রেজিস্টার্ড নং ডি এ-১

বাংলাদেশ গেজেট

অতিরিক্ত সংখ্যা

কর্তৃপক্ষ কর্তৃক প্রকাশিত

রবিবার, জানুয়ারী ২, ১৯৯৪

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার

অর্থ মন্ত্রণালয়

অভ্যন্তরীণ সম্পদ বিভাগ

(আয়কর)

প্রজ্ঞাপন

তারিখ: ১৮ই পৌষ, ১৪০০/১লা জানুয়ারী, ১৯৯৪

এস, আর, ও নং ১-আইন/৯৪—যেহেতু গণপ্রজাতন্ত্রী বাংলাদেশ সরকার এবং ফেডারেল প্রজাতন্ত্রী জার্মানী সরকার দ্বৈত করারোপণ পরিহার এবং আয়ের উপর কর সম্পর্কিত রাজস্ব ফাঁকি প্রতিরোধের জন্য ২৯শে মে, ১৯৯০ তারিখ একটি চুক্তি সম্পাদন করিয়াছে;

সেহেতু Income Tax Ordinance, 1984 (XXXVI of 1984) এর section 144 এ প্রদত্ত ক্ষমতাবলে সরকার নির্দেশ দিলেন যে, এতদ্‌সংগে সংযোজিত উক্ত চুক্তির বিধানাবলী বাংলাদেশে কার্যকর হইবে।

চুক্তি

"Agreement
between
the People's Republic of Bangladesh
and
the Federal Republic of Germany

for the Avoidance of Double Taxation with respect to Taxes on Income

The People's Republic of Bangladesh
and
the Federal Republic of Germany,

মূল্য : টাকা ৬.০০

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Desiring to promote their mutual economic relations through the conclusion of an Agreement for the avoidance of double taxation with respect to taxes on income,

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 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 all taxes imposed on total income or on elements of income including taxes on gains from the alienation of movable or immovable property.

3. The existing taxes to which this Agreement shall apply are, in particular ;

(a) in the Federal Republic of Germany :

the Einkommensteuer (income tax), the Koerperschaftsteuer (corporation tax) and the Gewerbesteuer and (trade tax) (hereinafter referred to as "German tax");

(b) in Bangladesh :

the income tax (hereinafter referred to as "Bangladesh tax").

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

Article 3

General Definitions

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

(a) the term "Bangladesh" means the People's Republic of Bangladesh;

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

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(c) the term "person" includes an individual, a company and any other entity treated as a unit for tax purposes;

(d) the term "company" means any body corporate or any entity treated as a body corporate for tax purposes;

(e) the terms "resident of a Contracting State" and "resident of the other Contracting State" mean a person who is a resident of the Federal Republic of Germany or a person who is a resident of Bangladesh as the context requires;

(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 within the meaning of Article 116, paragraph 11 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 Bangladesh any individual possessing the nationality of Bangladesh and any legal person, partnership and association deriving its status as such from the law in force in Bangladesh;

(h) 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;

(i) the term "competent authority" means in the case of the Federal Republic of Germany the Federal Minister of Finance, and in the case of Bangladesh the National Board of Revenue or its authorise representative.

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

Article 4

Resident

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

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2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows :

(a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

(b) if the State in which he has his centre of vital interests can not be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

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

(d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States then it shall be deemed to be a resident of the State in which its place of effective management is situated.

Article 5

Permanent Establishment

1. For the purposes of the Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishmsnt" includes especially :

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a warehouse, in relation to a person providing storage facilities for others; and

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

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than 183 days.

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

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

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

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

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

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

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person—other than an agent of an independent status to whom paragraph 6 applies—is acting on behalf of an enterprise and

(a) he has, and habitually exercises, in a Contracting 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,

(b) he habitually maintains in a Contracting State a stock of goods merchandise belonging to the enterprise from which he regularly delivers goods or merchandise for or on behalf of the enterprise, or

(c) he habitually secures orders for the supply of goods in a Contracting State, wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises which are controlled by it or have controlling interest in it,

that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business and their activities do not involve securing of orders within the meaning of sub-paragraph (c) of paragraph 5.

