

Germany - Pakistan

Income Tax Treaties

1994 Income Tax Agreement and Final Protocol

Signatories: Germany; Pakistan

Signed: June 14, 1994

In Force: December 30, 1995

Effective: In the F.R.G., from January 1, 1995. In Pakistan, from July 1, 1995. See Article 28.

Status: In Force

AGREEMENT BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE ISLAMIC REPUBLIC OF PAKISTAN FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME

The Federal Republic of Germany and the Government of the Islamic Republic of Pakistan, desiring to conclude a new Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

Article 1

Personal Scope

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

Article 2

Taxes Covered

1. This Agreement shall apply to taxes on income imposed on behalf of 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 all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on capital appreciation and taxes on the total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which this Agreement shall apply are in particular:
 - a) in the Federal Republic of Germany:
the Einkommensteuer (income tax),
the Koerperschaftsteuer (corporation tax) and
the Gewerbesteuer (trade tax)

- (hereinafter referred to as "German tax");
- b) in the Islamic Republic of Pakistan:
the Income tax,
the Super tax,
the Surcharge tax
(hereinafter referred to as "Pakistan tax").
4. The Agreement shall also apply 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 by either Contracting State or by the Government of any territory to which the present Agreement is extended under Article 27 of this Agreement. At the end of each year, the competent authorities of the Contracting States shall notify each other of any substantial nature 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 Federal Republic of Germany and, if for the purposes of this Agreement used in a geographical sense, the area in which the tax law of the Federal Republic of Germany is in force, as well as the continental shelf adjacent to the territorial sea, insofar as the Federal Republic of Germany may exercises there in conformity with international law sovereign rights to explore the continental shelf and exploit its natural resources;
- b) the term "Islamic Republic of Pakistan" used in the geographical sense means Islamic Republic of Pakistan as defined in the Constitution of the Islamic Republic of Pakistan and includes any area outside the territorial waters of Pakistan which under the international law and the laws of Pakistan is an area within which Pakistan the rights of Pakistan with respect to the seabed and its subsoil and their natural resources may be exercised;
- c) the terms "a Contracting State" and "the other Contracting State" mean the Federal Republic of Germany or the Islamic Republic of Pakistan, as the context requires;
- d) the term "person" includes an individual, a company and any other body of persons;
- e) the term "company" means any body corporate or any entity which is treated as a body corporate or any entity which is treated as a body corporate for tax purposes;
- f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively, an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

- g) the term "national" means:
- (i) in respect of the Federal Republic of Germany any German within the meaning of Article 116, paragraph (1), of the Basic Law for the Federal Republic of Germany and any legal person, partnership and association deriving its status as such from the law in force in the Federal Republic of Germany;
 - (ii) in respect of the Islamic Republic of Pakistan any national of Islamic Republic of Pakistan under the Constitution of Pakistan or any of its relevant law and any legal person, partnership and any other body of persons deriving its status as such from the law in force in the Islamic Republic of Pakistan;
- h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- i) the term "competent authority" means:
 - (i) in the Federal Republic of Germany the Federal Ministry of Finance or its authorised representative,
 - (ii) in the Islamic Republic of Pakistan: The Central Board of Revenue or its authorised representative; and in the case of any territory to which the present Agreement is extended under Article 27, the competent authority for the administration in such territory of the taxes to which the present Agreement applies.
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.
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 in which he is a national;
 - d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

Article 5

Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of the 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;
 - f) warehouse;
 - g) a mine, quarry or other place of extraction of natural resources;
 - h) permanent sales exhibition;
 - i) a building site or construction, installation or assembly project where such site, project or activity continues for a period or periods of more than six months.
3. Notwithstanding the preceding provisions of this article, the term "permanent establishment" shall be deemed not to include:
 - a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;

- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
 - c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for 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.
4. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of independent status to whom paragraph 5 applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:
- a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 3 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; or
 - b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.
5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly, or almost wholly on behalf of that enterprise, or a group of centrally controlled enterprises he would not be considered an agent of an independent status within the meaning of this paragraph.
6. Notwithstanding the preceding provisions of this article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of

that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 5 applies.

