

1987 Income and Capital Tax Agreement and Final Protocol

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Status: In Force

AGREEMENT BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE ARAB REPUBLIC OF EGYPT FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND CAPITAL

The Federal Republic of Germany and the Arab Republic of Egypt desiring to conclude between their States a new Agreement for the Avoidance of Double Taxation with respect to Taxes on Income and Capital with a view to encouraging 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 each Contracting State or of its Laender, 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, taxes on the total amounts of wages or salaries paid by enterprises, as well as 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 income tax (Einkommensteuer),
the corporation tax (Korperschaftsteuer),
the capital tax (Vermogensteuer) and
the trade tax (Gewerbsteuer)
(hereinafter referred to as "German tax");

b) in the Arab Republic of Egypt:
the tax on income derived from immovable property (including the land tax, the building tax and the ghaffir tax),
the tax on income derived from movable capital,
the tax on commercial and industrial profits,
the tax on wages, salaries, indemnities and pensions,
the tax on profits from liberal professions and all other noncommercial professions,
the general income tax,
the corporation profits tax, and all supplementary taxes (including local authority taxes) imposed as a percentage of the taxes mentioned above
(hereinafter referred to as "Egyptian tax").

(4) This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. In the event of substantial changes in their fiscal laws, the Contracting States will consult each other in order to determine whether it is necessary for that reason to amend any of the provisions of the Agreement.

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 Federal Republic of Germany or the Arab Republic of Egypt, as the context requires, and, if for the purposes of this Agreement used in a geographical sense, the area in which the tax law of the Contracting State concerned is in force, as well as the continental shelf adjacent to the territorial sea, insofar as the Contracting State concerned exercises there in conformity with international law sovereign rights to explore the continental shelf and exploit its natural resources;

b) the term "person" means an individual, a company and any other body of persons which is taxed as such;

- c) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- d) the terms "resident of a Contracting State" and "resident of the other Contracting State" mean a person who is a resident of the Federal Republic of Germany or a person who is a resident of the Arab Republic of Egypt, as the context requires;
- e) 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;
- f) the term "international traffic" means any transport by ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- g) the term "national" means.
 - aa) in respect of the Federal Republic of Germany any German in the meaning of paragraph 1 of Article 116 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 Arab Republic of Egypt any national of the Arab Republic of Egypt and any legal person, partnership and association deriving its status as such from the law in force in the Arab Republic of Egypt;
- h) 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 Arab Republic of Egypt the Minister of Finance or his authorised representative.

(2) As regards the application of this 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 the 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, 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, he shall be deemed to be a resident of the State of which he is a national;
- d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

(3) Where by reason of the provisions of paragraph (1) a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the 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 permanent sales exhibition;
- e) a factory;
- f) a workshop;
- g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
- h) a farm or plantation.

(3) A building site or construction or installation project or supervisory activities in connection therewith constitute a permanent establishment only where such site, project or activity continues for a period of more than 6 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, any other activity of a preparatory or auxiliary character;

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 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 any 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 preceding 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 Contracting 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 independent 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 in that 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.

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

(5) No profits shall be attributable 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 shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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

(3) The provisions of paragraph (1) shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 8 Associated Enterprises

(1) Where

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

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reasons of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

(2) If the information available to the taxation authority concerned is inadequate to determine, for the purposes of paragraph (1), the profits which might be expected to accrue to an enterprise, nothing in that paragraph shall affect the application of the law of either Contracting State in relation to the liability of that enterprise to pay tax on an amount determined by the exercise of a discretion or the making of an estimate by the taxation authority of that Contracting State: Provided that such discretion shall be exercised or such estimate shall be made, so far as the information available to the taxation authority permits, in accordance with the principle stated in that paragraph.

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 15 per cent of the gross amount of the

dividends. The provisions of this paragraph shall not affect the taxation of the company on the profits out of which the dividends are paid.

(3) Instead of the taxation according to paragraph (2), dividends paid by a company which is a resident of the Arab Republic of Egypt to an individual who is a resident of the Federal Republic of Germany may in the Arab Republic of Egypt be subject to the general income tax levied on net total income. However, the general income tax thus imposed shall in no case exceed an average of 20 per cent of the net dividends payable to such individual.

(4) The provisions of paragraphs (1) to (3) 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.

(5) The term "dividends" as used in this Article means income from shares, "jouissance" shares or "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 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. In the case of the Federal Republic of Germany the term also includes income derived by a sleeping partner from his participation as such and distributions on certificates of an investment trust.

(6) Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, 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.

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 15 per cent of the gross amount of the interest.