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7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

Income from Immovable Property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture, forestry or fishery) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture, forestry and fishery, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; 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

7. 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

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the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

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

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

5. 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

Shipping and Air Transport

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

(b) Notwithstanding the provisions of sub-paragraph (a), such profits may be taxed in the other Contracting State from which they are derived provided that the tax so charged shall not exceed :

(aa) during the first five fiscal years after the entry into force of this Agreement, 50 per cent, and

(bb) during the subsequent five fiscal years, 25 per cent, of the tax otherwise imposed by the internal law of that State. Subsequently, only the provisions of sub-paragraph (a) shall be applicable.

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

Article 9

Associated Enterprises

Where

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

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and 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 also be taxed in the Contracting State of which the company paying the dividends is a resiedent and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

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

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

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subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident 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 professional 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 in sofar as such dividends are paid to a resident of that other State or in sofar 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 prhfits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11

Interest

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

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2,

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

(b) interest arising in Bangladesh and paid to the German Government the Deutsche Bundesbank, the Kreditanstalt fur Wiederaufbau or the Deutsche Gesellschaft fur Wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) shall be exempt from Bangladesh tax.

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

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

5. The provisions of paragraphs 1 to 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a Land, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12

Royalties

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

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

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3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience but does not include any payments in respect of the operation of mines, quarries, oil wells or any other place of extraction of natural resources.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State 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 case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a Land, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13

Capital Gains

1. Gains 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 situsted. For the purpose of this paragraph shares of a company the property of which consists wholly or almost wholly of immovable property situated in a Contracting State shall be deemed to be immovable property situated in that State.

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

3. Gains from the alienation of ships or aircraft operated in international traffic or of 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. Subject to the provisions of paragraph 1, gains from the alienation of shares of a company which is a resident of a Contracting State may be taxed in that State.

5. Gains from the alienation of any property other than that mentioned in paragraphs 1 to 4 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 activities of an independent character shall be taxable only in that State unless :

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

(b) he is present in the other Contracting State for the purpose of performing his activities for a period or periods exceeding in the aggregate 90 days in the fiscal year concerned.

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

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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 derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16

Directors' Fees

Directors' fees and 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

Artistes and Athletes

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

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

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3. The provisions of paragraphs 1 and 2 shall not apply if the visit of 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

Subject to the provisions of paragraphs 1 and 3 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

Article 19

Government Service

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

2. 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.

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, by that State, Land, political subdivision, local authority or any other governmental instrument to a specialist or volunteer seconded to the other Contracting State with the consent of that other State.

Article 20

Teachers, Students and Trainees

1. An individual who visits a Contracting State at the invitation of that State or of a university, college, school, museum or other cultural institution of that State or under an official programme of cultural exchange for a period not exceeding two years solely for the purpose of teaching, giving lectures or carrying out research at such institution and who is, or was immediately before that visit, a resident of the other Contracting State shall be exempt

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from tax in the first-mentioned State on his remuneration for such activity, provided that such remuneration is derived by him from outside that 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 Fede.al Republic of Germany a Volontaer 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 7 200 DM or the equivalent in Bangladesh currency for the fiscal 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

Other Income

1. Subject to the provisions of paragraph 2 of this Article, 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 this Contracting State.

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

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Article 22

Relief From Double Taxation

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

(a) Unless the provisions of sub-paragraph (b) apply, there shall be excluded from the basis upon which German tax is imposed, any item of income arising in Bangladesh which, according to this Agreement, may be taxed in Bangladesh whether or not so taxed. The Federal Republic of Germany, however, retains the right to take into account in the determination of its rate of tax the items of income so excluded.

In the case of income from dividends the foregoing provisions shall apply only to such dividends as are paid to a company (not including partnerships) being a resident of the Federal Republic of Germany by a company being a resident of Bangladesh at least 25 per cent of the capital of which is owned direclty by the German company.