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 Contracting 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 laws 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 also apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraph 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 the determination of the profits of a permanent establishment, there shall be allowed as deduction expenses which are incurred for the purposes of the permanent establishment, including only those executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.
4. In so far as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary: the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of the preceding paragraph, 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 derived by a resident of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in Contracting State in which the place of effective management of the enterprise is situated.
2. The provisions of paragraph 1 shall also apply to profits derived from participation in a pool, a joint business or in 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.

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 recipient is the beneficial owner of the dividends, the tax so charged shall not exceed:
 - a) 10 per cent of the gross amount of the dividends if the recipient is a company (excluding partnerships) which owns directly at least 20 per cent of the capital of the company paying the dividends, and
 - b) 15 per cent of the gross amount of the dividends in all other cases.

Any amount payable in a Contracting State for not depositing tax within time and any penalty, fee or charge on account of tax offence shall not be considered at the time of determining maximum amount of tax that may be levied in the Contracting State of which the company paying the dividends is a resident.

3. The term "dividends" as used in this Article means income from shares, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is 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 in the case of the Federal Republic of Germany income derived by a sleeping partner from his participation as such and distributions on certificates of an investment trust.
4. The provisions of paragraph 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent

establishment or fixed base. In such case, the provisions of Article 7 or article 14, as the case may be, shall apply.

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

Article 11

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may be taxed in the Contracting State in which it arises, and according to the law of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed:
 - a) 10 per cent of the gross amount of the interest if the recipient is a bank, recognized as a banking institution under the laws of that State and,
 - b) 20 per cent of the gross amount of the interest in all other cases.

Any amount payable in a Contracting State for not depositing tax within time and any penalty, fee or charge on account of tax offence shall not be considered at the time of determining maximum amount of tax that may be levied in that Contracting State.

3. Notwithstanding the provisions of paragraph 2,
 - a) interest arising in the Federal Republic of Germany and paid to the Pakistan Government or the State Bank of Pakistan shall be exempt from German tax;
 - b) interest arising in the Islamic Republic of Pakistan and paid to the German Government, the Deutsche Bundesbank, the Kreditanstalt fuer Wiederauf bau or the Deutsche Investitions- und Entwicklungsgesellschaft, as well as interest paid in consideration of a loan guaranteed by Hermes-Deckung shall be exempt from Pakistan tax.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including the premiums and prizes attaching to such securities, bonds, or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
5. The provisions of paragraph 1 to 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State 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.
6. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a Land, a political sub- division, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt- claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply to the last-intentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being given to the other provisions on this Agreement.

Article 12

Royalties and Fees for Technical Services

1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the royalties or of the fees for technical services the tax so charged shall not exceed 10 per cent of the gross amount of such royalties or fees for technical services, as the case may be.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, (including cinematograph films, and films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.
4. The term "fees for technical services" as used in this Article means payments of any kind to any person, other than payments to an employee of the person making the payments, in consideration for any services of a managerial, technical or consultancy nature.
5. The provisions of paragraph 1 and 2 of this Article shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State carries on business in the other Contracting State in which the royalties or fees for technical services 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, property or contract in respect of which the royalties or fees for technical services 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. Royalties and fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a Land, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to make the payments was incurred and the payment are borne by that permanent establishment or fixed base, then the royalties or fees for technical services shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.
7. Where, by reason of special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties or technical fees, having regard to the use, right, information, or services 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 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 purposes 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.
3. 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.
4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed by that State.
5. Gains from the alienation of shares other than those mentioned in paragraph 4 representing a 25 per cent holding in a company which is a resident of a State may be taxed by that State.
6. Gains from the alienation of any property other than that referred to in paragraphs 1 to 5 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless:
 - a) he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or
 - b) his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 120 days in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

Article 15

Dependent Personal Services

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
 - a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned; and
 - b) the remuneration is paid by, or on behalf of, an employer, who is not a resident of the other State, and
 - c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other state.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, or aboard a boat engaged in inland waterways transport, may be taxed in the Contracting State in which the place of effect management of the enterprise operating ships or aircraft is situated.

