No. 30679

MEXICO
and
GERMANY

Agreement for the avoidance of double taxation with respect to taxes on income and on capital (with protocol). Signed at Mexico City on 23 February 1993

Authentic texts: Spanish and German.

Registered by Mexico on 17 February 1994.

MEXIQUE
et
ALLEMAGNE

Convention tendant à éviter la double imposition en matière d'impôts sur le revenu et d'impôts sur la fortune (avec protocole). Signé à Mexico le 23 février 1993

Textes authentiques : espagnol et allemand.

Enregistré par le Mexique le 17 février 1994.

[TRANSLATION — TRADUCTION]

[AGREEMENT[1] BETWEEN THE UNITED MEXICAN STATES AND THE FEDERAL REPUBLIC OF GERMANY FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND CAPITAL][2]

The United Mexican States and the Federal Republic of Germany,

Desiring to foster their economic relations by removing obstacles of a fiscal nature,

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 the two Contracting States or of their federative entities, 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 the United Mexican States:

(*aa*) The income tax *(el impuesto sobre la renta)*,

(*bb*) The tax on business property *(el impuesto al activo)*,

(hereinafter referred to as "Mexican tax");

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

(*aa*) The income tax *(Einkommensteuer)*,

(*bb*) The corporation tax *(Körperschaftsteuer)*,

(*cc*) The tax on capital *(Vermögensteuer)*,

(*dd*) The business tax *(Gewerbesteuer)*,

(hereinafter referred to as "German tax");

4. The Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Agreement in addition to

[1] Came into force on 30 December 1993, i.e., 30 days after the exchange of the instruments of ratification, which took place at Bonn on 30 November 1993, in accordance with article 28 (2).

[2] The text between brackets does not appear in the authentic German text.

or in place of the existing taxes. The competent authorities of the Contracting States shall notify each other of material changes which have ben made in their respective taxation laws.

Article 3. GENERAL DEFINITIONS

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

(*a*) The terms "a Contracting State" and "the other Contracting State" mean the United Mexican States or the Federal Republic of Germany, depending on the context, and, when used in the geographical sense for the purposes of this Agreement, the area in which the taxation laws of the State concerned are in force;

(*b*) The term "person" means an individual or company;

(*c*) The term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(*d*) The terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(*e*) The term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between two places in the other Contracting State;

(*f*) The term "competent authority" means, in the case of the United Mexican States, the Ministry of Finance and Public Credit and, in the case of the Federal Republic of Germany, the Federal Ministry of Finance.

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 law 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 other 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, 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 Contracting State in which he has a habitual abode;

(*c*) If he has a habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

(*d*) If he is not a national of either Contracting State, or if under German law he is a national of both States, the competent authorities of the two 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, 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 plae 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;

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

3. The term "permanent establishment" likewise encompasses a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of 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, display or delivery of goods or merchandise belonging to the enterprise;

(*b*) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(*c*) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(*d*) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

(*e*) The maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, such activities as advertising, supply of information, scientific research, preparations for the placement of loans, or any other activity of a preparatory or auxiliary character;

(*f*) The maintenance of a fixed place of business solely for the purpose of carrying on a combination of the activities referred to in subparagraphs (*a*) to (*e*), provided that the combined activities of the fixed lace of business retain their preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person — other than an agent of an indepedent status to whom paragraph 7 applies — is acting on behalf of an enterprise and has and habitually exercises in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of all the activities which that person undertakes for 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.

6. Notwithstanding the provisions of this article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an indepedent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business through a broker, a general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business and that conditions are not made or imposed in their commercial or financial relations with such enterprises which differ from those which would generally be made by independent agents.

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 a 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, rigts 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 share-cropping, 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 activities.

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 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 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. Where it provides impossible or excessively difficult in a Contracting State to determine in some specific cases the profits attributable to permanent establishments in accordance with the provisions of paragraph 2, nothing in paragraph 2 shall preclude the determination of the profits attributable to permanent establishments on the basis of an apportionment of the total profits of the enterprise to its various parts; the method of apportionment adopted shall, however, be such that the result is in accordance with the principles laid down in this article.

