonesia, may include in the basis upon which such tax is imposed the items of income which may be taxed in the Federal Republic of Germany in accordance with the provisions of this Agreement.

(*b*) Where a resident of Indonesia derives income from the Federal Republic of Germany and such income may be taxed in the Federal Republic of Germany in accordance with the provisions of this Agreement, the amount of the German tax payable in respect of the income shall be allowed as a credit against the Indonesian tax imposed on that resident. The amount of credit, however, shall not exceed that part of the Indonesian tax which is appropriate to the income.

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. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States, provided they are nationals of one or both of the Contracting States.

(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 which it grants only to its own residents.

(3) Except where the provisions of Article 9, paragraph 7 of Article 11, and paragraph 6 of Article 12, apply, interest, royalties, fees for technical services and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

(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 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 the first-mentioned State are or may be subjected.

(5) In this Article the term "taxation" means taxes which are the subject of this Agreement.

Article 25. MUTUAL AGREEMENT PROCEDURE

(1) Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic laws of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must

be presented within two years from the issuance of the assessment not in accordance with the provisions of this Agreement.

(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 a satisfactory 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 which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States, concerning their internal statute of limitation.

(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 provisions of this Agreement regarding the reduction or exemption from taxes on income in the Contracting States where it arises shall be applied in accordance with the laws of that State and the procedures to be agreed by the competent authorities of both Contracting States.

(5) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 26. Exchange of Information

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies with regard to their proceedings or judicial decisions) involved in the assessment or collection of the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes.

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

(*a*) To carry out administrative measures at variance with the laws and 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 Privileges

Nothing in this Agreement shall affect the fiscal privileges of members of a diplomatic mission, a consular post or an international organization under the general rules of international law or under the provisions of special agreements.

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 one month after the date of exchange of the instruments of ratification and shall have effect:

(*a*) In the case of taxes withheld at source on dividends, interest, royalties, and fees for technical services, in respect of amounts paid on or after the first day of January of the calendar year next following that in which the Agreement enters into force;

(*b*) In the case of other taxes, in respect of taxes levied for periods beginning on or after the first day of January of the calendar year next following that in which the Agreement enters into force.

(3) Upon the entry into force of this Agreement 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 of September 2, 1977,[1] shall expire and shall cease to have effect as from the dates on which the provisions of this Agreement commence to have effect.

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 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 case of taxes withheld at source on dividends, interest, royalties, and fees for technical services in respect of amounts paid on or after the first day of January of the calendar year next following that in which the notice of termination is given;

(*b*) In the case of other taxes, in respect of taxes levied for periods beginning on or after the first day of January of the calendar year next following that in which the notice of termination is given.

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

DONE at Bonn on October 30th, 1990, in duplicate in the German, Indonesian and English languages, all three texts being authentic. In case of divergent interpretation of the Indonesian and German texts, the English text shall prevail.

For the Federal Republic of Germany:

HANS-DIETRICH GENSCHER

VOSS

For the Republic of Indonesia:

ALATAS

[1] United Nations, *Treaty Series*, vol. 1327, p. 361.

PROTOCOL

The Federal Republic of Germany and the Republic of Indonesia

Have agreed at the signing at Bonn on October 30th, 1990 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. *With reference to Article 5, paragraph 5*

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 aforementioned provisions of the Indonesian Laws and Regulations.

2. *With reference to Article 7*

(*a*) In the determination of the profits of a building site or construction, assembly or installation project there shall be attributed to that permanent establishment in the Contracting State in which the permanent establishment is situated only the profits resulting from the activities of the permanent establishment as such. If machinery or equipment is delivered from the head office or another permanent establishment of the enterprise or a third person in connection with those activities or independently therefrom there shall not be attributed to the profits of the building site or construction, assembly or installation project the value of such deliveries.

(*b*) Income derived by a resident of a Contracting State from planning, project, construction or research activities as well as income from technical services exercised in that State in connection with a permanent establishment situated in the other Contracting State, shall not be attributed to that permanent establishment.

(*c*) In respect of paragraph 1 of Article 7, profits derived from the sale of goods or merchandise of the same or similar kind as those sold, or from other business activities of the same or similar kind as those effected, through that permanent establishment, may be considered attributable to that permanent establishment if it is proved, including by photocopy or taperecorder that

(*aa*) This transaction has been resorted to in order to avoid taxation in the Contracting State where the permanent establishment is situated and

(*bb*) The permanent establishment in any way was involved in this transaction.

It is understood that a permanent establishment of an enterprise is considered to be involved in a transaction if such permanent establishment has signed a contract irrespective of the fact that the delivery is partly undertaken by its enterprise.

3. *With reference to Articles 10 and 11*

Notwithstanding the provisions of these Articles, dividends and interest may be taxed in the Contracting State in which they arise, and according to the law of that State, if they

(*a*) Are derived from rights or debt claims carrying a right to participate in profits (including income derived from "jouissance" shares or "jouissance" rights, by a sleeping partner from his participation as such from a "partiarisches Darlehen" and

from "Gewinnobligationen" within the meaning of the tax law of the Federal Republic of Germany) and

(*b*) Under the condition that they are deductible in the determination of profits of the debtor of such income.

4. *With reference to Article 19*

It is understood that the provisions of paragraph 1 of Article 19 shall likewise apply in respect of remuneration paid from sources within the Federal Republic of Germany to the staff members of the Goethe-Institut sent to Indonesia.

5. *With reference to Article 23*

Where a company being a resident of the Federal Republic of Germany distributes income derived from sources within Indonesia, paragraph 1 shall not preclude the compensatory imposition of corporation tax on such distributions in accordance with the provisions of German tax law.

For the Federal Republic of Germany:

HANS-DIETRICH GENSCHER

VOSS

For the Republic of Indonesia:

ALATAS