(3) Notwithstanding the provisions of paragraph (2), interest arising in a Contracting State and paid -- to the other Contracting State, or to an instrumentality of that other State, not subject to tax in that other State on its income, or -- to a resident of the other Contracting State with respect to loans made, guaranteed, or insured by that other State or an instrumentality thereof,

shall be exempt from tax in the first-mentioned State. The competent authorities of the Contracting States shall determine by mutual agreement to which institutions this paragraph shall apply.

The competent authorities of the Contracting States shall determine by mutual agreement any other governmental institution to which this paragraph shall apply.

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

(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 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

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

(2) However, such royalties may be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed:

a) 25 per cent of the gross amount of royalties arising from the use of, or the right to use, trademarks;

b) 15 per cent of the gross amount of the royalties in all other cases.

(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.

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

(5) 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, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the 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 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 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 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 arising in a Contracting State and derived by a resident of the other Contracting State from the alienation of any property other than that referred to in paragraphs (1), (2) and (3) and not forming part of the business property of an enterprise may be taxed in the first-mentioned State.

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

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

b) he is present in the other Contracting State for the purpose of performing his activities for a period or periods exceeding in the aggregate 90 days in the calendar year concerned, in which case so much of the income may be taxed in that other State as is attributable to the activities performed in that State.

(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 calendar year concerned, and

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

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

(3) Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard 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 Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as 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 public entertainers, such as theatre, motion picture, radio or television artistes and musicians and by athletes, from their personal activities as such or income derived from the furnishing by an enterprise of the services of such public entertainers or athletes, may be taxed in the Contracting State in which these activities are exercised.

(2) The provisions of paragraph (1) shall not apply if the visit of public entertainers or athletes to a Contracting State is supported wholly or substantially from public funds of the other Contracting State, a Land, a political subdivision or a local authority thereof.

Article 18 Pensions and Annuities

(1) Pensions, other similar remuneration and annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the first-mentioned State.

(2) As used in this Article:

a) the term "pensions and other similar remuneration" means periodic payments made in consideration of past employment or by way of compensation for injuries received in connection with past employment;

b) the term "annuities" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article 19 Government Service

(1) Remuneration, 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, political subdivision or authority shall be taxable only in that State.

(2) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident and a national of that other State and not a national of the State referred to in paragraph (1).

(3) The provisions of Articles 15, 16 and 18 shall apply to remuneration 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.

Article 20 Students

An individual who was a resident of a Contracting State immediately before visiting the other Contracting State and is temporarily present in that other State solely as a student at a university, college, school or other similar educational institution in that other State or as a business apprentice or trainee acquiring technical, professional or business experience shall, from the date of his first arrival in that other State in connection with that visit, be exempt from tax in that other State

- a) on all remittances from abroad for purposes of his maintenance, education or training; and
- b) for a period not exceeding in the aggregate five years, on any remuneration not exceeding 7,200 Deutsche Mark of the equivalent in Egyptian currency for the calendar year for personal services rendered in that other Contracting State with a view to supplementing the resources available to him for his maintenance, study or training.

Article 21 Teachers, Researchers, Students and Recipients of a Grant

(1) Remuneration which a professor or teacher who is, or immediately before was, a resident of a Contracting State and who visits the other Contracting State for a period not exceeding two years for the purpose of carrying out advanced study or research or for teaching at a university, college, school or other educational institution receives for such work shall not be taxed in that other State, provided that such remuneration is derived by him from outside that other State.

(2) An individual who was a resident of a Contracting State immediately before visiting the other Contracting State and is temporarily present in that other State solely for the purpose of study, research or training as a recipient of a grant, allowance or award from a scientific, educational, religious or charitable organisation or under a technical assistance programme entered into by the Government of a Contracting State shall, from the date of his first arrival in that other State in connection with that visit, be exempt from tax in that other State

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

Article 22 Other Income

(1) Subject to the provisions of paragraph (2), 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) However, if such income is derived by a resident of a Contracting State from sources in the other Contracting State, such income may also be taxed in the State in which it arises, and according to the law of that State.

Article 23 Capital

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

Article 24 Relief From Double Taxation

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

- a) Unless the provisions of sub-paragraph b) apply, there shall be excluded from the basis upon which German tax is imposed, any item of income arising in the Arab Republic of Egypt and any item of capital situated within the Arab Republic of Egypt, which, according to this Agreement, may be taxed in the Arab Republic of Egypt. The Federal Republic of Germany, however, retains the right to take into account in the determination of its rate of tax the items of income and capital so excluded. As for dividends the foregoing provisions shall apply only to dividends which are paid to a company being a resident of the Federal Republic of Germany by a company being a resident of the Arab Republic of Egypt if at least 10 per cent of the capital of the Egyptian company is owned directly by the German company.

For the purposes of taxes on capital there shall also be excluded from the basis upon which German tax is imposed any participation, the dividends of which are excluded or, if paid, would be excluded, according to the immediately foregoing sentence from the basis upon which German tax is imposed.