Article 16

Directors' Fees

Directors' fees and similar payments derived by a resident of a Contracting State in this capacity as a member of the board of directors or a similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17

Artistes and Athletes

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or

television artist, or a musician, or as an athlete including a boxer or a wrestler, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.
3. The provisions of paragraph 1 and 2 shall not apply if the visit of entertainers or athletes to a Contracting State is carried out with the consent of that State and is supported wholly or substantially from public funds of the other Contracting State, a Land, a political subdivision or a local authority thereof.

Article 18

Pensions

1. Subject to the provisions of paragraph 1 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment may be taxed in that State.
2. However, such pensions and other similar remuneration may also be taxed in the other Contracting State if the payment is made by a resident of that other State or a permanent establishment situated therein.
3. The term "pensions" as used in this Article, means a periodic payment made in consideration of past employment or by way of compensation for injuries received.

Article 19

Government Functions

1.
 - a) Remuneration including pensions paid by a Contracting State, a Land, a political subdivision or a local authority thereof to any individual in respect of services rendered to that State, Land, subdivision of local authority thereof shall be taxable only in that State.
 - b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the recipient is a resident of that State, so however, that
 - (i) he is not a national of the Contracting State referred to in sub-paragraph-a-; or
 - (ii) he did not become a resident of the other Contracting State solely for the purpose of performing the services.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with any trade or business carried on by a Contracting State, a Land, a political subdivision or a local authority thereof.
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.

Article 20

Teachers, Students and Trainees

1. A professor or teacher 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.
2. An individual who is present in a Contracting State solely
 - a) as a student at a university, college or school in that Contracting State,
 - b) as a business apprentice (including in the case of the Federal Republic of Germany a Volontar or a Praktikant),
 - c) as the recipient of a grant, allowance or award for the primary purpose of study or research from a religious, charitable, scientific or educational organisation; or
 - d) as a member of a technical cooperation programme entered into by the Government of that Contracting State,

and who is, or was immediately before visiting that State, a resident of the other Contracting State, shall be exempt from tax in the first-mentioned Contracting State in respect of:

- (i) all remittances from abroad for the purposes of his maintenance, education or training;
- (ii) the grant, allowance or award and
- (iii) for a period not exceeding in the aggregate 4 years any remuneration not exceeding 7,200 DM (seven thousand two hundred Deutsche Mark) or the equivalent in Pakistan currency for the calendar year for personal services

rendered in that State with a view to supplementing the resources available to him for such purposes.

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 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, 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.
3. Notwithstanding the provisions of paragraphs 1, if a resident of a Contracting State derives income from sources within the other Contracting State in the form of lottery prizes and award, such income may be taxed in the other Contracting State.

Article 22

Relief From Double Taxation

1. Tax shall be determined in the case of a resident of the Federal Republic of Germany as follows:
 - a) Unless the provisions of sub-paragraph b) apply, there shall be excluded from the basis upon which German tax is imposed, any item of income arising in the Islamic Republic of Pakistan which, according to this Agreement, may be taxed in the Islamic Republic of Pakistan. The Federal Republic of Germany, however, retains the right to take into account in the determination of its rate of tax the items of income so excluded.

In the case of income from dividends the foregoing provisions shall apply only to such dividends as are paid to a company (not including partnerships) being a resident of the Federal Republic of Germany by a company being a resident of the Islamic Republic of Pakistan at least 20 per cent of the capital of which is owned directly by the German company.

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

- (i) dividends not dealt with in sub-paragraph a);
 - (ii) interest;
 - (iii) royalties and fees for technical services;
 - (iv) income to which paragraph 4 and 5 of Article 13 apply;
 - (v) remuneration to which Article 16 applies; and
 - (vi) income to which Article 17 applies;
- c) The provisions of sub-paragraph a) shall not apply to the profits of a permanent establishment and to the gains from the alienation of movable and immovable property forming part of the business property of a permanent establishment, to dividends paid by a company; provided that the resident of the Federal Republic of Germany concerned does not prove that the receipts of the permanent establishment or company are derived exclusively or almost exclusively:
- (i) from producing or selling goods or merchandise, giving technical advice or rendering engineering services, or doing banking or insurance business, within the Islamic Republic of Pakistan, or
 - (ii) from dividends paid by one or more companies, being residents of the Islamic Republic of Pakistan, more than 25 per cent of the capital of which is owned by the first-mentioned company, which themselves derive their receipts exclusively or almost exclusively from producing or selling goods or merchandise, giving technical advice or rendering engineering services, or doing banking or insurance business, within the Islamic Republic of Pakistan.