5. No profit shall be attributed to a permanent establishment on the sole ground that it purchases 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, the provisions of those articles shall not be affected by the provisions of this article.

Article 8. SHIPPING AND AIR TRANSPORT

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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

3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool 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 of an enterprise of the other Contracting State,

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

Article 10. DIVIDENDS

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

(*a*) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends;

(*b*) 15 per cent of the gross amount of the dividends in all other cases.

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

3. The term "dividends" as used in this article means income from shares, "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjectd 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.

4. The provisions of paragraphs 1 and 2 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 independent activities from a fixed base situated therein, and the holding in repect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such cases the provisions of article 7 or article 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except in so far as such dividends are paid to a resident of that other State or 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 undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11. INTEREST

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

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State; but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed:

(*a*) 10 per cent of the gross amount of the interest on loans granted by banks, insurance institutions and pension and retirement funds;

(*b*) 15 per cent of the gross amount of the interest in all other cases.

3. For a period of five years from the date on which the provisions of this Agreement enter into force the rate of 15 per cent shall be applied instead of the rate specified in paragraph 2 (*a*).

4. Notwithstanding the provisions of paragraph 2, the interest referred to in paragraph 1 may be taxed in the Contracting State of which the beneficial owner of the interest is a resident only if one of the following requirements is met:

(*a*) The beneficial owner is one of the Contracting States, the Banco de México or the Deutsche Bundesbank;

(*b*) The interest is paid by one of the persons referred to in subparagraph (*a*) above;

(*c*) The interest is paid on loans for terms of three years or more granted or guaranteed by public financing or guarantee entities with the object of promoting exports or development by providing credits or guarantees on preferential terms.

5. The term "interest" as used in this article means interest from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and, in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, and any other income which the taxation laws of the State in which the income arises assimilates to income from loans. However, the term "interest" does not include the income referred to in article 10.

6. The provisions of paragraphs 1, 2 and 3 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 professional services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such cases the provisions of article 7 or article 14, as the case may be, shall apply.

7. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, one of its federative entities, political subdivisions or local authorities, 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 the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed based is situated.

8. Where, by reason of a special relationship between the payer and the beneficial owner of the interest or between both of them and a third party, the amount of the interest, having regard to the debt-claim or combination of debt-claims 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.

9. The provisions of this article shall not apply when the debt-claim in respect of which the interest is paid was contracted or assigned mainly for the purpose of taking advantage of this article. The competent authorities shall consult each other before this paragraph is applied.

Article 12. ROYALTIES

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

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient of the royalties is the beneficial owner, the tax so charged shall not exceed 10 per cent of the gross amount of the 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 cinematographic films, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience. The term "royalties" also includes payments arising from the alienation of such properties or rights when such payments depend on the productivity or use of such properties or rights.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein or performs professional services from a fixed base situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such cases the provisions of article 7 or article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the the payer is that State itself, one of its federative entities, political subdivisions or local authorities, 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 or a fixed base in connection with which the liability to pay the royalties was incurred and such royalties are borne by such permanent establishment or fixed base, such royalties 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 of the royalties or between both of them and a third party, the amount of the royalties exceeds the amount which would have been agreed upon by the payer and the beenficial 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.

7. The provisions of this article shall not appy when the right in respect of which the royalties are paid was contracted or assigned mainly for the purpose of taking advantage of this article. The competent authorities shall consult each other before this paragraph is applied.

Article 13. CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in article 6 and 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 indepedent activities, including such gains from the alienation of such permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of shares and other holdings in a company which is a resident of a Contracting State may be taxed in that State.

