

L.N. 254 of 2002

**INCOME TAX ACT
(CAP. 123)**

**Double Taxation Relief (Taxes on Income)
(Federal Republic of Germany) Order, 2002**

IN exercise of the powers conferred by section 76 of the Income Tax Act, the Minister of Finance has made the following order:-

Citation.

1. The title of this order is the Double Taxation Relief (Taxes on Income) (Federal Republic of Germany) Order, 2002.

Arrangements to have effect.

2. It is hereby declared:-

(a) that the arrangements specified in the Agreement set out in the Schedule to this Order have been made with 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:

the income tax Einkommensteuer,

the corporation tax (Korperschaftsteuer) ,

the capital tax (Vermogensteuer), and

the trade tax (Gewerbsteuer),

including the supplements levied thereon.

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

(c) that the Agreement has entered into force on the 27th December, 2001.

AGREEMENT BETWEEN

MALTA

AND

THE FEDERAL REPUBLIC OF GERMANY

**FOR THE AVOIDANCE OF DOUBLE TAXATION WITH
RESPECT TO TAXES ON INCOME AND ON CAPITAL**

**MALTA
AND
THE FEDERAL REPUBLIC OF GERMANY,**

Desiring to promote their mutual economic relations by removing fiscal obstacles,

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 a Contracting State, of a Land or a political subdivision or local authority thereof, 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 and taxes on capital appreciation.

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

a) in the Federal Republic of Germany:

the income tax (Einkommensteuer),
the corporation tax (Körperschaftsteuer),
the capital tax (Vermögensteuer), and
the trade tax (Gewerbsteuer),
including the supplements levied thereon

(hereinafter referred to as “German tax”);

b) in the Republic of Malta:

the income tax

(hereinafter referred to as “Malta tax”).

4. The 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. The competent authorities of the Contracting States shall - if necessary for the application of the Agreement - notify each other of changes which have been made in their respective taxation laws.

Article 3

GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:
 - a) the term "Federal Republic of Germany" means the territory of the Federal Republic of Germany, as well as the area of the sea-bed, its sub-soil and the superjacent water column adjacent to the territorial sea, insofar as the Federal Republic of Germany exercises there sovereign rights and jurisdiction in conformity with international law and its national legislation to explore the continental shelf and exploit its natural resources;
 - b) the term "Malta" means the Republic of Malta and, 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, as well as any area of the sea-bed, its sub-soil and the superjacent water column adjacent to the territorial waters, wherein the Republic of Malta exercises sovereign rights, jurisdiction, or control in accordance with international law and its national law, including its legislation relating to the exploration of the Continental Shelf and exploitation of its natural resources;
 - 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 "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;
 - h) the term "national" means:

aa) in respect of the Federal Republic of Germany, any German within the meaning of the Basic Law of the Federal Republic of Germany and any legal person, partnership and association deriving its status as such from the laws in force in the Federal Republic of Germany;

bb) in respect of Malta, any individual possessing the nationality of Malta, and any legal person, partnership or association deriving its status as such from the laws in force in Malta;

i) the term “competent authority” means:

aa) in the case of the Federal Republic of Germany, the Federal Ministry of Finance or the agency to which it has delegated its powers;

bb) in the case of Malta, the Minister responsible for finance or his authorised representative.

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

Article 4

RESIDENT

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

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

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

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

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

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

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

Article 5

PERMANENT ESTABLISHMENT

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

2. The term “permanent establishment” includes especially:

- a) a place of management;
- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop, and
- f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources including an offshore drilling site.

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

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

- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. 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.

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 or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock, equipment and other business assets used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, or to explore for, 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 independent personal services.

Article 7

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.
4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be 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 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. For the purposes of this Article the term “profits from the operation of ships or aircraft in international traffic” shall include profits from:

- a) the occasional chartering of ships or aircraft, and
- b) the use or hiring out of containers (including trailers and ancillary equipment used for transporting the containers),

if these activities pertain to 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.

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

Article 9

ASSOCIATED ENTERPRISES

1. Where

- a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10

DIVIDENDS

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State the tax so charged shall not exceed:

- a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends;
- b) 15 per cent of the gross amount of the dividends in all other cases.