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

2. Tax shall be determined in the case of a resident of the Islamic Republic of Pakistan as follows:

Subject to the provisions of the laws of Islamic Republic of Pakistan, regarding the allowance as a credit against Pakistan tax, the amount of German tax payable, under the laws of Germany and in accordance with the provisions of this Agreement, whether directly or by deduction, by a resident of Pakistan, in respect of income from sources within Germany which has been subjected to tax both in Pakistan and Germany, shall be allowed as a credit against the Pakistan tax payable in respect of

such income but in an amount not exceeding that proportion of Pakistan tax which such income bears to the entire income chargeable to Pakistan tax.

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 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 subject 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 in the same circumstances and under the same conditions.
4. Interest, royalties fees for technical services 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. However, the preceding provisions of this paragraph shall not apply
 - in cases where the provisions of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, or
 - in cases where the disbursements are made without withholding and depositing tax chargeable under the domestic law and in accordance with the provisions of this Agreement.
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 Contracting State to any taxation or any requirements connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.
6. Nothing contained in this Article shall be construed as

- a) obliging a Contracting State to grant to residents of the other Contracting State any personal allowance, reliefs and reductions for taxation purposes which it grants to its own residents; or
 - b) affecting the provisions of tax law of either Contracting State regarding the imposition of tax on a non-resident individual; or
 - c) affecting the provisions of tax law of Islamic Republic of Pakistan regarding the grant of rebate of tax to companies fulfilling specific requirements regarding the declaration and payment of dividends
7. In this Article, the term "taxation" means taxes which are the subject of this Agreement.

Article 24

Mutual Agreement Procedure

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. This case must be presented within two years from the first notification of the action giving rise to taxation not in accordance with 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 an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any limits in the national laws of the Contracting State.
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 will establish by mutual agreement the mode of application of the provisions of this Agreement regarding the exemption or reduction of taxes.
5. The competent authorities of the Contracting States may communicate with each other directly for the purposes of reaching an agreement in the sense of the preceding paragraphs or for giving effect to the provisions of the Agreement.

Article 25

Exchange of Information

1. The competent authorities of the Contracting States shall, upon request, exchange such information (being information available under the respective taxation laws of the Contracting State) as is necessary for carrying out the provisions of this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of this Agreement. No information shall be exchanged which would disclose any trade, business, industrial or professional secret or any trade process.
2. In no case shall the provisions of paragraph 1 be construed so as to impose upon either of the Contracting States the obligation to carry out administrative measures at variance with the regulations and practice of either Contracting State or which would be contrary to its sovereignty, security or public policy or to supply particulars which are not procurable under the legislation of either State.

Article 26

Diplomatic and Consular Privileges

1. Nothing in this Convention shall effect the fiscal privileges of diplomatic mission, of officials of a consular post or of officials of an international law organisation under the general rules of international law or under the provisions of special agreements.
2. Notwithstanding the provisions of Article 4 an individual who is a member of a diplomatic mission or a consular post of a Contracting State which is situated in other Contracting State or in a third State shall be deemed for the purposes of the Agreement to be a resident of the sending State if:
 - a) in accordance with international law he is not liable to tax in the receiving State in respect of income from sources outside that State, and
 - b) he is liable in the sending State to the same obligations in relation to tax on his world income as are residents of that State.

Article 27

Territorial Extension

1. This Agreement may be extended, either in its entirety or with any necessary modifications to any State or territory for whose international relations Islamic Republic of Pakistan is responsible and which imposes taxes substantially similar in character to those to which the Agreement applies. Any such extension shall take effect from such date and subject to such modifications and conditions including

conditions as to termination, as may be specified and agreed between the Contracting States in notes to be exchanged through diplomatic channels or in any other manner in accordance with their constitutional procedure.

