

SUBSIDIARY LEGISLATION 123.06

**DOUBLE TAXATION RELIEF (TAXES ON
INCOME) (FEDERAL REPUBLIC OF GERMANY)
ORDER**

10th December, 1976

LEGAL NOTICE 149 of 1976 as amended by Legal Notice 7 of 1978.

1. The title of this Order Double Taxation Relief (Taxes on Income) (Federal Republic of Germany) Order. Title.

2. It is hereby declared -

Arrangements to
have effect.

(a) that the arrangements specified in the Agreement set out in the Schedule to this Order have been made with the Government of the Federal Republic of Germany with a view to affording relief from double taxation in relation to the following taxes imposed by the laws of the Federal Republic of Germany:

- (i) income tax including surcharge thereon;
- (ii) corporation tax including surcharge thereon;
- (iii) capital tax; and
- (iv) trade tax; and

(b) it is expedient that those arrangements should have effect.

SCHEDULEAGREEMENT
BETWEEN THE FEDERAL REPUBLIC OF GERMANY
AND MALTA
FOR THE AVOIDANCE OF DOUBLE TAXATION

THE FEDERAL REPUBLIC OF GERMANY

and

MALTA

DESIRING to conclude an Agreement for the Avoidance of Double Taxation have agreed as follows:

ARTICLE 1

Personal Scope

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

ARTICLE 2

Taxes Covered

(1) This Agreement shall apply to taxes on income and on capital imposed on behalf of each Contracting State or of its Laender, political subdivisions or local authorities, irrespective of the manner in which they are levied.

(2) There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation.

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

(a) in the Federal Republic of Germany:

the Einkommensteuer (income tax) including the
Ergänzungsabgabe (surcharge) thereon,
the Körperschaftsteuer (corporation tax) including the
Ergänzungsabgabe (surcharge) thereon,
the Vermögensteuer (capital tax), and the Gewerbesteuer (trade
tax),

(hereinafter referred to as "German tax");

(b) in Malta:

the income tax, including surtax
(hereinafter referred to as "Malta tax").

(4) This Agreement shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of the existing taxes.

(5) The provisions of this Agreement 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.

(6) Where this Agreement provides that income arising in a Contracting State, other than income to which paragraph (3) of article 11 applies, shall be relieved from tax in that State, either in full or in part, and, under the law in force in the other Contracting State, such income is subject to tax by reference to the amount thereof which is remitted to or received in that other State and not by reference to the full amount thereof, then the relief to be allowed in the first mentioned State shall apply only to so much of the income as is remitted to or received in the other State.

ARTICLE 3

General Definitions

(1) In this Agreement, unless the context otherwise requires -

(a) the term "Federal Republic of Germany", when used in a geographical sense, means the territory in which the Basic Law for the Federal Republic of Germany is in force, as well as any area adjacent to the territorial waters of the Federal Republic of Germany designated, in accordance with international law, as related to the rights which the Federal Republic of Germany may exercise with respect to the sea bed and subsoil and their natural resources, as domestic area for tax purposes;

(b) the term "Malta", when used in a geographical sense, means the Island of Malta, the Island of Gozo and the other islands of the Maltese archipelago, including the territorial waters thereof, and any area outside the territorial sea of Malta which, in accordance with international law, has been or may hereafter be designated, under the laws of Malta concerning the Continental Shelf, as an area within which the rights of Malta with respect to the sea bed and sub-soil and near natural resources may be exercised;

(c) the terms "a Contracting State" and "the other Contracting State" mean the Federal Republic of Germany or Malta, as the context requires;

(d) the term "person" includes an individual and a company;

(e) the term "company" means any body corporate or any entity, which is treated as a body corporate for tax purposes;

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

(g) the term "national" means:

(aa) in respect of the Federal Republic of Germany any German in 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 Malta, any citizen of Malta as provided for in Chapter III of the Constitution of Malta and in the Maltese Citizenship Act, and any legal person, partnership and association deriving its status as such from the law in force in Malta;

(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 Malta the Minister responsible for finance or his authorised representative.

(2) As regards the application of this Agreement by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the

meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of this Agreement.

ARTICLE 4

Fiscal Domicile

(1) For the purposes of this Agreement, 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 Agreement 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, quarry or other place of extraction of natural resources;
- (g) a building site or construction or assembly project which exists for more

than twelve months.

