

1979 Income and Capital Tax Convention and Final Protocol (English Translation)

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CONVENTION BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE REPUBLIC OF THE IVORY COAST FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE ESTABLISHMENT OF RULES FOR RECIPROCAL ADMINISTRATIVE ASSISTANCE WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Federal Republic of Germany and the Republic of the Ivory Coast, Desiring to avoid double taxation and establish rules of reciprocal administrative assistance in respect of taxes on income and on capital as well as to promote trade and investment between the two States,

Have agreed as follows:

Article 1 Personal Scope

This Convention shall apply to persons as defined in article 3 below who are residents of one or both of the Contracting States.

Article 2 Taxes Covered

1. This Convention shall apply to taxes on income and on capital imposed by each Contracting Party, by a Land, by their political subdivisions or by their local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and on capital the taxes imposed on total income, on total capital or on elements of income or of capital, including taxes on the total amount of wages paid by enterprises.
3. The existing taxes to which this Convention shall apply are:
 - (1) In the case of the Federal Republic of Germany:
 - (a) The income tax (Einkommensteuer);
 - (b) The corporation tax (Körperschaftsteuer);
 - (c) The capital tax (Vermögensteuer);
 - (d) The trade tax (Gewerbsteuer);(hereinafter referred to as "German tax");
 - (2) In the case of the Ivory Coast:
 - (a) The tax on industrial, commercial and agricultural profits (impôt sur les bénéfices industriels et commerciaux et sur les bénéfices agricoles);
 - (b) the tax on non-commercial profits (impôt sur les bénéfices non commerciaux);
 - (c) The tax on salaries and wages (impôt sur les traitements et salaires);
 - (d) The tax on income from movable capital (impôt sur le revenu des capitaux mobiliers);
 - (e) The general income tax (impôt général sur le revenu);(hereinafter referred to as "Ivory Coast tax").
4. The Convention shall apply also to identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes.
5. The competent authorities of the Contracting States shall notify each other in due course of any substantive changes made in their respective tax laws.

Article 3 General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:
 - a) The terms "a Contracting State" and "the other Contracting State" mean, according to the context, the Federal Republic of Germany or the Republic of the Ivory Coast, and, when used in a geographical sense, the territory to which the tax laws of the State concerned apply;
 - b) The term "person" includes an individual, a company, and any other bodies of persons;
 - c) The term "company" means any body corporate or 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 "nationals" means:

aa) In the case of the Federal Republic of Germany, all Germans within the meaning of paragraph 1 of article 116, of the Basic Law for the Federal Republic of Germany and all bodies corporate, all partnerships and all other groups of persons constituted in accordance with the laws in force in the Federal Republic of Germany;

bb) In the case of the Ivory Coast, all individuals possessing Ivorian nationality and all bodies corporate, partnerships and associations constituted in accordance with the laws in force in the Republic of the Ivory Coast;

f) The term "competent authorities" means;

In the case of the Federal Republic of Germany, the Federal Minister of Finance;

In the case of the Ivory Coast, the Minister of Finance or his representative.

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

Article 4 Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. This term does not, however, include persons who are liable to taxation in that State only on income from sources or capital located in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then this case shall be determined in the following manner:

a) He shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him: if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closest (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 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 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 Convention, the term "permanent establishment" means a fixed place of business in 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 sales outlet;

f. A workshop;

g. A mine an oil or gas well, a quarry or any other place of extraction of natural resources;

h. A fixed place of business used for collecting information when this activity is the object of the enterprise;

i. A fixed place of business used for the purpose of advertising when this activity is the object of the enterprise.

3. A building site or construction or assembly project shall not constitute a permanent establishment unless it exists for more than six months.

4. Notwithstanding the preceding provisions of this article, the term "permanent establishment" shall not be deemed to include:

a. The use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;

b. The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;

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

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

5. Notwithstanding the provisions of paragraphs 1 and 2 when a person other than an agent of an independent status to whom paragraph 7 applies is acting or behalf of an 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:

a. It has and habitually exercises in that State authority to conclude contracts on behalf of the enterprise; or

b. If he habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise belonging to the enterprise by means of which he regularly fills orders which he has received on behalf of the enterprise.