5. Subject to the provisions of article 12, gains from the alienation of any property other than that referred to in paragraphs 1 to 4 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14. INDEPENDENT ACTIVITIES

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 except in the following circumstances, when such income may also be taxed in the other Contracting State:

(*a*) If he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or

(*b*) If his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any continuous period of 12 months; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

Article 15. DEPENDENT ACTIVITIES

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 exercised there, 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 any continuous period of 12 months;

(*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 on board a ship 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 16. DIRECTOR'S FEES

Director's fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or trustees or, in the case of Mexico, in his capacity as administrator or receiver, of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17. ENTERTAINERS AND ATHLETES

1. Notwithstanding the provisions of articles 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. Where an entertainer or an athlete who is a resident of a Contracting State derives from the other Contracting State income in respect of services connected with his personal celebrity, such income may be taxed in that other State.

2. Notwithstanding the provisions of articles 7, 14 and 15, where income in respect of the 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 be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. Notwithstanding the provisions of paragraph 1, the income referred to in this article derived by a resident of a Contracting State in respect of his activities exercised in the other Contracting State shall be taxable only in the first-mentioned State if such activities are financed directly or indirectly by that State or one of its federative entities, political subdivisions, local authorities or public-law institutions.

Article 18. PENSIONS

Subject to the provisions of article 19, paragraph 1, 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. GOVERNMENT SERVICE

1. Remuneration, including pensions, paid by a Contracting State or a federative entity, political subdivision or local authority thereof to an individual in respect of services rendered to that State, federative entity, subdivision or authority shall be taxble only in that State. However, such remuneration shall be taxble only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who is 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 or a federative entity, political subdivision or local authority thereof.

3. The provisions of paragraph 1 shall apply to remuneration paid as part of a development assistance programme agreed between the Contracting Parties or with one of their federative entities to specialists or volunteers sent to one of the Contracting States with its consent, provided that the remuneration is paid from public funds furnished entirely by the other Contracting State or one of its federative entities.

Article 20. STUDENTS

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

Article 21. OTHER INCOME

1. Income of a resident of a Contracting State not expressly mentioned in the foregoing articles shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, income of a resident of a Contracting State not mentioned in the foregoing articles and arising in the other Contracting State may also be taxed in that other State, in accordance with its laws.

Article 22. CAPITAL

1. Capital represented by immovable property, as defined in article 6, 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, 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 activities or by movable property used or transformed by an enterprise in the other Contracting State may be taxed in that other State.

3. Capital represented by ships or aircraft operated in international traffic and by movable property pertaining to the operation of such ships or 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 23. METHODS FOR THE AVOIDANCE OF DOUBLE TAXATION

1. In the case of a resident of the United Mexican States, double taxation shall be avoided in the following manner, under the conditions established by Mexican law:

(*a*) Residents of the United Mexican States may set against the Mexican tax to which they are liable the German tax paid up to an amount not exceeding the Mexican tax which would be paid in the United Mexican States in respect of the same income;

(*b*) Companies resident in the United Mexican States may set against the Mexican tax to which they are liable in respect of the receipt of dividends the German tax paid in respect of the profits from which the company resident in the Federal Republic of Germany paid the dividends.

2. In the case of a resident of the Federal Republic of Germany, double taxation shall be avoided in the following manner:

(*a*) Income arising in the United Mexican States and elements of capital situated therein which, pursuant to the provisions of this Agreement, may be taxed in the United Mexican States shall be exempt from German tax, provided that a decision is not made in accordance with the provisions of paragraph (*b*). The Federal Republic of Germany, however, retains the right to take into account income and elements of capital so exempted in the determination of the applicable tax rate.

In the case of dividends the exemption shall apply only if they are paid to a company (excluding partnerships) resident in the Federal Republic of Germany by a company resident in the United Mexican States at least 10 per cent of whose capital is owned directly by the German company.

Shareholdings shall be exempt from the tax on capital where the corresponding dividends — provided that they are paid or would have been paid — are or would have been exempt in accordance with the provisions of the preceding sentence.

