

1979 Income and Capital Tax Convention and Final Protocol

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In force date: February 20, 1982

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Status: In Force

CONVENTION BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL

The Federal Republic of Germany and the Democratic Socialist Republic of Sri Lanka, Desiring to conclude a new convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital, Have agreed as follows:

Article 1 Personal Scope

This Convention shall apply to persons who are residents of one or both of the Contracting States.

Article 2 Taxes Covered

(1) The taxes which are the subject of this Convention are:

(a) in the Federal Republic of Germany:

the income tax (Einkommensteuer),
the corporation tax (Körperschaftsteuer),
the capital tax (Vermögensteuer), and
the trade tax (Gewerbesteuer)

(hereinafter referred to as "German tax");

(b) in the Democratic Socialist Republic of Sri Lanka:

the income tax and
the wealth tax

(hereinafter referred to as "Sri Lanka tax").

(2) This Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

(3) The provisions of this Convention in respect of taxation of income or capital shall likewise apply to the German trade tax, computed on a basis other than income or capital.

Article 3 General Definitions

(1) In this Convention, unless the context otherwise requires:

(a) the term "Sri Lanka" means the Democratic Socialist Republic of Sri Lanka;

(b) the terms "a Contracting State" and "the other Contracting State" mean the Federal Republic of Germany or Sri Lanka, as the context requires, and when used in a geographical sense, the territory in which the tax law of the State concerned is in force;

(c) the term "person" means an individual and a company;

(d) the term "company" means a body corporate, and any other body of persons or entity which is subject to tax as such;

(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 a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(g) the term "national" means:

(aa) in respect of the Federal Republic of Germany, any German within the meaning of Article 116, paragraph (1) of the Basic Law for the Federal Republic of Germany and any legal person, partnership and association deriving its status as such from the law in force in the Federal Republic of Germany;

(bb) in respect of Sri Lanka, all natural persons who, under the law in force in Sri Lanka, are citizens of Sri Lanka and any legal person, partnership and association deriving its status as such from the law in force in Sri Lanka;

(h) the term "competent authority" means in the case of the Federal Republic of Germany the Federal Minister of Finance and in the case of Sri Lanka the Commissioner-General of Inland Revenue.

(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 relating to the taxes which are the subject of this Convention.

Article 4 Residence

(1) For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the law 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.

(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 accordance with the following rules:

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

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

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

(d) If he is a national of both Contracting 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 Contracting 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 the enterprise is wholly or partly carried on.

(2) The term "permanent establishment" shall include especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, oil or gas well, quarry or other place of extraction of natural resources;

(g) an installation or structure used for the exploration of natural resources, which exists for more than 183 days;

(h) an agricultural or farming estate or plantation;

(i) a building site or construction or assembly project which exists for more than 183 days.

(3) The term "permanent establishment" shall not be deemed 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 for collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

(4) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State-- other than an agent of an independent status to whom the provisions of paragraph (5) of this Article apply--shall be deemed to be a permanent establishment in the first-mentioned State if he has, and

habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

(5) An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

(6) 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 make either company a permanent establishment of the other.

Article 6 Income From Immovable Property

(1) Income from immovable property may be taxed in the Contracting State in which such property is situated.

(2) The term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated; ships, boats and aircraft shall not be regarded as immovable property.

(3) The provisions of paragraph (1) of this Article 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) of this Article shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional 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 the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise (other than expenses which would not be deductible if the permanent establishment were a separate enterprise) 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, according to its law, 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 embodied in this Article.

(5) No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

(6) For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

(7) Where profits include items which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8 Shipping and Air Transport

(1) Profits derived 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 is situated.

(2) Notwithstanding the provisions of paragraph (1), profits derived from the operation of ships in international traffic may be taxed in the Contracting State in which such operation is carried on; but the tax so charged shall not exceed 50 per cent of the tax otherwise imposed by the internal law of that State.

(3) The provisions of paragraph (1) shall likewise apply in respect of participations in pools, in a joint business or in an international operations agency of any kind by enterprises engaged in the operation of ships or aircraft in international traffic.

(4) 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.

Article 9 Associated Enterprises

Where

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

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and 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 these conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

Article 10 Dividends

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

(2) However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State

(a) in the case of the Federal Republic of Germany, the tax so charged shall not exceed 15 per cent of the gross amount of the dividends;

(b) in the case of Sri Lanka, the tax so charged shall not exceed 15 per cent of the gross amount of the dividends paid in respect of any shares or other rights representing capital contributed from abroad to the company paying the dividends after the coming into force of the Convention.