6. An insurance enterprise of one of the Contracting States shall be deemed to have a permanent establishment in the other Contracting State if through a representative not belonging to the category of persons referred to in paragraph below it collects premiums in the territory of that State or ensures risks situated therein.

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, 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. However, if the agent habitually maintains in the last-mentioned State a stock of goods or merchandise belonging to the enterprise by means of which he regularly fills orders which he has received on behalf of the enterprise, the latter shall be deemed to have a permanent establishment.

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 not) 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 and rights to 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 also apply to income derived from the direct use 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 enterprises 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 State but as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attribute to that permanent establishment.

2. Where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprises 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. A portion of the general expenses of the headquarters of the enterprise shall be charged against the proceeds from the different permanent establishment in proportion to the turnover in each of them or in accordance with another acceptable criterion.

4. In so far 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. The term "profits" used in this article includes profits accruing to a member of a partnership by virtue of his participation.

6. When profits include elements of income which are addressed separately in other articles of this Convention, the provisions of those articles shall not be affected by the provisions of the present 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. Profits from the operation of ships or aircraft in international traffic derived by such enterprises from participation in a pool, a joint business or an international operating agency shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated; this provision applies only to the share of profits attributed to the Ivorian participant of the multinational company Air-Afrique.

Article 9 Associated Enterprises

Where:

(1) 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

(2) 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 because 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 the State, but if the recipient owner of the dividends the tax so charged shall not exceed 15 percent of the gross amount of the dividends.

3. The term "dividends" means income from shares, jouissance shares or jouissance rights, mining shares, founders' shares or other rights, not being debt-claims, 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. Also regarded as dividends is income from distributions on certificates of an investment fund and, in the case of the Federal Republic of Germany, the income which a sleeping partner (stiller Gesellschafter) derives from his participation.

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 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 that case 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 in so far 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 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 paragraph 2.

a. Interest arising in the Federal Republic of Germany and paid to the Ivorian Government or to the Caisse Autonome d'Amortissement shall be exempt from German tax;

b. Interest arising in the Republic of the Ivory Coast and paid to the German Government, the Deutsche Bundesbank, the Kreditanstalt für Wiederaufbau or the Deutsche Gesellschaft für wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) shall be exempt from Ivorian tax.

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

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

5. The provisions of paragraphs 1 and 2 shall not apply if the 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 that 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 the State itself, a Land, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise on the Contracting State in which the permanent establishment is situated.

7. Where by reason of a special relationship between the payer and the beneficiary 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 beneficiary-owner in the absence of such relationship, the provisions of this article shall apply only to be 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 Convention.

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 the State, but if the recipient is the beneficial owner of the royalties, 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 cinematograph films, or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, agricultural, industrial, commercial, or scientific equipment, or for information concerning agricultural, industrial, commercial or scientific experience.

4. The provisions of paragraph 1 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 therewith. In that case 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 payer is that State itself, a Land, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the contract giving rise to the royalties was concluded, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.

6. Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, 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 Convention.

Article 13 Capital Gains

1. Gains from the alienation of immovable property, as defined in paragraph 2 of article 6, may where necessary be taxed in the Contracting State in which such property is situated.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State.

3. Notwithstanding the provisions of paragraph 2, gains from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to their operation shall be taxable only in the Contracting State in which the profits from their operation are taxable under the provisions of article 8.

4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3 of this article shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14 Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of independent personal services of other independent activities of a similar character shall be taxable only in that State. However, such income may be taxed in the other Contracting State:

a. If the resident has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities, but only so much of the income as is attributable to that fixed base; or

b. If he performs his activities in the other Contracting State for a period or periods including normal interruptions of work exceeding in the aggregate 183 days in the calendar year, but only to the extent that the income is attributable to those activities.