3. In the case of Malta, the provisions of paragraph 2 shall not apply as long as according to the Malta tax law the tax chargeable on the profits of a company may be offset against the shareholder's income tax. In such case the Malta tax on the gross amount of the dividends paid by a company which is a resident of Malta to a resident of the Federal Republic of Germany who is the beneficial owner thereof shall not exceed:

- a) that tax which is chargeable on the profits out of which the dividends are paid;
or
- b) 15 per cent on the profits out of which the dividends are paid, if the 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 the 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.

4. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other income which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident. The term "dividends" includes also income derived by a sleeping partner ("stiller Gesellschafter") from his participation as such or from a "partiarisches Darlehen", "Gewinnobligationen" or similar payments and distributions on certificates of an investment fund or investment trust.

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

6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if such resident is the beneficial owner of the interest.

2. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, 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.

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

4. 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 shall be taxable only in that other State if such resident is the beneficial owner of the royalties.

2. 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, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected 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.

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

Article 13

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of shares and similar rights in a company, the assets of which consist principally of immovable property situated in a Contracting State may be taxed in that State.

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

4. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

5. Gains from the alienation of any property other than that referred to 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 he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities or he is present in the other Contracting State for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned. If he has such a fixed base or remains in that other State for the aforesaid period or periods the income may be taxed in that other State but only so much of it as is attributable to that fixed base or is derived in that other State during the aforesaid period or periods.
2. The term “professional services” includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, dentists, lawyers, engineers, architects 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 any twelve-month period commencing or ending 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 which operates the ship or aircraft is situated.

Article 16

DIRECTORS' FEES

Directors' fees and other 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 SPORTSMEN

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

2. Notwithstanding the provisions of Article 12, the income derived by the persons mentioned in paragraph 1 from their personal activities exercised in the other Contracting State shall also include remuneration of any kind paid for the use or the right to use the name, the picture or other personal rights of such persons. The same applies to income derived from the toleration of the recording and transmission of artistic and athletic performances by radio and television.

3. Where income as defined in paragraphs 1 and 2 accrues not to the entertainer or sportsman 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 sportsman are exercised.

4. Paragraphs 1 and 3 shall not apply to income accruing from the exercise of activities by artistes or sportsmen in a Contracting State where the visit to that State is financed entirely or mainly from public funds of the other State, a Land, a political subdivision or a local authority thereof or by an organisation which in that other State is recognised as a charitable organisation. In such a case the income may be taxed only in the Contracting State of which the individual is a resident.

Article 18

PENSIONS, ANNUITIES AND SIMILAR PAYMENTS

1. Pensions and similar payments or annuities paid to a resident of a Contracting State from the other Contracting State shall be taxable only in the first-mentioned State.

2. Notwithstanding the provisions of paragraph 1, payments received by an individual being a resident of a Contracting State from the statutory social insurance of the other Contracting State shall be taxable only in that other State.

3. Notwithstanding the provisions of paragraph 1, recurrent or non-recurrent payments made by one of the Contracting States or a political subdivision thereof to a person resident in the other Contracting State for damages sustained as a result of war or political persecution or of military or civil service (including restitution payments) shall be taxable only in the first-mentioned State.

4. The term “annuities” means certain amounts payable periodically at stated times, for life or for a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money’s worth.

5. Maintenance payments, including those for children, made by a resident of a Contracting State to a resident of the other Contracting State shall be exempted from tax in that other State. This shall not apply where such maintenance payments are deductible in the first-mentioned State in computing the taxable income of the payer; tax allowances in mitigation of social burdens are not deemed to be deductions for the purposes of this paragraph.

Article 19

GOVERNMENT SERVICE

1. Remunerations, other than pensions, paid by a Contracting State, a Land, a political subdivision or a local authority thereof or some other legal entity under public law of that State to an individual in respect of services rendered to that State, a Land, a political subdivision or a local authority thereof or some other legal entity under public law 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 and if the individual is a resident of that State and

- a) is a national of that State; or
- b) did not become a resident of that State solely for the purpose of rendering the services.

2. Notwithstanding the provisions of Article 18, pensions paid by a Contracting State, a Land, a political subdivision or a local authority thereof or some other legal entity under public law of that State to an individual in respect of services rendered to that State, a Land, a political subdivision or a local authority thereof or some other legal entity under public law shall be taxable only in the other Contracting State if the individual is a resident of that State and a national of that State.

3. The provisions of Articles 15,16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State, a Land, a political subdivision or a local authority thereof or some other legal entity under public law of that State.