(*b*) The German taxes on income, corporations and capital applicable to income arising in the United Mexican States and to elements of capital situated therein which are listed below shall, in the light of German taxation laws concerning tax decisions in respect of foreign taxes, be subject to deduction of the Mexican tax which had been paid in accordance with Mexican law and in accordance with this Agreement in respect of:

(*aa*) Dividends not covered by paragraph (*a*);

(*bb*) Interest;

(*cc*) Royalties;

(*dd*) Directors' fees;

(*ee*) Income of entertainers and athletes;

(*ff*) Immovable property and the income therefrom. This provision shall not apply if the immovable property is effectively owned by a permanent establishment of the kind referred to in article 7 which is situated in the United Mexican States or by a fixed base within the meaning of article 14 which is situated in the United Mexican States, provided that subparagraph (*a*) is not applicable to the profits of the permanent establishment in accordance with the provisions of subparagraph (*d*);

(*gg*) Alienation of shares and other holdings referred to in article 13, paragraph 4; and

(*hh*) The income referred to in article 21, paragraph 2.

(*c*) For the purposes of the deduction referred to in the preceding subparagraph, tax shall be deemed to have been paid in the United Mexican States in the following amounts;

(*aa*) 10 per cent of the dividends not covered by subparagraph (*a*) of this paragraph; and

(*bb*) 15 per cent of the royalties within the meaning of article 12, paragraph 2, or the tax which has effectively been paid, whichever is the greater.

(*d*) Notwithstanding the provisions of subparagraph (*a*), income within the meaning of articles 7 and 10, profits from the alienation of capital forming part of the business property of a permanent establishment, and the elements of capital from which such profits are derived shall be exempt from German tax only if the resident of the Federal Republic of Germany proves that the income of the permanent establishment or the company arises exclusively or almost exclusively from active work.

With regard to income within the meaning of article 10 and the elements of capital from which it is derived, the exemption shall also apply if the dividends arise from holdings in other companies resident in the United Mexican States which perform active work and in which the company making the last distribution of dividends has a holding of more than 25 per cent.

Active work consists of the production and sale of goods or merchandise, consultancy and technical services and banking and insurance transactions carried out in the United Mexican States.

If these conditions are not met, only the deduction procedure established in subparagraph (*b*) shall apply.

Article 24. NON-DISCRIMINATION

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

2. The term "national" means:

(*a*) With respect to the United Mexican States, any individual possessing Mexican nationality in accordance with the provisions of article 30 of the Constitution of the United Mexican States and any legal person, partnership or association deriving its status as such from the laws in force in the United Mexican States;

(*b*) With respect to the Federal Republic of Germany, any German within the meaning of article 116, paragraph 1, of the Basic Law of the Federal Republic of Germany and any legal person, partnership or association deriving its status as such from the laws in force in the Federal Republic of Germany.

3. 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.

4. Except where the provisions of article 9, article 11, paragraph 8, or article 12, paragraph 6, apply, interest, royalties and other disbursements paid by an enterprisee 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.

5. 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.

Article 25. MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or may result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting state of which he is a resident. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the 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 this Agreement.

3. The competent authorities of the Contractring States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement.

4. The competent authorities of the Contracting States may establish by mutual agreement the way in which the reductions of tax provided for in the Agreement shall be given effect.

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. If it is considered that such agreement may be facilitated by personal contacts, the exchange of views may take place in a commission consisting of representatives of the competent authorities of the Contracting States.

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. The exchange of information is not restricted by article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic law of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) responsible for the assessment or collection of the taxes covered by the Agreement, the declaratory or executive procedures connected with such taxes, or the determination of appeals in relation thereto. Such persons or authorities shall use the information only for such purposes. They may disclose such information in public court proceedings or in judicial decisions.

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 its laws and administrative practice or those of the other Contracting State;

(*b*) To supply information which is not obtainable under its own laws or in the normal course of its administrative practice or those of the other Contracting State;

(*c*) To supply information which would disclose any trade, industrial or professional secret or trade process, or information the disclosure or which would be contrary to public policy *(ordre public)*.

Article 27. DIPLOMATIC AGENTS AND CONSULAR OFFICERS

Nothing in this Agreement shall affect the fiscal privileges of members of the diplomatic missions, consular offices and international organizations under the general rules of international law or under special agreements.