2. The term "independent personal 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 Income From Dependent Personal Services

1. Subject to the provisions of articles 17, 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, above 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 including normal interruptions of work not exceeding in the aggregate 183 days in the fiscal year concerned; and

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

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

3. Notwithstanding the preceding provisions of this article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated, without prejudice in respect of the Ivory Coast to a possible division of the tax collected among the States members of the multinational company Air-Afrique.

Article 16 Directors Fees

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

Article 17 Entertainers and Athletes

1. Notwithstanding the provisions of articles 7, 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

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

3. The provisions of paragraphs 1 and 2 above shall not apply to income from activities exercised in a Contracting State by a non-profit organization of the other Contracting State or its members, unless such members are acting for their own account.

4. The provisions of paragraph 1 shall not apply to professional entertainers or athletes whose stay in a Contracting State is financed entirely or largely from public funds of the other Contracting State, or are of its Lander political subdivisions or local authorities.

Article 18 Pensions

Subject to the provisions of paragraph 2 of article 19, 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 Remuneration and Pensions

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

2. Any person paid by, or out of funds created by, a Contracting State, a Land or a political subdivision or a local authority thereof to an individual who is a national of that State in respect of services rendered to that State or Land or subdivision or authority shall be taxable only in that State.

3. The provisions of articles 15, 16 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 Land or a political subdivision of a local authority thereof.

4. Notwithstanding the provisions of paragraphs 1 and 3, remuneration paid by the Federal Republic of Germany to technical co-operation personnel under the Convention between the Government of the Federal Republic of Germany and the Government of the Republic of the Ivory Coast concerning technical co-operation of 21 August 1975 shall be taxable only in the Federal Republic of Germany.

Article 20 Students Researchers and Apprentices

1. Payments which a student, researcher or apprentice of one of the two Contracting Parties who is visiting the other Contracting State solely for the purpose of his education, training or research receives for the purpose of his maintenance, education, training or research shall not be taxed in that State, provided that such payments arise from sources outside that State.

2. An individual who was a resident of a Contracting State immediately before visiting the other Contracting State and who is temporarily present in that other State solely for the purpose of his education, research or apprenticeship while receiving a subsidy, allowance or grant from a scientific, education, religious or charitable organization or under a technical assistance programme in which the Government of a Contracting State participates shall be exempt from the date of his initial arrival in that other State in connection with his visit from any tax applying in that State to:

- a. The amount of that subsidy, allowance or grant, and
- b. Payments from abroad for his maintenance, education or training.

Article 21 Income Not Expressly Mentioned

1. Items of income of a resident of a Contracting State not expressly mentioned in the foregoing articles of this Convention shall not be taxable in that State unless they belong to a permanent establishment or a fixed base situated in the other Contracting State.

Article 22 Capital

1. Capital represented by immovable property as defined in paragraph 2 of article 6 may be taxed in the Contracting State in which such property is situated.

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

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

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

Article 23 Exemption Method

1. In the case of residents of the Federal Republic of Germany, double taxation shall be avoided as follows:

a. Without prejudice to the provisions of subparagraph (b), income arising in the Republic of the Ivory Coast and elements of capital situated in the Ivory Coast which, under this Convention, may be taxed in the Ivory Coast shall be excluded from the German tax base. However, the Federal Republic of Germany retains the right to take into account, in determining the rate of tax, the income and elements of capital so excluded. In the case of dividends, the preceding provisions shall apply only to those paid by a company which is a resident of the Republic of the Ivory Coast to a joint stock company which is a resident of the Federal Republic of Germany and which holds directly at least 25 per cent of the capital of the Ivorian company. Also excluded from the German tax base are shares whose dividends, in the event of distribution, would be excluded from the tax base under the terms of the preceding sentence;

b. In accordance with the provisions of German tax laws relating to foreign tax credit, a credit shall be allowed, as the case requires, against the German tax on income, on companies or on capital imposed on the following income arising in the Republic of the Ivory Coast and the following property situated in the Republic of the Ivory Coast, in respect of the Ivorian tax levied in accordance with Ivorian laws and the present Convention, on:

aa. Dividends not dealt with in subparagraph (a);