4. The provisions of paragraph 1 shall likewise apply in respect of remuneration paid, under a development assistance programme of a Contracting State, a Land, a political

subdivision or a local authority thereof, out of funds exclusively supplied by that State, Land, political subdivision or local authority, to a specialist or volunteer seconded to the other Contracting State with the consent of that other State.

5. The provisions of paragraph 1 shall likewise apply in respect of remuneration paid by or for the Goethe Institute of the Federal Republic of Germany. Corresponding treatment of the remuneration of other comparable institutions of the Contracting States may be arranged by the competent authorities by mutual agreement. If such remuneration is not taxed in the State where the institution was founded, the provisions of Article 15 shall apply.

Article 20

VISITING PROFESSORS, TEACHERS AND STUDENTS

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 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. Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

Article 21

OTHER INCOME

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income 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.

Article 22

CAPITAL

1. Capital represented by immovable property, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.
2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.
3. Capital represented by ships and aircraft operated in international traffic and by movable property pertaining to the operation of such ships and aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Article 23

AVOIDANCE OF DOUBLE TAXATION IN THE STATE OF RESIDENCE

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

a) Unless foreign tax credit is to be allowed under sub-paragraph b), there shall be exempted from the assessment basis of the German tax 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 in the determination of its rate of tax the items of income and capital so exempted. In the case of items of income from dividends the preceding provision 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 Malta at least 10 per cent of the capital of which is owned directly by the German company and which were not deducted when determining the profits of the company distributing these dividends.

There shall be exempted from the assessment basis of the taxes on capital any shareholding the dividends of which, if paid, would be exempted according to the foregoing sentences.

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

- aa) dividends not dealt with in sub-paragraph a) above;

- bb) items of income that may be taxed in Malta according to paragraph 2 of Article 13;
 - cc) directors' fees;
 - dd) items of income of artistes and sportsmen.
- c) For the purposes of sub-paragraph b) of this paragraph,
- aa) dividends referred to in sub-paragraph b) of paragraph 3 of Article 10, and
 - bb) dividends paid out of profits benefiting out of any time-limited exemption or reduction of tax granted under incentive provisions contained in the Malta law designed to promote economic development to the extent that such exemption or reduction is granted for profits from industrial or manufacturing activities, agriculture, fishing, tourism (including restaurants and hotels) and other activities as may be agreed upon by the competent authorities, provided that the activities have been carried out within Malta,

shall be subject to German tax on the amount after the deduction of Malta tax paid (if any) on the profits out of which the dividends are paid under the laws of Malta and in accordance with this Agreement, and a tax of 20 per cent calculated on the gross amount of the dividends shall be deemed to have been paid in Malta. The provisions of this sub-paragraph shall apply for the first ten years during which this Agreement is effective. This period may be extended by mutual agreement between the competent authorities.

d) The provisions of sub-paragraph b) shall apply instead of the provisions of sub-paragraph a) to items of income as defined in Articles 7 and 10 and to the assets from which such income is derived if the resident of the Federal Republic of Germany does not prove that the gross income of the permanent establishment in the business year in which the profit has been realised or of the company resident in Malta in the business year for which the dividends were paid was derived exclusively or almost exclusively from activities within the meaning of nos.1 to 6 of paragraph 1 of section 8 of the German Law on External Tax Relations (Aussensteuergesetz) or from participations within the meaning of paragraph 2 of section 8 of that Law; the same shall apply to immovable property used by a permanent establishment (paragraph 4 of Article 6) and to profits from the alienation of such immovable property (paragraph 1 of Article 13) and of the movable property forming part of the business property of the permanent establishment (paragraph 3 of Article 13).

e) Where a company being a resident of the Federal Republic of Germany distributes income derived from sources within Malta, sub-paragraph a) shall not preclude the compensatory imposition of corporation tax on such distributions in accordance with the provisions of German tax law.

f) Notwithstanding the provisions of sub-paragraph a) double taxation shall be avoided by allowing a tax credit as laid down in sub-paragraph b)

aa) if in the Contracting States items of income or capital are placed under differing provisions of the Agreement or attributed to different persons (except pursuant to Article 9) and this conflict cannot be settled by a procedure in accordance with paragraph 3 of Article 25 and if as a result of this difference in placement or attribution the relevant income or capital would remain untaxed or be too lowly taxed, or

bb) if after proper consultation and subject to the limitations of its domestic law a Contracting State notifies the other Contracting State through diplomatic channels of other income to which it intends to apply the provisions of this paragraph. The notification shall not take effect until the first day of the calendar year following the year in which the notification was made and all legal requirements under the domestic law of the notifying State for the notification to take effect have been fulfilled.