- b) Egyptian tax paid under the laws of the Arab Republic of Egypt and in accordance with this Agreement on:

aa) dividends, not dealt with in sub-paragraph a),
bb) interest in the meaning of Article 11 and interest paid on debts secured by mortgage on real estate,

cc) royalties in the meaning of Article 12,

dd) capital gains to which paragraph (4) of Article 13 applies,

ee) remuneration to which Article 16 applies,

ff) income to which Article 17 applies,

gg) income to which paragraph (2) of Article 22 applies,

shall, subject to the provisions of German tax law regarding credit for foreign tax, be allowed as a credit against German income or corporation tax payable on such items of income.

c) For the purposes of credit referred to in sub-paragraph b) Egyptian tax on dividends and interest paid by a resident of the Arab Republic of Egypt shall be deemed to include any amount which would have been payable as Egyptian tax under the laws of the Arab Republic of Egypt and in accordance with this Agreement for any year but for an exemption from, or reduction of, tax granted for that year or any part thereof under:

aa) Law No. 43 of 1974 amended by the law No. 32 of 1977 concerning Arab and Foreign Capital Investment and Free Zones so far as it was in force on, and has not been modified since, the date of signature of this Agreement, or has been modified only in minor respects so as not to affect its general character; and except to the extent that any of the said provisions has the effect of exempting or relieving a source of income for a period in excess of ten years; or

bb) any other provision which may subsequently be made granting an exemption or reduction of tax which is agreed by the competent authorities of the Contracting States to be of a substantially similar character, if it has not been modified since or has been modified only in minor aspects so as not to affect its general character.

d) The provisions of sub-paragraph a) shall not apply to the profits of, and to the capital represented by property forming part of the business property of, a permanent establishment; to dividends paid by, and to the shareholding in, a company; or to gains referred to in paragraphs (1) and (2) of Article 13 of the Agreement; provided that the resident of the Federal Republic of Germany concerned does not prove that the receipts of the permanent establishment or company are derived exclusively or almost exclusively

aa) from producing or selling goods and merchandise, giving technical advice or rendering engineering services, or doing banking or insurance business, within the Arab Republic of Egypt, or

bb) from dividends paid by one or more companies resident in the Arab Republic of Egypt more than 25 per cent of the capital of which is owned by the first- mentioned company, which themselves derived their receipts exclusively or almost exclusively from producing or selling goods or merchandise, giving technical advice or rendering engineering services, or doing banking or insurance business, within the Arab Republic of Egypt.

In such a case Egyptian tax paid under the laws of the Arab Republic of Egypt 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 foreign 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 Arab Republic of Egypt as follows:

There shall be excluded from the basis upon which Egyptian tax is imposed any item of income arising in the Federal Republic of Germany and any item of capital situated within the Federal Republic of Germany, which, according to this Agreement, may be taxed in the Federal Republic of Germany. The Arab Republic of Egypt, however, retains the right to take into account in the determination of its rate of tax the items of income and capital so excluded. The preceding provisions of this paragraph shall not apply to

a) dividends,

b) interest,

c) royalties,

d) capital gains to which paragraph (4) of Article 13 applies, and

e) income to which paragraph (2) of Article 22 applies;

the German tax levied on this income shall, however, be allowed as credit against the Egyptian tax payable in respect of such income computed on the basis of an average rate of tax.

Article 25 Non-Discrimination

(1) The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the

taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

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

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

(3) Except where the provisions of Article 9, paragraph (7) of Article 11, or paragraph (5) of Article 12, apply, interest, royalties 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 shall, for the purpose of determining the taxable capital of such enterprise, be deductible 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 Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

(5) Nothing in this Article shall be construed as affecting

a) the application in the Arab Republic of Egypt of Article 4 paragraph 9 and Article 120 paragraph 4 of the Law 157 of 1981 (as they may be amended from time to time in minor respects without affecting the general principal thereof);

b) the application in the Federal Republic of Germany of paragraph 3 of Article 50 of the Income Tax Law and paragraph 3 of Article 23 of the Corporation Tax Law as well as the exemptions conferred in the Federal Republic of Germany by Article 102 of the Valuation Law.

(6) The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 26 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 law 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 25, to that of the Contracting State of which he is a national. 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 the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

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

(4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

Article 27 Exchange of Information

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement. 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)

involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of this Agreement. Such persons or authorities shall use the information only for such purposes. These persons or authorities may disclose the information in court proceedings or in judicial decisions.