bb. Interest dealt with in paragraph 2 of article 11;

cc. Royalties dealt with in paragraph 2 of article 12;

dd. Remuneration dealt with in article 16;

ee. Income dealt with in article 17;

ff. Income from immovable property dealt with in article 6 and capital dealt with in paragraph 1 of article 22, unless the immovable property from which the income arises or the capital within the meaning of article 22 are part of a permanent establishment dealt with in article 7 and situated in the Ivory Coast or a fixed base dealt with in article 14 and situated in the Ivory Coast;

c. For the purposes of the credit referred in paragraph (b), subparagraph aa, above, so long as dividends are, with a view to promoting the economic development of the Ivory Coast, exempted or taxed at a rate lower than the rate specified in paragraph 2 of article 10, the amount of Ivorian tax to be allowed as a credit shall be 15 per cent of the gross amount of those dividends.

d. For the purposes of the credit referred to in paragraph (b), subparagraph (bb) above, so long as the interest is, with a view to promoting the economic development of the Ivory Coast, exempted or taxed at a rate lower than the rate specified in paragraph 2 of article 11, the amount of Ivorian tax to be allowed as a credit shall be 15 per cent of the gross amount of that interest.

e. Only the provisions of paragraph (b) above to the exclusion of those of paragraph (c), shall apply to profits of a permanent establishment, property forming part of the assets of such an establishment, dividends distributed by a company and shares in such a company or the profits referred to in paragraphs 1 and 2 of article 13 above, unless the resident of the Federal Republic of Germany concerned provides proof that the income from the permanent establishment or company arises exclusively or nearly exclusively:

aa. From one of the following activities carried on in the Ivory Coast, namely, the production or sale of property or merchandise, technical consultations, provision of technical services, or banking or insurance operations, or

bb. From dividends distributed by one or more companies resident in the Republic of the Ivory Coast 25 per cent of whose capital is held by the first-mentioned company and whose income is derived exclusively or nearly exclusively from one of the following activities carried on in the Ivory Coast, namely, the production or sale of property or merchandise, technical consultations, provision of technical services or banking or insurance operations.

2. In the case of residents of the Ivory Coast, double taxation shall be avoided as follows:

The tax authorities of the Ivory Coast may not include in the tax base income that is taxable in the other Contracting State under this Convention. However, the Republic of the Ivory Coast reserves the right to take into account in determining the rate of tax, the income so excluded.

Article 24 Non-discrimination

1. The nationals of 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 of the immovable property of a permanent establishment or a fixed base which an enterprise or a resident 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 or residents 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 of other personal circumstances, which it grants to its own residents.

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

4. In this article the term "taxation" means taxes of every kind and description.

Article 25 Mutual Agreement Procedure

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the Contracting State, with a view to the avoidance of taxation not in accordance with the Convention.

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

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 and for any other purpose provided for in this Convention.

Article 26 Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention. Any information so exchanged shall be treated as secret and shall be disclosed only to persons or authorities bound to professional secrecy who are concerned with the assessment or collection of the taxes which are the subject of the Convention and with appeals relating thereto, and to the judicial authorities if necessary for the purpose of criminal prosecution in respect of such taxes. The above-mentioned persons and authorities may reveal such information in public court proceedings or in judicial decisions.

2. The provisions of paragraph 1 above may not, under any circumstances, be interpreted as imposing on one of the Contracting States, the obligation to:

a. Take administrative measures derogating from its administrative practice or that other Contracting State;

- b. Provide information which could not be obtained on the basis of its own laws or within the framework of its usual administrative practice or those of the other Contracting State;
- c. Transmit information which would reveal secrets of a commercial, industrial or professional nature, or a trade process or information which would be contrary to public order.