Article 28. ENTRY INTO FORCE

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

2. This Agreement shall enter into force 30 days after the exchange of instruments of ratification and shall have effect:

(*a*) In the case of taxes on dividends, interest and royalties withheld at the source, in respect of the amounts paid or payable from the first day of January, inclusive, of the calendar year immediately following the year in which this Agreement enters into force;

(*b*) In the case of other taxes, in respect of the tax years beginning on the first day of January following the date of entry into force of this Agreement.

Article 29. TERMINATION

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

(*a*) In the case of taxes on dividends, interest and royalties withheld at the source, in respect of the amounts paid or payable from the first day of January, inclusive, of the calendar year immediately following the year in which notice of termination is given;

(*b*) In the case of other taxes, in respect of the tax years beginning on the first day of January following the date of the notice of termination.

DONE at Mexico City on 23 February 1993 in duplicate in the Spanish and German languages, both texts being equally authentic.

For the United Mexican States:

PEDRO ASPE ARMELLA

For the Federal Republic of Germany:

PETER DINGENS

PROTOCOL

The United Mexican States and the Federal Republic of Germany,

In connection with the signature of the Agreement between the United Mexican States and the Federal Republic of Germany for the avoidance of double taxation with respect to taxes on income and on capital, done at Mexico City on 23 February 1993, have agreed on the following provisions, which constitute a part of the Agreement:

1. Ad *article 7*

(*a*) With regard to article 7, paragraph 1, profits arising from the alienation of goods or merchandise of an identical or similar kind to those sold by the permanent establishment may be regarded as attributable to that permanent establishment, provided that it is proved that the permanent establishment has participated in some way in the operation in question;

(*b*) Only profits arising from the work involved may be attributed in the Contracting State in which the permanent establishment is situated to a construction, assembly or installation project. Profits derived from the supply of merchandise from the central office or from another permanent establishment of the enterprise or from a third party which are connected with such work or are independent thereof, shall not be attributable to the construction, assembly or installation project;

(*c*) Income arising from planning, design, construction or research work and from technical services which a resident of a Contracting State carries out in that State and which are connected with a permanent establishment maintained in the other Contracting State shall not be attributed to that establishment;

(*d*) For the purposes of paragraphs 1 and 2, income or profits attributable to a permanent establishment during its existence shall be taxable in the Contracting State in which the permanent establishment is situated, even if the payments are deferred until after the establishment has ceased to exist;

(*e*) With regard to article 7, paragraph 3, deductions shall not be allowed with respect to the amounts paid or received (except as reimbursement for actual expenditures) by the permanent establishment to the central office of the enterprise or to any other of its offices, in respect of:

(*aa*) Royalties, fees or similar payments for the right to use patents or other rights;

(*bb*) Commission for specific services rendered or for management services performed; or

(*cc*) Interest on loans to the permanent establishment, except in the case of a banking enterprise.

2. Ad *articles 7 and 11*

The provisions of articles 7 and 11 shall not be construed so as to restrict the freedom of the Contracting States to apply rules to limit the phenomenon of under capitalization or excessive indebtedness of enterprises.

3. Ad *articles 7, 12 and 14*

With regard to article 12, remuneration paid for technical services or technical assistance shall be regarded as income to which the provisions of article 7 or article 14 apply, provided that such remuneration is not paid in respect of information on industrial, commercial or scientific know-how.

4. Ad *article 8*

It is understood that the profits referred to in article 8, paragraph 1, do not include profits from the operation of hotels or from a transport activity other than the operation of ships or aircraft in international traffic.

5. Ad *article 10*

With regard to article 10, paragraph 3, for the purposes of taxation in the Federal Republic of Germany the term "dividends" includes income received by a sleeping partner from his participation as such and the distribution of profits with respect to certificates of participation in investment companies.