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

- a) to carry out administrative measures at variance with the laws or administrative practice of that or of the other Contracting State;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

Article 28 Diplomatic Missions and Consular Posts

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

(2) Notwithstanding the provisions of Article 4, an individual who is a member of a diplomatic mission or consular post of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed for the purposes of this Agreement to be a resident of the sending State if:

- a) in accordance with international law he is not liable to tax in the receiving State in respect of income from sources outside that State or on capital situated outside that State, and
- b) he is liable in the sending State to the same obligations in relation to tax on his total income or on capital as are residents of that State.

Article 29 Land Berlin

This Agreement shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of the Arab Republic of Egypt within three months of the date of entry into force of this Agreement.

Article 30 Entry Into Force

(1) This Agreement shall be ratified and the instruments of ratification shall be exchanged at Bonn 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 for the first time:

- a) in respect of taxes withheld at source, to amounts paid after December 31 of the year in which it enters into force;
- b) in respect of other taxes, to taxable years beginning on or after January 1 of the year following the year in which it enters into force.

(3) Upon the entry into force of this Agreement the Agreement between the Federal Republic of Germany and the United Arab Republic (Egyptian Province) for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income of November 17, 1959, shall expire and shall cease to have effect as from the dates on which the provisions of this Agreement commence to have effect.

Article 31 Termination

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

- a) in respect of taxes withheld at source, to amounts paid after December 31 of the year in which the notice of termination is given;
- b) in respect of other taxes, to taxable years beginning on or after January 1 of the year following that in which the notice of termination is given.

Done at Cairo this eighth day of December 1987 in duplicate in the German, Arabic and English languages, all three texts being authentic. In case of divergent interpretations of the German and Arabic texts, the English text shall prevail

FOR THE FEDERAL REPUBLIC OF GERMANY:

Hans-Dietrich Genscher

FOR THE ARAB REPUBLIC OF EGYPT:

M.A. El Razaz

PROTOCOL

The Federal Republic of Germany and the Arab Republic of Egypt have agreed at the signing at Cairo on December 8, 1987 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 respect to paragraphs (1) and (2) of Article 7

Where an enterprise of a Contracting State sells merchandise or carries on an activity in the other Contracting State by means of a permanent establishment situated there, the profits of that permanent establishment shall not be calculated on the base of the gross amount received by the enterprise but shall be calculated only on the base of the profits attributable to the real activities of the permanent establishment for such sales or for such activities.

In the case of contracts for outfitting, for installation or for construction of equipment or of industrial, commercial or scientific establishments, or of public works, where the enterprise has a permanent establishment, the profits of such permanent establishment shall not be determined on the base of the total amount of the contract, but shall be determined only on the base of the part of the contract that is effectively carried out by that permanent establishment in the Contracting State where this permanent establishment is situated. The profits relating to the part of the contract that is earned out by the main office of the enterprise shall only be taxable in the Contracting State where that enterprise is resident.

In applying the preceding paragraphs, when the contract does not state a specific price of furnishing of equipment on the one hand, and installation or construction on the other hand:

- a) if the enterprise makes a contractual allocation of the total price between these two categories of operation, that allocation shall be accepted by the tax administrations, except in case of fraud;
- b) if the enterprise does not make such an allocation, the total contract shall be considered the operation of the permanent establishment. The cost of outfitting for the establishment shall, of course, be accepted as a deduction in calculating its profits.

2. With reference to Articles 10 and 11:

Notwithstanding the provisions of these Articles, dividends and interest arising in the Federal Republic of Germany may be taxed according to the law of that State, if they

- a) are derived from rights or debt-claims carrying a right to participate in profits and
- b) under the condition that they are deductible as business expenses in the determination of profits of the debtor of such income.

3. With reference to Article 21:

The provisions of this Article do not affect the provisions of the Supplementary Agreement of May 24, 1983/June 1, 1983, to Article V of the German-Egyptian Cultural Agreement of November 11, 1959.

4. With reference to Article 24:

a) Where a company being a resident of the Federal Republic of Germany distributes income derived from sources within the Arab Republic of Egypt paragraph (1) of Article 24 of the Agreement shall not preclude the compensatory imposition of corporation tax on such distributions in accordance with the provisions of German tax law.

b) For purposes of determining the amount of income tax due to the Arab Republic of Egypt income arising in the Arab Republic of Egypt and excluded from the basis upon which German tax is imposed according to sub-paragraph a) of paragraph (1) or taxed in the Federal Republic of Germany according to sub-paragraph b) in connection with sub-paragraph c) of paragraph (1) is not subject to taxation in the Federal Republic of Germany within the meaning of Law No. 43 of 1974 concerning Arab on Foreign Capital Investment and Free Zones.

FOR THE FEDERAL REPUBLIC OF GERMANY:

Hans-Dietrich Genscher

FOR THE ARAB REPUBLIC OF EGYPT:

M.A. El Razaz