

AGREEMENT BETWEEN THE REPUBLIC OF HUNGARY AND THE FEDERAL REPUBLIC OF GERMANY FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Republic of Hungary and the Federal Republic of Germany,

Desiring to promote their mutual economic relations by removing fiscal obstacles and to strengthen their cooperation in tax matters,

Have agreed as follows:

Article 1

Persons Covered

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, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

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

a) in the Federal Republic of Germany:

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

including the supplements levied thereon

(hereinafter referred to as „German tax”);

b) in the Republic of Hungary:

- the personal income tax (személyi jövedelemadó),
- the corporate tax (társasági adó),
- the land parcel tax (telekadó) and
- the building tax (építményadó)

including the supplements levied thereon
(hereinafter referred to as „Hungarian tax”).

(4) The Agreement shall apply also to any identical or substantially similar taxes that 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 notify each other of any significant changes that 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 „Germany” means the Federal Republic of Germany and, when used in a geographical sense, 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, in so far as the Federal Republic of Germany may exercise sovereign rights and jurisdiction in conformity with international law and its national legislation for the purpose of exploring, exploiting, conserving and managing the living and non-living natural resources;

b) the term „Hungary” means the Republic of Hungary and, when used in a geographical sense it means the territory of the Republic of Hungary;

c) the terms „a Contracting State” and „the other Contracting State” mean Hungary or Germany, as the context requires,

d) the term „person” means an individual, a company and any other body of persons;

e) the term „company” means any body corporate or any entity that is treated as a body corporate for tax purposes;

f) the term „enterprise” applies to the carrying on of any business;

g) the term „business” includes the performance of professional services and of other activities of an independent character;

h) 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 or an enterprise carried on by a resident of the other Contracting State;

i) the term „international traffic” means any transport by a ship, a boat or aircraft operated by an enterprise that has its place of effective management in a Contracting State, except when the ship, the boat or aircraft is operated solely between places in the other Contracting State;

j) the term „national” means:

aa) in respect 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 Germany;

bb) in respect of Hungary

(i) any individual possessing the nationality of the Republic of Hungary;

(ii) any legal person, partnership, association or other entity deriving its status as such from the laws in force in Hungary;

k) the term „competent authority” means

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

bb) in the case of Hungary the Minister for National Economy or his authorised representative.

(2) As regards the application of the Agreement at any time by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

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, place of incorporation or any other criterion of a similar nature, and also includes that State, a Land and any political subdivision or local authority thereof. This term, however, 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 only 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 only 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 only 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 only 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 only 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.

(3) A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve 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 and equipment 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, 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.

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, Inland Waterways Transport and Air Transport

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

(2) Profits from the operation of boats engaged in inland waterways transport in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

(3) For the purposes of this Article profits from the operation of ships, boats or aircraft in international traffic shall include profits from the occasional

a) rental of ships, boats or aircraft on a bare-boat basis and

b) use or rental of containers (including trailers and ancillary equipment used for transporting the containers),

if these activities pertain to the operation of ships, boats or aircraft in international traffic.

(4) If the place of effective management of a shipping enterprise or of an inland waterways transport enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.

(5) 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 that is not liable to tax) 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.

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, „jouissance” shares or „jouissance” rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits 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, and distributions on certificates of an investment fund.

(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 and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

(5) Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment 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 beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

(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. However, the term “interest” does not include income dealt with in Article 10.

(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 and the debt–claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

(4) Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

(5) 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 beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

(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. The term „royalties” shall also include payments of any kind for the use or the right to use a person's name, picture or any other similar personality rights and payments received as consideration for the recording of entertainers' or sportsmen's performances by radio or television.

(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 and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

(4) Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent

establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

(5) Where, 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 referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

(2) Gains from the alienation of shares, rights or an interest in a company, the assets of which consist more than 50 per cent of, or of rights in, immovable property situated in a Contracting State or of shares in a company the assets of which consist more than 50 per cent of, or of rights in, such immovable property situated in a State may be taxed in the State in which the immovable property is situated.

(3) Subject to the provisions of paragraph 2, gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

(4) Gains from the alienation of ships or aircraft operated in international traffic, boats engaged in inland waterways transport or movable property pertaining to the operation of such ships, aircraft or boats, 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.