(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 Bangladesh the Bangladesh tax paid under the laws of Bangladesh and in accordance with this Agreement on:

(aa) profits to which Article 8 paragraph 2 sub-paragraph (b) applies ;

(bb) dividends not dealt with in sub-paragraph (a) ;

(cc) interest ;

(dd) royalties ;

(ee) remuneration to which Article 16 applies ;

(ff) income to which Article 17 applies ;

(gg) income from immovable property to which Article 6 applies. This shall not apply if the immovable property from which such income arises is effectively connected with a permanent establishment referred to in Article 7 and situated in Bangladesh or with a fixed base referred to in Article 14 and situated in Bangladesh unless the provisions of sub-paragraph (d) preclude the application of the provisions of sub-paragraph (a) to the profits of the permanent establishment.

(c) For the purposes of sub-paragraph (b), the Bangladesh tax on dividends, interest and royalties allowed as a credit against German income or corporation tax shall be deemed to be at least 15 per cent of the gross amount of the payment.

(d) The provisions of sub-paragraph (a) shall not apply to the profits of a permanent establishment and to the gains from the alienation of movable and immovable property forming part of the business property

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of a permanent establishment as well as to dividends paid by 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 :

(aa) from producing or selling goods or merchandise, giving technical advice or rendering engineering services, or d ing or banking or insurance business, within Bangladesh ; or

(bb) from dividends paid by one for more companies, being residents of Bangladesh, 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 Bangladesh.

In such a case Bangladesh tax payable under the laws of Bangladesh and in accordance with this Agreement on the abovementioned items of income shall, subject to the provisions of German tax law regarding credit for foreign tax, be allowed as a credit against German income or corporation tax payable on such items of income.

2. Tax shall be determined in the case of a resident of Bangladesh as follows :

(a) Unless the provisions of sub-paragraph (b) apply, there shall be excluded from the basis upon which Bangladesh tax is imposed, any item of income arising in the Federal Republic of Germany which, according to this Agreement, may be taxed in the Federal Republic of Germany, whether or not so taxed. Bangladesh, however, retains the right to take into account in the determination of its rate of tax the items of income so excluded.

In the case of income from dividends the foregoing provisions shall apply only to such dividends as are paid to a company (not including partnerships) being a resident of Bangladesh by a company being a resident of the Federal Republic of Germany at least 25 per cent of the capital of which is owned directly by the Bangladesh company.

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

(aa) profits to which Article 2 paragraph 2 sub-paragraph (b) applies;

(bb) dividends not dealt with in sub-paragraph (a) ;

(cc) interest ;

(dd) royalties :

(ee) remuneration to which Article 16 applies ;

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(ff) income to which Article 17 applies ;

(gg) income from immovable property to which Atricle 6 applies. This shall not apply if the immovable property from which such income arises is effectively connected with a pernament establishment referred to in Article 7 and situated in the Federal Republic of Germany or with a fixed base referred to in Article 14 and situated in the Federal Republic of Germany.

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Article 23

Non-discrimination

7. 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. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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

3. Except where the provisions of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents or the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. Nothing contained in paragraphs 1, 2 and 4 of this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any reliefs, reductions and personal allowances, which it grants to its own residents.

Article 24

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement. 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 or appeals in relation to, the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions concerning the case to which such information relates.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation :

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

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

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

Article 25

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting State result or will result for him in taxation not in accordance with the provisions of this Agreement he may, irrespective of the remedies provided by the domestic law of those State, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 23 to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other

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Contracting State, with a view to the avoidance of taxation, which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

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

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 26

Diplomatic Missions and Consular Posts

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

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

(a) in accordance with international law he is not liable to tax in the receiving State in respect of income from sources outside that State, and

(b) he is liable in the sending State to the same obligations in relation to tax on his world income as are residents of that State.

Article 27

Land Berlin

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

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Article 28

Entry into Force

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

2. This Agreement shall enter into force one month after the date of exchange of the instruments of ratification and shall have effect in respect of income derived during any fiscal year beginning on or after January 1, 1990.

Article 29

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 following the fifth calendar year in which it enters 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 in respect of income derived during any fiscal year following that in which the notice of termination is given.