6. Ad *articles 10 and 11*

Notwithstanding the provisions of these articles, dividends and interest may be taxed in the Contracting State in which they arise in accordance with the legislation of that State if:

(*a*) They are based on rights or debt-claims with a share in profits (including the income of a sleeping partner from his participation or income from *partiarische Darlehen* or *Gewinnobligationen* within the meaning of the tax laws of the Federal Republc of Germany), and

(*b*) They are deductible for the computation of the gain derived by the payer of the dividends or interest.

7. Ad *article 11*

For the purposes of the provisions of article 11, paragraph 4, loans guaranteed by the Banco Nacional de Comercio Exterior, S.N.C., and Nacional Financiera, S.N.C., in the case of the United Mexican States, and by the Kreditanstalt für Wiederaufbau, the Deutsche Investitions und Entwicklungsgesellschaft or Hermes Deckung, in the case of the Federal Republic of Germany, shall be deemed to be covered by subparagraph (*c*).

8. Ad *article 11*

For the purposes of the provisions of the second part of paragraph 7 of article 11, where the loan is contracted by the central office of the enterprise and its proceeds benefit several permanent establishments or fixed bases situated in different countries, the interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated, to the extent that the interest is paid by that permanent establishment or fixed base.

9. Ad *article 12*

For the purpose of the provisions of the second part of paragraph 5 of article 12, where the liability to pay the royalties is incurred by the central office of the enterprise and the right or property is effectively connected with several permanent establishments or fixed bases situated in different countries, the royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated, to the extent that the royalties are paid by that permanent establishment or fixed base.

10. Ad *article 15*

With regard to article 15, paragraph 3, it is understood that the word "enterprise" as used in this paragraph refers to the person deriving the profits from the operation of ships or aircraft in international traffic.

11. Ad *article 23*

Where a company which is a resident of the Federal Republic of Germany uses income from sources in the United Mexican States for the dividend distribution in question, paragraph 2 shall not prevent the taxation of such distribution in accordance with the provisions of German taxation laws.

12. Ad *articles 23 and 25*

The Federal Republic of Germany shall avoid double taxation by means of tax deductions in accordance with article 23, paragraph 2 (*b*), and not by means of the tax exemption referred to in article 23, paragraph 2 (*a*), if:

(*a*) In the Contracting States the income or elements of capital are subject to different provisions of the Agreement or are attributed to different persons (except for the persons mentioned in article 9) and this conflict cannot be resolved by a procedure in accordance with article 25, and

(*aa*) As a result of the application of such provisions or of such attribution, the respective income or elements of capital are subject to double taxation; or

(*bb*) As a result of the application of such provisions or of such attribution, the respective income or elements of capital remain untaxed or are taxed at an inappropriately low rate in the United Mexican States and are (without prejudice to the application of this paragraph) exempt from tax in the Federal Republic of Germany; or

(*b*) The Federal Republic of Germany, after consultation and subject to the limits imposed by its domestic law, has notified the United Mexican States through the diplomatic channel of other income to which it intends to apply this paragraph, in order to avoid the exemption of income from tax in both Contracting States or other operations resulting in the improper application of this Agreement.

In the event of notification under subparagraph (*b*), the United Mexican States may, provided that it gives notice through the diplomatic channel, treat such income for the purposes of this Agreement in the same way as the income is treated by the Federal Republic of Germany. A notification under the provisions of this paragraph shall take effect from the first day of the calendar year following the year in which it is made, provided that all the legal requirements for it to take effect acording to the domestic law of the notifying State have been completed.

13. Ad *article 24*

No provision of article 24, paragraph 5, shall be construed so as to prevent the United Mexican States from setting limits on the deductibility of debts contracted by enterprises resident in the Federal Republic of Germany, in order to determine the tax base for the tax on business property, in the same way as the deductibility of debts contracted by enterprises resident in the United Mexican States is limited.

DONE at Mexico City on 23 February 1993 in duplicate in the Spanish and German languages, both texts being equally authentic.

For the United Mexican States:	For the Federal Republic of Germany:
PEDRO ASPE ARMELLA	PETER DINGENS