(6) Where an individual was a resident of a Contracting State for a period of 5 years or more and has become a resident of the other Contracting State, paragraph 5 shall not prevent the first-mentioned State from taxing under its domestic law the capital appreciation of shares in a company resident in the first-mentioned State for the period of residency of that individual in the first-mentioned State. In such case, the appreciation of capital taxed in the first-mentioned State shall not be included in the determination of the subsequent appreciation of capital by the other State.

Article 14

Income from Employment

(1) Subject to the provisions of Articles 15, 17, 18 and 20, 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 tax 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 which the employer has in the other State.

(3) The provisions of paragraph 2 shall not apply to remuneration for employment within the framework of professional hiring out of labour.

(4) Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft, or aboard a boat engaged in inland waterways transport 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, aircraft or boat is situated.

Article 15

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 or the supervisory board of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 16

Artistes and Sportsmen

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

(3) Paragraphs 1 and 2 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 17

Pensions, Annuities and Similar Payments

- (1) Subject to the provisions of paragraph 2 of Article 18, pensions and similar payments or annuities paid to a resident of a Contracting State from the other Contracting State shall only be taxable in the first-mentioned State.
- (2) Notwithstanding the provisions of paragraph 1, pensions and other payments made according to the law on mandatory social insurance of a Contracting State shall only be taxable in that State unless the recipient has been a resident in the other Contracting State on or before the day of the exchange of the instruments of ratification of this Agreement.
- (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 as compensation for political persecution or for an injury or damage sustained as a result of war (including restitution payments) or of military or civil alternative service or of a crime, vaccination or a similar event 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.

Article 18

Government Service

- (1) a) Salaries, wages and other similar remuneration, other than a pension, 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, Land, political subdivision or local authority or some other legal entity under public law shall be taxable only in that State.
 - b) However, such salaries, wages and other 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 who
 - aa) is a national of that State or
 - bb) did not become a resident of that State solely for the purpose of rendering the services.
- (2) Subject to the provisions of paragraph 2 of Article 17
 - a) Any pension paid by, or out of funds created 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, Land, political subdivision or local authority or some other legal entity under public law shall be taxable only in that State.
 - b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
- (3) The provisions of Articles 14, 15, 16, and 17 shall apply to salaries, wages and other similar remuneration, and to 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 paragraphs 1 and 2 shall also apply in respect of salaries, wages and other similar remuneration and pensions paid to individuals in respect of services rendered to the Goethe Institute, the German Academic Exchange Service („Deutscher Akademischer Austauschdienst“) further the Collegium Hungaricum, the Hungarian Cultural and Information Centre („Magyar Kulturális és Tájékoztatási Központ“) respectively and to other comparable institutions mutually agreed by the competent authorities. If such remuneration is not taxed in the State where the institution was founded, the provisions of Article 14 shall apply.

Article 19

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, advanced studies 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, post graduate 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 20

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 as defined in paragraph 2 of Article 6, 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 and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

Article 21

Capital

(1) Capital represented by immovable property referred to in Article 6, 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 may be taxed in that other State.

(3) Capital represented by ships and aircraft operated in international traffic, and by boats engaged in inland waterways transport, and by movable property pertaining to the operation of such ships and aircraft and boats, 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 22

Elimination of Double Taxation in the State of Residence

(1) Tax shall be determined in the case of a resident 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 Hungary and any item of capital situated within Hungary which, according to this Agreement, is effectively taxed in Hungary.

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 Germany by a company being a resident of Hungary 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 on income payable in respect of the following items of income the Hungarian tax paid under the laws of Hungary and in accordance with this Agreement:

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

bb) items of income that may be taxed in Hungary according to paragraph 2 of Article 13;

cc) items of income that may be taxed in Hungary according to paragraph 3 of Article 14;

dd) directors' fees;

ee) items of income that may be taxed according to Article 16.

c) 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 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 Hungary 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); the same shall apply to immovable property used by a permanent establishment and to income from this immovable property of the 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).

d) Germany, however, retains the right to take into account in the determination of its rate of tax the items of income and capital, which are under the provisions of this Agreement exempted from German tax.

e) 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 this 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 24 and if as a result of this difference in placement or attribution the relevant income or capital would remain untaxed or be taxed lower than without this conflict or

bb) if the competent authority of Germany notifies the competent authority of Hungary of other items of income to which it intends to apply the provisions of sub-paragraph b). Double Taxation is then avoided for the notified income by allowing a tax credit from the first day of the calendar year, next following that in which the notification was received and all legal requirements according to the internal law of Germany are fulfilled.