(3) 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 assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident, and in the case of the Federal Republic of Germany, income derived by a sleeping partner from his participation as such and distributions on certificates of an investment-trust.

(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 such 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 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 be taxed in the Contracting State in which it arises, and according to the law of that State; but if the recipient is the beneficial owner of the interest the tax so charged shall, provided that the interest is taxable in the other Contracting State, not exceed:

(a) in the case of the Federal Republic of Germany, 10 per cent of the gross amount of the interest; and

(b) in the case of Sri Lanka, 10 per cent of the gross amount of interest paid in respect of any debt-claim, bond, debenture or other security arising from money received from abroad after the coming into force of this Convention.

(3) Notwithstanding the provisions of paragraph (2)

(a) interest arising in the Federal Republic of Germany and paid to the Sri Lanka Government shall be exempt from German tax;

(b) interest arising in Sri Lanka 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 Sri Lanka tax.

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

(4) Interest received by any banking institution which is a resident of one of the Contracting States shall be exempt from tax in the other Contracting State.

(5) Interest accruing to any company, partnership, or other body of persons resident in the Federal Republic of Germany from any loans in money, goods or services or in any other form, granted by that company, partnership or body of persons to the Government of the Democratic Socialist Republic of Sri Lanka or to a State Corporation, or to any institution of the Government of the Democratic Socialist Republic of Sri Lanka, or to any other institution to the capital of which the Government of the Democratic Socialist Republic of Sri Lanka has made any contribution, or to a credit agency or an undertaking in the Democratic Socialist Republic of Sri Lanka with the approval of the Government of the Democratic Socialist Republic of Sri Lanka, shall be exempt from Sri Lanka tax.

(6) The term "interest" as used in this Article 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 all other income assimilated to income from money lent by the taxation law of the State from which the income is derived.

(7) The provisions of paragraphs (1) to (5) 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.

(8) Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a Land, a political subdivision or a local authority thereof 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 in the Contracting State in which the permanent establishment is situated.

(9) 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 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 be taxed in the Contracting State in which they arise, and according to the law of that State; but if the recipient is the beneficial owner of the royalty the tax so charged shall not exceed:

(a) in the case of the Federal Republic of Germany, 10 per cent of the gross amount of the royalties; and

(b) in the case of Sri Lanka, 10 per cent of the gross amount of any royalty paid in respect of any contract entered into after the coming into force of the Convention.

(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, 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, and

includes payments of any kind in respect of motion picture films and works on film or video-tape for use in connection with television.

(4) The provisions of paragraphs (2) and (3) 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 professional services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a 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 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 or fixed base in connection with which the obligation to pay the royalties was incurred, and those royalties are borne by that permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

(6) Where, owing to a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties paid, 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 that case, the excess part of the payments shall remain taxable according to the law 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 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. However, gains from the alienation of movable property of the kind referred to in paragraph (4) of Article 22 shall be taxable only in the Contracting State in which such movable property is taxable according to the said Article.

(3) Gains from the alienation of shares in a company which is a resident of a Contracting State may be taxed in that State.

(4) Gains from the alienation of any property other than those mentioned in paragraphs (1) to (3) shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14 Independent Personal Services

(1) Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.

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

Article 15 Dependent Personal Services

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

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

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

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

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

(3) Notwithstanding the preceding provisions of this Article, remuneration 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.

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 Artists and Athletes

(1) Notwithstanding the provisions of Articles 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

(1) Any pension (other than a pension to which Article 19 applies) or annuity derived from sources within one of the Contracting States by an individual who is a resident of the other Contracting State and subject to tax in that other State in respect thereof shall be exempt from tax in the first-mentioned State.

(2) The term "annuity" 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)

(a) Remuneration, other than a pension, paid by a Contracting State, a Land, a political subdivision or a local authority thereof to an individual in respect of services rendered to that State, Land, subdivision or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State and is not a national of the first-mentioned State.

(2)

(a) Any pension paid by, or out of funds created by a Contracting State, a Land, a political subdivision or a local authority thereof to an individual in respect of services rendered to that State, Land, subdivision or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of that State and is not a national of the first-mentioned State.

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

(4) 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, a Land, a political subdivision or a local authority thereof.

Article 20 Teachers

A professor or teacher who visits a 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 in that Contracting State and who is, or was immediately before that visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned State on any remuneration which he derives from outside the first-mentioned State for such teaching.