2. Unless otherwise agreed by both Contracting States the denunciation of the Agreement by one of them under Article 29 shall terminate, in the manner provided for in that Article, the application of the Agreement to any State or territory to which it has been extended under this Article.

Article 28

Entry Into Force

1. This Agreement shall be: ratified and the instruments of ratification shall be exchanged at * * * as soon as possible.
2. This Agreement shall enter into force one month after the date of exchange of the instruments of ratification and shall thereupon have effect
 - a) in the Federal Republic of Germany
 - (i) in the case of taxes withheld at source on dividends, interest, royalties and fees for technical services in respect of amounts paid on or after the first day of January in the calendar year in which the Agreement enters into force and
 - (ii) in the case of other taxes in respect of taxes levied for periods, beginning on or after the first day of January in the calendar year in which the Agreement enters into force;
 - b) in the Islamic Republic of Pakistan
 - (i) in the case of taxes withheld at the source on dividends, interest, royalties and fees for technical services in respect of amounts paid on or after the first day of July in the calendar year in which the Agreement into force and
 - (ii) in the case of other taxes in respect of assessment years, beginning on or after the first day of July in the calendar year in which the Agreement enters into force.
3. Upon the entry into force of this Agreement the Convention between the Federal Republic of Germany and the Islamic Republic of Pakistan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at Bonn on 7th August, 1958, the Protocol amending this Convention signed at Bonn on 27th August, 1963 and the Supplementary Convention between the Federal Republic of Germany and the Islamic Republic of Pakistan for the Avoidance

of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income hereto signed at Islamabad on 24th January, 1970 shall expire and shall cease to have effect as from the dates on which the provisions of this Agreement commence to have effect.

Article 29

Termination

This Agreement shall continue in effect indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year 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 effective:

- a) in the Federal Republic of Germany
 - (i) in the case of taxes withheld at source on dividends, interest, royalties and fees for technical services in respect of amounts paid on or after the first day of January in the calendar year next following that in which notice of termination is given and
 - (ii) in the case of other taxes in respect of taxes levied for periods, beginning on or after the first day of January in the calendar year next following that in which notice of termination is given;
- b) in the Islamic Republic of Pakistan
 - (i) in the case of taxes withheld at source on dividends, interest, royalties and fees for technical services in respect of amounts paid on or after the first day of July in the calendar year next following that in which notice of termination is given and
 - (ii) in the case of other taxes in respect of assessment years, beginning on or after the first day of July in the calendar year next following that in which notice of termination is given.

Done at Islamabad this 14th day of July, 1994, in two originals, each in the German and English languages, both texts being equally authentic.

FOR THE FEDERAL REPUBLIC OF GERMANY:

FOR THE ISLAMIC REPUBLIC OF PAKISTAN:

PROTOCOL

The Federal Republic of Germany and the Islamic Republic of Pakistan have agreed at the signing at Islamabad on 14 July 1994 of the Agreement between the two States for the avoidance of double taxation with respect to taxes on income upon the following provisions which shall form an integral part of the said Agreement.

1. With reference to paragraph 1 of Article 7

In respect of paragraph 1 of Article 7, profits derived from the sale of goods or merchandise of the same or similar kind as those sold, or from other business activities of the same or similar kind as those effected, through that permanent establishment, may be considered attributable to that permanent establishment if it is proved, that

- a) this transaction has been resorted to in order to avoid taxation in the Contracting State where the permanent establishment is situated; and
- b) the permanent establishment in any way was involved in this transaction.

It is understood that a permanent establishment of an enterprise is considered to be involved in a transaction if such permanent establishment has signed a contract irrespective of the fact that the delivery is partly undertaken by its enterprise.