- (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 paragraph (5) applies - shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercise 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

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. The term shall in any case include property accessory to immovable property, rights to which the provisions of general law respecting immovable property apply, and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

(3) The provisions of paragraph (1) shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

(4) The provisions of paragraphs (1) and (3) shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of 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) Where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

(3) In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

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

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

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

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

ARTICLE 8

Ships and Aircraft

(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) 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.

(3) 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 those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

ARTICLE 10

Dividends

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

(2) However, such dividends may 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 the tax so charged shall not exceed:

- (a) 5 per cent of the gross amount of the dividends if the recipient is a company (excluding partnerships) which owns directly at least 25 per cent of the capital of the company paying the dividends;
- (b) in all other cases, 15 per cent of the gross amount of the dividends.

(3) Notwithstanding the provisions of paragraph (2), where dividends are paid by a company resident of the Federal Republic of Germany to a company resident of Malta, German tax on the dividends may exceed the rates set out in paragraph (2), but not 27 per cent of the gross amount of such dividends, if -

- (a) at least 25 per cent of the capital of the first mentioned company is owned directly or indirectly by the company resident of Malta, or by it together with other persons controlling it or who are under common control with it, and
- (b) the rate of German corporation tax on distributed profits is lower than that on undistributed profits by at least fifteen percentage points.

(4) Notwithstanding the provisions of paragraph (2), where under the law of Malta a shareholder in receipt of a dividend is entitled to set off against his tax an amount corresponding to the tax paid or payable by the company in respect of the profits distributed to him by way of such dividend, then

- (a) tax so paid or payable by the Malta company in respect of profits being distributed as dividend to a resident of the Federal Republic of Germany may be imposed at a rate not exceeding that charged on the company,

but no tax shall be charged in Malta in addition thereto on the dividends so distributed by the company to that resident;

- (b) tax so paid or payable by the Malta company in respect of profits being distributed as dividend to a resident of the Federal Republic of Germany may be imposed at a rate not exceeding fifteen per cent of the gross amount thereof, and no tax shall be charged in Malta in addition thereto: provided that such dividends are paid out of gains or profits earned in any year in respect of which the company is in receipt of any benefit under provisions regulating aids to industries in Malta, and the shareholder submits returns and accounts to the taxation authorities of Malta in respect of his income liable to Malta tax for the relative year of assessment.

(5) The term "dividends" as used in this Article means income from shares, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation law of the State of which the Company making the distribution is a resident. Income derived by a sleeping partner from his participation as such, and distributions on certificates of an investment trust.

(6) The provisions of paragraphs (1) to (4) shall not apply if the recipient of the dividends, being a resident of a Contracting State, has in the other Contracting State, of which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provisions of Article 7 shall apply.

(7) 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 to persons who are not residents of that other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11

Interest

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

(2) However, such interest may be taxed in the Contracting State in which it arises, and according to the law of that State, but the tax so charged shall not exceed ten per cent of the gross amount of such interest.

(3) Notwithstanding the provisions of paragraph (2) -

- (a) interest arising in the Federal Republic of Germany and paid to the Malta Government or to the Central Bank of Malta shall be exempt from German tax;
- (b) interest arising in Malta 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 Malta tax.

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

(4) The term "interest" as used in this Article means income from 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 in which the income arises.

(5) The provisions of paragraphs (1) and (2) shall not apply if the recipient of the interest, being a resident of a Contracting State, has in the other Contracting State in which the interest arises a permanent establishment with which the debt-claim, from which the interest arises, is effectively connected. In such a case, the provisions of Article 7 shall apply.

(6) Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a Land, a political subdivision 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.

(7) Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid 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 recipient 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 Agreement.

ARTICLE 12

Royalties

(1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if the royalties consist of payments of any kind received as a consideration for the use of or the right to use, any copyright of literary, artistic or scientific work, including cinematographic films or tapes for television or broadcasting.

(2) Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State if the royalties consist of payments of any kind received as a consideration for the use of, or the right to use, any patent, trade mark, design, model, plan, secret formula or process, equipment or information concerning industrial, commercial or scientific experience. However, such royalties may be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax so charged shall not exceed ten per cent of the gross amount of such royalties.

(3) The provisions of paragraphs (1) and (2) shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise a permanent establishment with which the right or property giving rise to the royalties is effectively connected. In such a case, the provisions of Article 7 shall apply.