(2) Tax shall be determined in the case of a resident of Hungary as follows:

a) Where a resident of Hungary derives income or owns capital which, in accordance with the provisions of this Agreement may be taxed in Germany, Hungary shall, subject to the provisions of subparagraphs b) and c), exempt such income or capital from tax.

b) Where a resident of Hungary derives items of income which, in accordance with the provisions of Article 10, may be taxed in Germany, Hungary shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Germany. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given which is attributable to such items of income derived from Germany.

c) Where in accordance with any provision of the Agreement income derived or capital owned by a resident of Hungary is exempt from tax in Hungary, Hungary may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

d) The provisions of subparagraph a) shall not apply to income derived or capital owned by a resident of Hungary where Germany applies the provisions of this Convention to exempt such income or capital from tax or applies the provisions of paragraph 2 of Article 10 to such income.

Article 23

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, in particular 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, in particular with respect to residence, 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 on account of civil status or family responsibilities which it grants to its own residents.

(4) Except where the provisions of paragraph 1 of Article 9, paragraph 5 of Article 11, or paragraph 5 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.

(6) The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 24

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 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 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 elimination of double taxation in cases not provided for in the Agreement.

(4) The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 25

Exchange of Information

(1) The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of a Contracting State, of a Land or a political subdivision or local authority thereof, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

(2) Any information received under paragraph 1 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) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in paragraph 1 or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public prosecutor's investigation proceedings, public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such else.

(3) In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures for the supply of information 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*).

(4) If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

(5) In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 26

Procedural Rules for Taxation at Source

(1) If in one of the Contracting States the taxes on dividends, interest, royalties or other items of income derived by a person who is a resident of the other Contracting State are levied by withholding at source, the right of the first-mentioned State to apply the withholding of tax at the rate provided under its domestic law shall not be affected by the provisions of this Agreement. The tax withheld at source shall be refunded on application by the taxpayer if and to the extent that it is reduced by this Agreement or ceases to apply.

(2) Refund applications must be submitted by the end of the fourth year following the calendar year in which the withholding tax was applied to the dividends, interest, royalties or other items of income.

(3) Notwithstanding paragraph 1, each Contracting State shall provide for procedures to the effect that payments of income subject under this Agreement to no tax or only to reduced tax in the state of source may be made without deduction of tax or with deduction of tax only at the rate provided in the relevant Article.

(4) The Contracting State in which the items of income arise may ask among others for a certificate by the competent authority on the residence in the other Contracting State.

(5) The competent authorities may by mutual agreement implement the provisions of this Article and if necessary establish other procedures for the implementation of tax reductions or exemptions provided for under this Agreement.

Article 27

Application of the Agreement in Special Cases

This Agreement shall not be interpreted to mean that a Contracting State is prevented from applying its domestic legal provisions on the prevention of tax evasion or tax avoidance.

If the foregoing provision results in double taxation, the competent authorities shall consult each other pursuant to Article 24 paragraph 3 on how to avoid double taxation.

Article 28

Members of Diplomatic Missions and Consular Posts

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

Article 29

Protocol

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

Article 30

Entry into Force

(1) This Agreement shall be ratified; the instruments of ratification shall be exchanged as soon as possible in Berlin.

(2) The Agreement shall enter into force on the 30th day following the day of the exchange of the instruments of ratification and 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 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 Hungarian People's Republic and the Federal Republic of Germany for the Avoidance of Double Taxation with respect to Taxes on Income, Profits and Capital, signed on 18th July 1977, shall cease to have effect, and respectively expire:

a) in the case of taxes withheld at source, with 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 periods beginning on or after the first day of January of the calendar year next following that in which the Agreement entered into force;

c) in the case of paragraph 1 of Article 20, in respect of the exemption of taxes on the day when the period, therein mentioned, has ended.