Article 27 Diplomatic and Consular Officials

1. Nothing in this Convention shall affect the fiscal privileges granted to the members of diplomatic mission or consular post under the general rules of international law or under the provisions of special agreements.
2. In so far as, owing to fiscal privileges granted to the members of a diplomatic mission or consular post under the general rules or international law or under the provisions of special international treaties, income or capital is not subject to tax in the receiving State, the right to tax shall be reserved to the sending State.
3. For the purposes of this Convention, persons who are members of a diplomatic mission or consular post of a Contracting State in the other Contracting State or in a third State and who are nationals of the sending State shall be deemed to be residents of the sending State if they are liable therein to the same obligations in respect of taxes on income and capital as are residents of that State.
4. This Convention shall not apply to international organizations, to organs or officials thereof and to persons who are members of a diplomatic mission or consular post of a third State, being present in a Contracting State and not treated in either Contracting State as residents in respect of taxes on income and capital.

Article 28 "Land Berlin"

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

Article 29 Entry Into Force

1. This Convention shall be ratified, the instruments of ratification shall be exchanged as soon as possible at Bonn.
2. The Convention shall enter into force one month after exchange of instruments of ratification and shall apply:
 - a. In the Federal Republic of Germany to taxes levied for the entire taxable period beginning on 1 January of the calendar year in which the Convention entered into force.
 - b. In the Republic of the Ivory Coast:
 - aa. To taxes levied on income for the entire taxable period beginning on 1 October of the calendar year in which the Convention enters into force;
 - bb. To other taxes levied on income for the entire taxable period beginning on 1 January of the calendar year in which the Convention enters into force;
 - c. In both Contracting States, to taxes deducted at source on dividends, interest and royalties paid after 31 December of the calendar year preceding the year in which the Convention enters into force.

Article 30 Termination

This Convention is concluded for an unlimited period, but either Contracting State may, before 30 June of any calendar year beginning with the third year after the year in which it is ratified, give a written notice of termination, through the diplomatic channel, to the other Contracting State. In the event of notice of termination given before 1 July of any such year, the Convention shall apply for the last time:

- a. In the Federal Republic of Germany, to taxes levied for the taxable period following that in which notice of termination is given;
- b. In the Republic of the Ivory Coast, to taxes levied for the tax years following that in which notice of termination is given;
- c. In both Contracting States, to taxes deducted at source on dividends, interest and royalties paid after 31 December of the year in which notice of termination is given.

DONE at Abidjan, on 3 July 1979, in duplicate in the German and French languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY:

Dr. Hansfinrich Kruse,

Ambassador of the Federal Republic of Germany

FOR THE GOVERNMENT OF THE REPUBLIC OF THE IVORY COAST:

Simeon Aki,

Minister for Foreign Affairs of the Republic of the Ivory Coast

PROTOCOL

The Federal Republic of Germany and the Republic of the Ivory Coast.

On signing on 3 July 1979 at Abidjan the Convention for the avoidance of double taxation and the establishment of rules for reciprocal administrative assistance with respect to taxes on income and on capital, the two States have agreed on the following provisions which shall form an integral part of this Convention:

1. Ad article 10

Notwithstanding paragraph 2 of article 10, the tax levied in the Ivory Coast on dividends paid by a company which is a resident of the Republic of the Ivory Coast and which is exempt from the tax on profits or does not pay that tax at the ordinary rate may not exceed 18 per cent of the gross amount of the dividends.

2. Ad articles 10 and 11

Notwithstanding articles 10 and 11, dividends and interest arising in the Federal Republic of Germany shall be taxable in accordance with the tax laws of that State.

a. If they are derived from rights or debt-claims with profit participation (particularly the income which a sleeping partner (stiller Gesellschafter) derives from his participation, income derived from a loan carrying the right to profit participation (partiarisches Darlehen) and income derived from participating debentures (Gewinnobligationen) within the meaning of the laws of the Federal Republic of Germany, and

b. Provided that they are deductible when the profits of the payer of this income are determined.

3. Ad article 23

If a company which is a resident of the Federal Republic of Germany uses income arising in the Republic of the Ivory Coast for the payment of dividends, paragraph 1 of article 23 of the convention shall not preclude the levying of a compensatory tax on the amounts distributed as company tax in accordance with the provisions of the tax laws of the Federal Republic of Germany.