2. With reference to paragraph 1 of Article 7 read with paragraph 2(i) of Article 5

- a) In the Contracting State in which the permanent establishment is situated, no profits shall be attributed to a building site or construction or installation project except those which are the result of such activities themselves. Profits derived from the supply of goods connected with, or independent of, such activities and effected by the principal permanent establishment or any other permanent establishment of the enterprise or by a third party shall not be attributed to the building site or construction or installation project, provided that the said profits reflect normal open-market commercial terms (arm's length basis).
- b) Income derived from design, planning, engineering or research or from technical services which a resident of a Contracting State performs in that Contracting State and which are connected with a permanent establishment in the other Contracting State shall not be attributed to that permanent establishment.

3. With reference to paragraph 3 of Article 7

No deduction shall be allowed in respect of amounts paid or charged (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of:

- a) royalties, fees or other similar payments in return for the use of patents or other rights;

- b) commission for specific services performed or for management; and
- c) interest on moneys lent to the permanent establishment except in case of a banking institution.

4. With reference to Article 10 and 11

Notwithstanding the provisions of these Articles, dividends and interest may be taxed in the Contracting State in which they arise, and according to the law of that State, if they

- a) are derived from rights or debt claims carrying a right to participate in profits (including income derived by a sleeping partner from his participation as such, from a "partiarisches Darlehen" and from "Gewinnobligationen" with the meaning of the tax law of the Federal Republic of Germany) and
- b) under the conditions that they are deductible in the determination of profits of the debtor of such income.

5. With reference to Article 22

- a) Where a company being a resident of the Federal Republic of Germany distributes income derived from sources within the Islamic Republic of Pakistan paragraph 1 shall not preclude the compensatory imposition of corporation tax on such distributions in accordance with the provisions of German tax law.
- b) The Federal Republic of Germany shall avoid double taxation by a tax credit as provided for in paragraph 1 b) of Article 22, and not by a tax exemption under paragraph 1 a) of Article 22,

(aa) if in the Contracting States income is placed under differing provisions of the Agreement or attributed to different persons [other than under Article 9 (Associated Enterprises)] and this conflict cannot be settled by procedure pursuant to Article 24 and

- (i) if as a result of such placement or attribution the relevant income would be subject to double taxation; or
- (ii) if as a result of such placement or attribution the relevant income would remain untaxed or be subject only to inappropriately reduced taxation in the Islamic Republic of Pakistan and would (but for the application of this paragraph) remain exempt from tax in the Federal Republic of Germany; or

(bb) if the Federal Republic of Germany has, after due consultation and subject to the limitation of its internal law, notified the Islamic Republic of Pakistan through diplomatic channels of other items of income to which it intends to apply this

paragraph in order to prevent the exemption of income from taxation in both Contracting States or other arrangements for the improper use of the Agreement.

In the case of a notification under sub-paragraph (bb) the Islamic Republic of Pakistan may, subject to notification through diplomatic channels, characterise such income under the Agreement consistently with the characterisation of that income by the Federal Republic of Germany. A notification made under this paragraph shall have effect only from the first day of the calendar year following the year in which it was received and any legal prerequisites under the domestic law of the notifying State for giving it effect have been fulfilled.

6. With reference to Article 25

If personal data is exchanged under this Article, the following additional provisions shall apply subject to the domestic laws of each Contracting State:

- a) The data supplying Contracting States shall be responsible for the accuracy of the data they supply. If it emerges that inaccurate data or data which should not have been supplied have been communicated, the receiving State shall be notified of this without delay. That State shall be obliged to correct or destroy said data.
- b) The Contracting States shall be obliged to keep official records of the transmission and receipt of personal data.
- c) The Contracting States shall be obliged to take effective measures to protect the personal data communicated against unauthorised access, unauthorised alteration and unauthorised disclosure.
- d) Upon application the person concerned shall be informed of the information stored about him and of the use planned to be made of it. There shall be no obligation to give this information if on balance it appears that the public interest in withholding it outweighs the interest of the person concerned in receiving it.
- e) The right of the person concerned to be informed of the data stored about him shall be a matter of the domestic law of the Contracting State in whose sovereign territory the application for the information is made.

Done at Islamabad this 14th day of July, 1994, in two originals, each in the German and English languages, both texts being equally authentic.