Article 21 Students

(1) An individual who was a resident of one of the Contracting States and is temporarily present in the other Contracting State solely--

(a) as a student at a recognized university, college or school in that other Contracting State,

(b) as a business or technical apprentice (including in the case of the Federal Republic of Germany, a Volunteer or Praktikant), or

(c) as the recipient of a grant, allowance or award for the primary purpose of study, research or training from a religious, charitable, scientific or educational organisation, or under a technical assistance programme entered into by a Government of a Contracting State, shall be exempt from tax in that other Contracting State in respect of--

(i) all remittances from abroad for the purpose of his maintenance, education, study, research or training,

(ii) the grant, allowance or award, and

(iii) for a period not exceeding in the aggregate three years, any remuneration not exceeding 7,200 DM or the equivalent in Sri Lanka 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 such purposes.

(2) in this Article, the term "Government" shall include a statutory body established in a Contracting State in order to carry on a public utility undertaking under national control.

Article 22 Capital

(1) Capital represented by immovable property 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 of a permanent establishment of an enterprise or by movable property pertaining to a fixed base used for the performance of professional services, may be taxed in the Contracting State in which the permanent establishment or fixed base is situated.

(3) Notwithstanding the provisions of paragraph (2), 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) Shares in a company shall be taxable in the Contracting State in which such company is resident. This provision shall not apply to shares owned by companies as long as no tax is imposed in Sri Lanka on such shares.

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

Article 23 Relief From Double Taxation

(1) In the Federal Republic of Germany, double taxation will be avoided in the following manner:

(a) Unless the provisions of subparagraph (b) of this paragraph apply, there shall be excluded from the basis upon which German tax is imposed any item of income arising in Sri Lanka and any item of capital situated within Sri Lanka which, according to this Convention, may be taxed in Sri Lanka. The Federal Republic of Germany, however, retains the right to take into account in the determination of its rates of tax the items of income and capital so excluded. The foregoing provisions shall likewise apply to dividends which are paid to a company resident in the Federal Republic of Germany by a company resident in Sri Lanka if at least 25 per cent of the capital of the Sri Lanka company is owned directly by the German company. There shall also be excluded from the basis upon which German capital 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 such German capital tax is imposed.

(b) Subject to the provisions of German tax law regarding credit for foreign tax, there shall be allowed as a credit against German income or corporation tax payable in respect of the following items of income arising in Sri Lanka the Sri Lanka tax paid under the laws of Sri Lanka and in accordance with this Convention on--

(aa) dividends not dealt with in subparagraph (a);

(bb) interest;

(cc) royalties;

(dd) gains to which paragraph (3) of Article 13 applies;

(ee) remuneration to which Article 16 applies; and

(ff) income to which Article 17 applies.

The credit shall not, however, exceed that part of the German tax, as computed before the credit is given, which is appropriate to such income.

(c) For the purposes of subparagraph (b), the term "Sri Lanka tax" shall be deemed to include--

(aa) 20 per cent of the gross amount of the payment in the case of dividends;

(bb) 15 per cent of the gross amount of the payment in the case of interest;

(cc) 20 per cent of the gross amount of the payment in the case of royalties.

The credit allowed under this subparagraph shall, however, not exceed the amount of Sri Lanka tax which would have been payable but for the reliefs or reductions provided for in this Convention.

(2) In Sri Lanka, double taxation will be avoided in the following manner:

(a) Unless the provisions of subparagraph (b) of this paragraph apply, there shall be excluded from the basis upon which Sri Lanka 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 Convention, may be taxed in the Federal Republic of Germany. Sri Lanka, however, retains the right to take into account in the determination of its rates of tax the items of income and capital so excluded. The foregoing provisions shall likewise apply to dividends which are paid to a company resident in Sri Lanka by a company resident in the Federal Republic of Germany if at least 25 per cent of the capital of the German company is owned directly by the Sri Lanka company.

(b) Subject to the provisions of Sri Lanka tax law regarding credit for foreign tax, there shall be allowed as a credit against Sri Lanka income tax payable in respect of the following items of income arising in the Federal Republic of Germany the German tax paid under the laws of the Federal Republic of Germany and in accordance with this Convention on--

(aa) dividends not dealt with in subparagraph (a);

(bb) interest;

(cc) royalties;

(dd) gains to which paragraph (3) of Article 13 applies;

(ee) remuneration to which Article 16 applies; and

(ff) income to which Article 17 applies.

The credit shall not, however, exceed that part of the Sri Lanka tax, as computed before the credit is given, which is appropriate to such income.

Article 24 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.

(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 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.