2. Tax shall be determined in the case of a resident 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 provisions of this Agreement, there is included in a Malta assessment income 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. 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, especially with respect to residence, 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. Stateless persons who are residents of a Contracting State shall not be subjected in either 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 the State concerned in the same circumstances are or may be subjected.

3. 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 which it grants only to its own residents.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 4 of Article 11, or paragraph 4 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

5. 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 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.

Article 25

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

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

4. If the taxation of income in a Contracting State is effected by way of a withholding tax at source, and if this taxation is limited by the provisions of this Agreement, the application of this tax reduction or exemption shall be governed by the national law of that State in conjunction with the procedures agreed upon for this purpose between the competent authorities of the two Contracting States.

5. 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

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 or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes 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. Any subsequent supply to other agencies may be effected only with the prior approval of the data-supplying State.

2. In no case shall the provisions of paragraph 1 be construed 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 would be contrary to public policy (*ordre public*).

Article 27

LIMITATION OF BENEFITS

1. This Agreement shall not be interpreted to mean that

- a) a Contracting State is prevented from applying its domestic legal provisions on the prevention of tax evasion or tax avoidance;
- b) the Federal Republic of Germany is prevented from levying taxes on amounts which are to be included in the items of income of a resident of the Federal Republic of Germany under the Fourth Part of the German Law on External Tax Relations (*Aussensteuergesetz*).

2. The provisions of this Agreement shall not apply to companies or other persons enjoying a special fiscal treatment by virtue of the laws or the administrative practice of either one of the Contracting States. Neither shall they apply to income derived from such companies

or other persons derived by a resident of the other Contracting State, nor to shares or other rights in such companies owned by such a resident.

Article 28

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

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

Article 29

APPLICATION OF PROTOCOL

The attached Protocol shall be an integral part of this Agreement.

Article 30

REGISTRATION OF AGREEMENT

Registration of this Agreement with the Secretariat of the United Nations, in accordance with Article 102 of the Charter of the United Nations, shall be initiated jointly by both Contracting States, immediately after its entry into force.

Article 31

ENTRY INTO FORCE

1. This Agreement shall be ratified and the instruments of ratification shall be exchanged at Valletta as soon as possible.
2. This Agreement shall enter into force on the date of exchange of the instruments of ratification and its provisions shall have effect in both Contracting States:
 - a) in the case of taxes withheld at source, in respect of amounts paid on or after the first day of January of the calendar year next following that in which the Agreement entered into force;
 - b) in the case of other taxes, in respect of taxes levied for assessment periods beginning on or after the first day of January of the calendar year next following that in which the Agreement entered into force.
3. Upon the entry into force of this Agreement, the Agreement between the Federal Republic of Germany and Malta for the Avoidance of Double Taxation signed on 17th

September 1974 shall expire and shall cease to have effect as from the date on which the provisions of this Agreement commence to have effect.

Article 32

TERMINATION

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

- a) in the case of taxes withheld at source, in respect of amounts paid on or after the first day of January of the calendar year next following that in which notice of termination is given;
- b) in the case of other taxes, in respect of taxes levied for assessment periods beginning on or after the first day of January of the calendar year next following that in which notice of termination is given.

DONE at Berlin this 8th day of March, 2001 in two originals, each in the German and English languages, both texts being equally authentic.

For Malta	For the Federal Republic of Germany
Joe Borg	Wolfgang Ischinger
Minister of Foreign Affairs	Secretary of State

Protocol

Malta and The Federal Republic of Germany

have agreed, at the signing at Berlin on 8 March 2001 of the Agreement between the two States for the avoidance of double taxation with respect to taxes on income and on capital, upon the following provisions, which shall form an integral part of the said Agreement:

1. With reference to Article 7:

a) Where an enterprise of a Contracting State sells goods or merchandise or carries on business in the other Contracting State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received therefor by the enterprise but only on the basis of the payments which are attributable to the actual activity of the permanent establishment for such sales or business.

b) In the case of contracts, in particular for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, where the enterprise has a permanent establishment in the other Contracting State, the profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the Contracting State in which it is situated. Profits derived from the supply of goods to that permanent establishment or profits related to the part of the contract which is carried out in the Contracting State in which the head office of the enterprise is situated shall be taxable only in that State.

c) Payments received as a consideration for technical services, including studies or surveys of a scientific, geological or technical nature, or for engineering contracts including blueprints related thereto, or for consultancy or supervisory services shall be deemed to be payments to which the provisions of Article 7 or Article 14 of the Agreement apply.