FOR THE FEDERAL REPUBLIC OF GERMANY:

FOR THE ISLAMIC REPUBLIC OF PAKISTAN:

Memorandum
On the Meeting of the Competent Authorities of Pakistan and Germany held on 6 and 7 July 2004 in Berlin, Germany

A Pakistan delegation, led by Mr. Salman Nabi, Member (Direct Taxes) Central Board of Revenue and a German delegation, led by Dr. Wolfgang Lasars, Director of International Tax Division, Federal Ministry of Finance, met in Berlin from 6 to 7 July 2004 for mutual consultation on problems which may arise in the application of the Agreement between the Islamic Republic of Pakistan and the Federal Republic of Germany for the avoidance of double taxation with respect to taxes on income (DTA), and to reach a mutual agreement. A list of delegates is attached (ANNEX).

The negotiations were conducted in a friendly and cordial atmosphere of mutual understanding. Both delegations have discussed and agreed to the following:

1. The German-Pakistan DTA and the Protocol shall have effect over the domestic tax laws of the contracting states, as specified in section 107 of the Pakistan Income Tax Ordinance 2001 and section 2 of the German Fiscal Code.
2. The source state may tax business profits of an enterprise of the other contracting state only so much as is attributable to a permanent establishment of that enterprise (Article 5 and 7 of the DTA read with provisions of the Protocol). In the case of a turnkey project paragraph 2 of the protocol of the DTA should be taken into special consideration. The appropriate course is, in principle, to break down the contract, on the basis of the information contained in the contracting and the actual carrying out of the contract, into supply of goods and other activities performed in the residence country and construction and installation components as well as other activities performed by the enterprise through permanent establishment in the country of source. Income based on the activities in the country of source and computed in accordance with normal open-market commercial terms (in accordance with the arm's length principle) should be taxable in the country of source.
3. Pakistan has introduced a system of advance ruling in income tax law. The Central Board of Revenue may, on application in writing by a non-resident taxpayer, issue to the taxpayer and advance ruling setting out Commissioner's position regarding the application of income tax law to a transaction proposed or entered into by the taxpayer. This mechanism takes care of apprehensions about proper application of the Protocol which otherwise would be dependent on facts of individual cases.
4. Presumptive taxation regime

Under clause (41) of Part IV of the Second Schedule to Income Tax Ordinance 2001, a resident of Germany may opt for taxation under presumptive tax regime by virtue of which tax paid at source (withholding income tax) at the prescribed rates on the full amount of the contract is final tax. Profits attributable to a permanent establishment need not be computed. Because a decision for such an option has been made on the free will of a resident of Germany, he cannot seek relief under Article 24 of DTA. The competent authority of Pakistan will provide the competent authority of Germany with information on German residents who have opted for such a regime to enable German tax authorities to carry out the provisions of the DTA.

5. The application of the arm's length principle is generally based on a comparison of the conditions in transactions between independent enterprises. With respect to transfer pricing cases in the pharmaceutical industry, where research and development production is done by a parent company/head office and the formulation and the selling of the medicines is done by a subsidiary/permanent establishment in the country of source both delegations agree that the most appropriate method is the resale price method.
6. An parent company in the pharmaceutical industry has the option to apply to the competent authority of its country of residence to certify that the transfer price to the permanent establishment/subsidiary in the other contracting state is similar to the transfer price to independent third parties in similar third countries (if there are some). In case there are no such transactions with independent third parties, such certification would be made in respect of transfer prices to permanent establishment/subsidiaries in similar third countries. The tax authorities in the other contracting state will accept this certificate in its exemption of the transfer prices.

Both delegations are confident that this Memorandum will contribute to the economic development and business relationship of both countries. The competent authorities of both countries will inform their respective business communities about this Memorandum.

Done at the Federal Ministry of Finance in Berlin, 7 July 2004.

For the Pakistan
Delegation

Sd/
Mr. Salman Nabi
Member (Direct Taxes)
Central Board of Revenue
Government of Pakistan

For the German
Delegation

Sd/
Dr. Wolfgang Lasars
Director of International Tax Division
Federal Ministry of Finance