(4) Royalties 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 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 liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

(5) Where, owing to a special relationship between the payer and the recipient 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 recipient 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 Agreement.

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 (3) 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 any property other than those mentioned in paragraphs (1) and (2) 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 calendar year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

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

Notwithstanding the provisions of Articles 14 and 15, income derived by public entertainers, such as theatre, motion picture, radio or television artists, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

ARTICLE 18

Public Funds

(1) Subject to the provisions of Article 19, remuneration paid by, or out of funds created by a Contracting State, a Land, a political subdivision or a local authority thereof to any individual in respect of an employment shall be taxed only in that State. If, however, the employment is exercised in the other Contracting State by a national of that State not being a national of the first-mentioned State, the remuneration shall be taxable only in that other State.

(2) The provisions of Articles 15, 16 and 17 shall apply to remuneration in respect of an employment in connection with any business carried on by a Contracting State, a Land, a political subdivision or a local authority thereof for the purpose of profits.

(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, those Laender, political subdivisions or local

authorities thereof, to a specialist or volunteer seconded to the other Contracting State with the consent of that other State.

ARTICLE 19

Pensions

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 20

Teachers, Students and Trainees

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

(2) An individual who was a resident of a Contracting State immediately before visiting the other Contracting State and is temporarily present in that other State solely as a student at a university, college, school or other similar educational institution in that other State or as a business apprentice (including in the case of the Federal Republic of Germany a Volontar or a Praktikant) shall, from the date of his first arrival in that other State in connection with that visit, be exempt from tax in that other State -

- (a) on all remittances from abroad for purposes of his maintenance, education or training; and
- (b) for a period not exceeding in the aggregate three years, on any remuneration not exceeding 6000 DM or the equivalent in Malta 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.

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

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

ARTICLE 21

Income not expressly mentioned

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Agreement shall be taxable only in that 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 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) 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 elements of capital of a resident of a Contracting State shall be taxable only in that State.

ARTICLE 23

Relief from Double Taxation

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

- (a) unless the provisions of sub-paragraphs (b) or (c) apply, there shall be excluded from the basis upon which German tax is imposed, any item of income arising in Malta and any item of capital situated within Malta, which, according to this Agreement, may be taxed in Malta. The Federal Republic of Germany, however, retains the right to take into account the items of income and capital so excluded in the determination of its rate of tax on other items of income and capital. The foregoing provisions shall likewise apply to dividends, which are paid to a company being a resident of the Federal Republic of Germany by a company being a resident of Malta if at least 25 per cent of the capital of the Malta company is owned directly by the German company. There shall also be excluded from the basis upon which German tax is imposed any shareholding, the dividends of which, if paid, would be excluded, according to the immediately foregoing sentence from the basis upon which German 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 and corporation tax, including the surcharge thereon, payable in respect of the following items of income arising in Malta, and against German capital tax payable in respect of the capital situated in Malta referred to below, the Malta tax paid under the law of Malta and in accordance with this Agreement on:
 - (aa) dividends, not dealt with in sub-paragraph (a), to which paragraph (2) of Article 10 applies;
 - (bb) interest to which paragraph (2) of Article 11 applies;
 - (cc) royalties to which paragraph (2) of Article 12 applies;
 - (dd) remuneration to which Article 16 applies;

- (ee) income to which Article 17 applies;
 - (ff) income from immovable property to which Article 6 applies, and on capital to which paragraph (1) of Article 22 applies, unless the property from which such income arises, or such capital, forms part of a permanent establishment, referred to in Article 7, situated in Malta or of a fixed base, referred to in Article 14, situated in Malta;
- (c) dividends, not dealt with in sub-paragraph (a), to which paragraph (4) of Article 10 applies, shall be subject to German tax on the amount after the deduction of Malta tax charged in accordance with the provisions of the aforesaid paragraph, but, subject to the provisions of German tax law regarding credit for foreign tax, there shall be allowed as a credit against German income and corporation tax, including the surcharge thereon, that part of the Malta tax which would be payable under the law of Malta but is not so payable in virtue of the provisions of paragraph (4) of Article 10;
- (d) where Malta tax on interest as defined in paragraph (4) of Article 11, or on royalties referred to in paragraph (2) of Article 12, is reduced below the rates provided for in paragraph (2) of Article 11 or paragraph (2) of Article 12, respectively, in virtue of special incentive measures designed to promote the economic development of Malta, there shall be allowed, subject to the provisions of German tax law regarding credit for foreign tax, as a credit against German income and corporation tax, including the surcharge thereon, an amount of ten per cent of the gross amount of such interest or royalties, but not more than the Malta tax which would be payable but for such reduction.
- (2) Tax shall be determined in the case of Malta as follows:

Subject to the provisions of the law of Malta regarding the allowance of a credit against Malta tax in respect of foreign tax, where, in accordance with the income provisions of this Agreement, there is included in a Malta assessment from sources within the Federal Republic of Germany, the German tax paid on such income shall be allowed as a credit against Malta tax payable thereon.