Done at Bonn this 29th day of May, 1990, in two originals, each in the Bangla, German and English languages, all texts being authentic. In the case of any divergence of interpretation, the English text shall prevail.

For the people's Republic of Bangladesh

For the Federal Republic of Germany

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Protocol

The People's Republic of Bangladesh
and
The Federal Republic of Germany

Have Agreed at the Signing at Bonn on May 29, 1990, of the Agreement between the two States for the avoidance of double taxation with respect to taxes on income upon the following provisions which shall form an integral part of the said Agreement.

1. With reference to Article 10

in the case of the Federal Republic of Germany the term "dividends" shall also include income derived by a sleeping partner from his participation as such.

2. With reference to Articles 10 and 11

notwithstanding the provisions of these Articles, dividends and interest may be taxed in the Contracting State in which they arise, and according to the law of that State, if they 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" within the meaning of the law of the Federal Republic of Germany) and under the condition that they are deductible in the determination of profits of the debtor of such income.

3. With reference to Article 22

where a company being a resident of the Federal Republic of Germany distributes income derived from sources within Bangladesh paragraph 1 shall not preclude the compensatory imposition of corporation tax on such distributions in accordance with the provisions of German tax law: In case Bangladesh changes its law to avoid economic double taxation, similar appropriate provisions in respect of paragraph 2 shall be applicable in its case.

Done at Bonn, this 29th day of May, 1990, in two originals, each in the Bangla, German and English languages, all texts being authentic. In case of any divergence of interpretation, the English text shall prevail.

For the People's Republic of Bangladesh

MUZAMMEL HUSSAIN

For the Federal Republic of Germany

Dr. HANS WERNER LAUTENSCHLAGER

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The State Secretary of the Federal Foreign Office

Bonn, May 29, 1990

Excellency,

With reference to Article 3 of the Agreement between the Federal Republic of Germany and the People's Republic of Bangladesh for the Avoidance of Double Taxation with respect to Taxes on Income, signed today, I have the honour to declare that the conclusion of the said Agreement does not affect the position of the Federal Republic of Germany on the maritime borders of Bangladesh.

It is our mutual understanding that the Agreement signed today may be reviewed after the expiry of five years as from its entry into force, should either Contracting State so request.

I would be grateful if you could confirm your agreement to the foregoing, in which case this Note and Your Excellency's Note in reply thereto shall form an integral part of the said Agreement.

Accept, Excellency, the assurances of my highest consideration.

His Excellency
Mr Muzammel Hussain
Ambassador of the People's Republic of Bangladesh
Bonn

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The Ambassador of the
People's Republic of Bangladesh

Bonn, May 29, 1990

Excellency,

I have the honour to confirm receipt of your Note of today's date, which reads as follows :

"With reference to Article 3 of the Agreement between the Federal Republic of Germany and the People's Republic of Bangladesh for the Avoidance of Double Taxation with respect to Taxes on Income, signed today, I have the honour to declare that the conclusion of the said Agreement does not affect the position of the Federal Republic of Germany on the maritime borders of Bangladesh.

It is our mutual understanding that the Agreement signed today may be reviewed after the expiry of five years as from its entry into force, should either Contracting State so request.

I would be grateful if you could confirm your agreement to the foregoing, in which case this Note and Your Excellency's Note in reply thereto shall form an integral part of the said Agreement."

I have the honour to inform you that my Government agrees to the foregoing.

Accept, Excellency, the assurances of my highest consideration.

His Excellency
Dr Hans Werner Lautenschlager
State Secretary of the Federal Foreign Office Bonn"

রাষ্ট্রপতির আদেশক্রমে
ড: আকবর আলী খান
সচিব।

মোঃ মিজানুর রহমান, উপ-নিয়ন্ত্রক, বাংলাদেশ সরকারী মুদ্রণালয়, ঢাকা কর্তৃক মুদ্রিত।
মোঃ আব্দুর রশীদ সরকার, উপ-নিয়ন্ত্রক, বাংলাদেশ ফরমস্ ও প্রকাশনী অফিস, তেজগাঁও, ঢাকা কর্তৃক প্রকাশিত।

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