2. With reference to Article 10:

The provisions of paragraph 3 of Article 10 shall continue to apply in Malta as long as Malta operates the full imputation system of taxation of company profits and of the subsequent distribution of such profits to the company's shareholders. Should the present system be changed, the rates referred to in sub-paragraph a) of paragraph (2) of Article 10 shall apply to dividends distributed by a company which is a resident of Malta to a resident of the Federal Republic of Germany. However, in the event of such change, the Contracting States shall

consult each other to consider whether any such change in Malta's system of taxation would necessitate any revision of the provisions of Article 10.

3. With reference to Articles 10 and 11:

Notwithstanding the provisions of Articles 10 and 11, income derived in the Federal Republic of Germany from rights or debt-claims participating in profits including income of a sleeping partner ("stiller Gesellschafter") from his participation as such or from a "partiarisches Darlehen" or "Gewinnobligationen" that is deductible in determining the profits of the debtor may be taxed in the Federal Republic of Germany according to the laws of the Federal Republic of Germany.

4. With reference to Article 26:

To the extent that personal data are exchanged under this Agreement and in accordance with domestic legal provisions, the following additional provisions shall apply, regard being had to the legal provisions applicable to the respective Contracting State:

- a) The data-receiving State may use such data only for the stated purpose and shall be subject to the conditions prescribed by the data-supplying State.
- b) The data-receiving State shall on request inform the data-supplying State about the use of the supplied data and the results achieved thereby.
- c) The data-supplying State shall be obliged to ensure that the data to be supplied are accurate and that they are necessary for and proportionate to the purpose for which they are supplied. Any bans on data supply prescribed under applicable domestic law shall be observed. If it emerges that inaccurate data or data which should not have been supplied have been supplied, the data-receiving State shall be informed of this without delay. That State shall be obliged to correct or erase such data.
- d) Upon application the person concerned shall be informed of the supplied data relating to him and of the use to which such data are to be put. There shall be no obligation to furnish this information if on balance it turns out that the public interest in withholding it outweighs the interest of the person concerned in receiving it. In all other respects, the right of the person concerned to be informed of the existing data relating to him shall be governed by the domestic law of the Contracting State in whose sovereign territory the application for the information is made.
- e) The data-receiving State shall bear liability in accordance with its domestic laws in relation to any person suffering unlawful damage as a result of supply under the exchange of data pursuant to this Agreement. In relation to the damaged person, the data-receiving State may not plead to its discharge that the damage had been caused by the data-supplying State.
- f) If the domestic law of the data-supplying State provides for special provisions for the evasion of the personal data supplied, that State shall inform the data-receiving State accordingly. Irrespective of such law, supplied personal data shall be erased once they are no longer required for the purpose for which they were supplied.

g) The Contracting States shall be obliged to keep official records of the supply and receipt of personal data.

h) The data-supplying and the data-receiving States shall be obliged to take effective measures to protect the personal data supplied against unauthorised access, unauthorised alteration and unauthorised disclosure.

5. With reference to Article 27:

It is understood that in the case of Malta the persons who enjoy a special fiscal treatment referred to in paragraph 2 of Article 27 are the following:

a) persons who are entitled to a special tax benefit under the Malta Financial Services Centre Act (Cap. 330) except for those persons who opt under section 41 of the said Act to be subject to the normal provisions of the Income Tax Act (Cap 123) and the Income Tax Management Act, 1994; or

b) persons who and to the extent to which under the provisions of the Merchant Shipping Act, 1973 are not subject to tax on the profits derived from the operation of ships in international traffic; or

c) persons entitled to any special tax benefit in respect of distributions by a trust subject to the provisions of the Trusts Act given that a trust as laid down in that Act is not vested with legal personality and therefore cannot benefit under this Agreement in its own right; or

d) persons entitled to any special tax benefit under any substantially similar law subsequently enacted which is considered in mutual agreement by the competent authorities of the Contracting States as special fiscal treatment within the meaning of paragraph 2 of Article 27 of this Agreement.