Article 31

Termination

This Agreement shall continue in effect for an unlimited period 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, and respectively expire:

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 periods beginning on or after the first day of January of the calendar year next following that in which notice of termination is given.

The date of receipt of such notice by the other Contracting State shall be definitive for the determination of the deadline.

DONE at Budapest on 28 of February 2011 in two originals, each in the Hungarian, German and English languages, all three texts being authentic. In the case of divergent interpretation of the Hungarian and the German texts, the English text shall prevail.

PROTOCOL
**to the Agreement between the Republic of Hungary and the Federal Republic of
Germany for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion
with respect to Taxes on Income and on Capital signed on 28 February 2011**

The Republic of Hungary and the Federal Republic of Germany have in addition to the Agreement of 28 February 2011 for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital agreed on the following provisions, which shall form an integral part of the said Agreement:

1. With reference to Articles 3, 4, 8, 13, 14 and 21:

The „place of effective management” is the place where key management and commercial decisions that are necessary for the conduct of the entity's business are in substance made. The place of the effective management will ordinarily be the place where the most senior person or group of persons makes its decisions, and the day-to-day management is conducted, the place where the actions to be taken by the entity as a whole are determined.

2. With reference to Article 7:

a) Where an enterprise of a Contracting State 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 therefore by the enterprise but only on the basis of the amount which is attributable to the actual activity of the permanent establishment for such sales or business.

b) The provision of paragraph 3 is applicable irrespective of limitations by the domestic laws, provided that the deducted expenses are in accordance with the international practice.

c) 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 through 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.

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

3. With reference to Articles 5 and 7:

The application and interpretation of Articles 5 and 7 of this Agreement and, in particular the settlement of any disputes insofar, should be done by using the Commentary on Articles 5 and 7 of the current Model Convention of the OECD. If the Commentary is revised in the future by the OECD, Articles 5 and 7 of this Agreement should be interpreted in the spirit of the revised Commentary, provided this is in accordance with the text of the Agreement.

4. With reference to Articles 10 and 11:

Notwithstanding the provisions of Article 10 and 11 of this Agreement, dividends and interest may be taxed in the Contracting States in which they arise, and according to the law of that State,

a) if they are derived from rights or debt claims carrying a right to participate in profits, including income derived by a silent partner („stiller Gesellschafter“) from his participation as such, or from a loan with an interest rate linked to borrower's profit („partiarisches Darlehen“) or from profit sharing bonds („Gewinnobligationen“) within the meaning of the tax law of and under the condition that they are deductible in the determination of profits of the debtor of such income or

b) if the distributing company is a Real Estate Investment Trust company or a similar entity that is exempt from corporation tax.

5. With reference to Article 25:

If in accordance with domestic law personal data are exchanged under this Agreement, the following additional provisions shall apply subject to the legal provisions in effect for each Contracting State:

a) The receiving agency may use such data only for the stated purpose and shall be subject to the conditions prescribed by the supplying agency.

b) The receiving agency shall on request inform the supplying agency about the use of the supplied data and the results achieved thereby.

c) Personal data may be supplied only to the responsible agencies. Any subsequent supply to other agencies may be effected only with the prior approval of the supplying agency.

d) The supplying agency 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 receiving agency shall be informed of this without delay. That agency shall be obliged to correct or erase such data without delay.

e) 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.

f) The receiving agency 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 receiving agency may not plead to its discharge that the damage had been caused by the supplying agency.

g) Where the domestic law of the supplying agency contains special provisions for the deletion of the personal data supplied, that agency shall inform the receiving agency 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.

h) The supplying and the receiving agencies shall be obliged to keep official records of the supply and receipt of personal data.

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

6. With reference to Article 26:

If the domestic law of a Contracting State provides for a period of refund applications longer than four years, it is understood that the domestic provision shall prevail.

7. Legal acts of the European Community:

It is understood that this Agreement shall not affect legal acts of the European Community and corresponding provisions of the Contracting States.

DONE at Budapest on 28 February 2011 in two originals, each in the Hungarian, German and English languages, all three texts being authentic. In the case of divergent interpretation of the Hungarian and the German texts, the English text shall prevail.