(4) Nothing contained in this Article shall be construed as

(a) obliging either Contracting State to grant to persons not resident in that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to persons so resident; or

(b) affecting the additional rate of tax referred to in section 37 of the Sri Lanka Inland Revenue Act.

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

Article 25 Diplomatic Missions and Consular Posts

(1) Nothing in this Convention 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) Insofar as, due to such privileges granted to a person under the general rules of international law or under the provisions of special international agreements, income or capital are 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 a consular post of a Contracting State in the other Contracting State or in a third State, as well as persons connected with such persons, and who are nationals of the sending State, shall be deemed to be residents of the sending State if they are subjected therein to the same obligations in respect of taxes on income and capital as are residents of that State.

Article 26 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 other 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 the 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.

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 Convention. 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 the Convention. Such persons or authorities shall use the information only for such purposes. These persons or authorities may disclose the information in public court proceedings or in judicial decisions.

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

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

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

Article 28 Land Berlin

This Convention 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 Democratic Socialist Republic of Sri Lanka within three months of the date of entry into force of this Convention.

Article 29 Entry Into Force

(1) This Convention shall be ratified and the instruments of ratification shall be exchanged at Colombo as soon as possible.

(2) This Convention shall enter into force on the thirtieth day after the date of exchange of the instruments of ratification and shall have effect:

(a) in the Federal Republic of Germany, in respect of taxes which are levied in any assessment period beginning on or after the first day of January in the year following that in which this Convention enters into force;

(b) in Sri Lanka, in respect of taxes which are levied for any year of assessment beginning on or after the first day of April in the year following that in which this Convention enters into force.

(3) Upon the entry into force of this Convention the Convention between the Government of the Federal Republic of Germany and the Government of Sri Lanka for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Property signed at Colombo on 4th July, 1962, shall expire and shall cease to have effect as from the dates on which the provisions of this Convention commence to have effect.

Article 30 Termination

This Convention shall continue in effect indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year following that in which it enters into force, give to the other Contracting State through diplomatic channels, written notice of termination and, in such event, this Convention shall cease to be effective:

(a) in the Federal Republic of Germany, in respect of taxes which are levied in any assessment period following that in which the notice of termination is given;

(b) in Sri Lanka, in respect of taxes which are levied for any year of assessment following that in which the notice of termination is given.

DONE at Bonn on 13th September 1979, in two originals, each in German, Sinhala and English, all texts being authentic. In case there is any divergence of interpretation, the English text shall prevail.

FOR THE FEDERAL REPUBLIC OF GERMANY

G. van Well

Obert

FOR THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

Ch. W. Pinto

Final Protocol

The Federal Republic of Germany and the Democratic Socialist Republic of Sri Lanka, Have agreed at the signing at Bonn on 13th September 1979 of the Convention between the two States for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income and capital upon the following provisions which shall form an integral part of the said Convention.

1. 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 (including income derived by a sleeping partner from his participation as such, from a "partiarisches Darlehen" and from "Gewinnobligationen" in the meaning of the law of the Federal Republic of Germany) and
(b) under the condition that they are deductible in the determination of profits of the debtor of such income.

2. With reference to Article 23:

(a) notwithstanding the provisions of paragraph (1), subparagraph (a), of Article 23 of the Convention, only the provisions of paragraph (1), subparagraph (b), of that Article with the exclusion of subparagraph (c) shall apply to the profits of a permanent establishment; to dividends paid by a company; or to gains referred to in paragraphs (1) and (2) of Article 13 of the Convention, 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 Sri Lanka or

(bb) from dividends paid by one or more companies, being residents of Sri Lanka, more than 25 per cent of the capital of which is owned by the first-mentioned company, which themselves derive their receipts exclusively or almost exclusively from producing or selling goods or merchandise, giving technical advice or rendering engineering services, or doing banking or insurance business, within Sri Lanka.

If the foregoing provisions apply, there shall, subject to the provisions of German tax law regarding credit for foreign tax, be allowed as a credit against German capital tax payable in respect of capital represented by property forming part of the business property of the permanent establishment and of the shareholding in the company the Sri Lanka tax paid on such capital under the laws of Sri Lanka and in accordance with this Convention.

(b) When a company being a resident of the Federal Republic of Germany distributes income derived from sources within Sri Lanka, paragraph (1) shall not preclude the compensatory imputation of corporation tax on such distributions in accordance with the provisions of the tax law of the Federal Republic of Germany.

FOR THE FEDERAL REPUBLIC OF GERMANY

G. van Well

Obert

FOR THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

Ch. W. Pinto