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.

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

(3) 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) 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 Agreement, 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 this Agreement.

(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 Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

(4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of applying the provisions of this Agreement.

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 Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons, authorities or courts other than those concerned with the assessment or collection of the taxes which are the subject of this Agreement or the determination of appeals or the prosecution of offences in relation thereto.

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

- (a) to carry out administrative measures at variance with the laws or the 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 or the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy,

ARTICLE 27

Diplomatic and Consular Privileges

- (1) Nothing in this Agreement shall affect diplomatic or consular privileges

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 Agreement, persons who are members of a diplomatic or consular mission 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 28

Land Berlin

This Agreement 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 Malta within three months from the date of entry into force of this Agreement.

ARTICLE 29

Entry into force

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

(2) This Agreement shall enter into force on the 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 for any assessment period beginning on or after January 1, 1973;
- (b) in Malta in respect of taxes which are levied for any year of assessment beginning on or after January 1, 1974;
- (c) in both Contracting States in respect of taxes withheld at source on dividends, interests and royalties paid after December 31, 1972.

ARTICLE 30

Termination

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

- (a) in, the Federal Republic of Germany in respect of taxes which are levied for any assessment period following that during which the notice of termination is given;
- (b) in Malta in respect of taxes which are levied for any year of assessment commencing with the second year of assessment following that during which the notice of termination is given;

- (c) in both Contracting States in respect of taxes withheld at source on dividends, interest and royalties paid after December 31 of the year during which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE at Valletta this 17th day of September One thousand Nine hundred and Seventy-four, in duplicate in the German and English Languages, both texts being equally authentic.

For the Federal Republic of Germany
Hans-Joachim Steinbach
Ambassador for Malta

For the Government of Malta
Dr Joseph Abela
Minister of Finance, Customs and Ports

PROTOCOL

The Federal Republic of Germany
and
Malta

Have agreed at the Signing at Valletta on the 17th day of September One thousand Nine hundred and Seventy-four, of the Agreement between the two States for the avoidance of double taxation upon the following provisions which shall form an integral part of the said Agreement.

(1) With reference to Article 8 and 22

Notwithstanding the provisions of Article 8 of the Agreement profits from the operation of a ship in international traffic derived by a company which is a resident of Malta having more than 25 per cent of its capital owned, directly or indirectly, by persons not residents of Malta, may be taxed in the Federal Republic of Germany unless the company proves that the profits derived from the operation of such ship are subject to Malta tax without regard to any relief therefrom as provided for in article 86 of the Merchant Shipping Act, or in any identical or similar provision.

(2) With reference to Article 10

Under the Malta law in force, income tax paid or payable by a company, as is referable to that part of its profits which is distributed by way of dividends, is assimilated with the personal income tax of the shareholder in receipt of such a dividend. In the shareholder's hands the dividend is charged to tax gross and the relevant amount of tax, so assimilated, is set off against the shareholder's tax liability on his income from all liable sources.

(3) With reference to Article 13

Notwithstanding the provisions of paragraph (3) of Article 13, gains derived by an individual who is a resident of Malta from the alienation of shares of a company which is a resident of the Federal Republic of Germany may be taxed in the latter State unless they are subject to tax in Malta.

(4) With reference to Article 23

Notwithstanding the provisions of paragraph (1), sub-paragraph (a) of Article 23 of the Agreement, the provisions of paragraph (1), sub-paragraphs (b) and (c) of that

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

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

DONE at Valletta on the 17th day of September One thousand Nine hundred and Seventy-four, in duplicate in the German and English languages, both texts being equally authentic.

For the Federal Republic of Germany
Hans-Joachim Steinbach
Ambassador for Malta

For the Government of Malta
Dr Joseph Abela
Minister of Finance, Customs and Ports
