

Agreement

between

the German Institute in Taipei

and

the Taipei Representative Office in 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 German Institute in Taipei
and
the Taipei Representative Office in the Federal Republic of Germany –

Desiring to promote their mutual economic relations through the conclusion of an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital –

Have agreed as follows:

Article 1
Personal Scope

This Agreement shall apply to persons who are residents of one or both of the territories of paragraph (1) a) of Article 3.

Article 2
Taxes Covered

(1) This Agreement shall apply to taxes on income and on capital imposed in either of the territories of paragraph (1) a) of Article 3, 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 in particular:

a) in the territory in which the taxation law administered by the German Federal Ministry of Finance, the Ministries of Finance of the "Länder", or fiscal authorities of political subdivisions thereof is applied:

- (i) the income tax (Einkommensteuer);
- (ii) the corporation tax (Körperschaftsteuer);
- (iii) the trade tax (Gewerbesteuer); and
- (iv) the capital tax (Vermögensteuer);

including the supplements levied thereon;

b) in the territory in which the taxation law administered by the Taxation Agency, Ministry of Finance, Taipei, or fiscal authorities of political subdivisions thereof is applied:

- (i) the profit seeking enterprise income tax;
- (ii) the individual consolidated income tax; and
- (iii) the income basic tax;

including the supplements levied thereon.

(4) The Agreement shall apply also to any identical or substantially similar taxes that are imposed subsequently in addition to, or in place of, the existing taxes. The competent authorities of the territories shall inform each other about the significant changes that have been made in the taxation laws of the respective territories.

Article 3 General Definitions

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

- a) the term "territory" means the territory referred to in paragraph (3) a) or (3) b) of Article 2 of this Agreement, as the case requires, and "other territory" and "territories" shall be construed accordingly;

- b) the term "person" means an individual, a company and any other body of persons;
- c) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- d) the term "enterprise" applies to the carrying on of any business;
- e) the term "business" includes the performance of professional services and of other activities of an independent character;
- f) the terms "enterprise of a territory" and "enterprise of the other territory" mean respectively an enterprise carried on by a resident of a territory or an enterprise carried on by a resident of the other territory;
- g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a territory, except when the ship or aircraft is operated solely between places in the other territory;
- h) the term "competent authority" means
 - (i) in the case of the territory in which the taxation law administered by the German Federal Ministry of Finance, the Ministries of Finance of the "Länder", or fiscal authorities of political subdivisions thereof is applied, the Federal Ministry of Finance or the agency to which it has delegated its powers;
 - (ii) in the case of the territory in which the taxation law administered by the Taxation Agency, Ministry of Finance, Taipei, or fiscal authorities of political subdivisions thereof is applied, the Minister of Finance, his authorised representatives or the agency to which he has delegated his powers.

(2) As regards the application of the Agreement at any time in a territory 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 territory for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that territory prevailing over a meaning given to the term under other laws of that territory.

Article 4

Resident

(1) For the purposes of this Agreement, the term "resident of a territory" means any person who, under the laws of that territory, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature, and also includes the territories referred to in paragraphs (3) a) and (3) b) of Article 2 and any political subdivision or local authority thereof.

(2) A person is not a resident of a territory for the purposes of this Agreement if that person is liable to tax in that territory in respect only of income from sources in that territory or capital situated therein, provided that this provision shall not apply to individuals who are residents of the territory referred to in paragraph (3) b) of Article 2 of this Agreement, as long as resident individuals are taxed only in respect of income from sources in that territory.

(3) Where by reason of the provisions of paragraph (1) an individual is a resident of both territories, then his status shall be determined as follows:

- a) he shall be deemed to be a resident only of the territory in which he has a permanent home available to him; if he has a permanent home available to him in both territories, he shall be deemed to be a resident only of the territory with which his personal and economic relations are closer (centre of vital interests);
- b) if the territory 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 territory, he shall be deemed to be a resident only of the territory in which he has an habitual abode;
- c) if he has an habitual abode in both territories or in neither of them, the competent authorities of the territories shall settle the question by mutual agreement.

(4) Where by reason of the provisions of paragraph (1) a person other than an individual is a resident of both territories, then it shall be deemed to be a resident only of the territory in which its place of effective management is situated.

(5) A partnership is deemed to be a resident of the territory 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) The term "permanent establishment" likewise encompasses:

- a) a building site, a construction, assembly or installation project, but only where such site or project lasts for a period of more than six months;
- b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the territory for a period or periods aggregating more than six months within any twelve months period.

(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 territory an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that territory 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 territory merely because it carries on business in that territory 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 territory controls or is controlled by a company which is a resident of the other territory or which carries on business in that other territory (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 territory from immovable property (including income from agriculture or forestry) situated in the other territory may be taxed in that other territory.

(2) The term "immovable property" shall have the meaning which it has under the law of the territory 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 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 territory shall be taxable only in that territory unless the enterprise carries on business in the other territory 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 territory 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 territory carries on business in the other territory through a permanent establishment situated therein, there shall in each territory 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 territory in which the permanent establishment is situated or elsewhere.

(4) Insofar as it has been customary in a territory 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 territory 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 of this Article, 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 of an enterprise of a territory from the operation of ships or aircraft in international traffic shall be taxable only in that territory.

(2) For the purposes of this Article the terms "profits from the operation of ships or aircraft in international traffic" shall include profits from

- a) the occasional rental of ships or aircraft on a bare-boat basis, and
- b) the use or rental of containers (including trailers and ancillary equipment used for transporting the containers),

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

(3) The provisions of paragraph (1) shall also apply to profits from the participation in a pool, a joint business or an international operating agency, but only to so much of the profits so derived as is attributable to the participant in proportion to its share in the joint operation.

Article 9
Associated Enterprises

(1) Where

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

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 territory includes in the profits of an enterprise of that territory – and taxes accordingly – profits on which an enterprise of the other territory has been charged to tax in that other territory and the profits so included are profits which would have accrued to the enterprise of the first-mentioned territory if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other territory 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 territories shall, if necessary, consult each other.

Article 10

Dividends

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

(2) However, such dividends may also be taxed in the territory of which the company paying the dividends is a resident and according to the laws of that territory, but if the beneficial owner of the dividends is a resident of the other territory, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

(3) If in the territory referred to in paragraph (3) b) of Article 2, a tax rate of less than 10 per cent of the gross dividends is applied pursuant to an Agreement which is signed with a member state of the OECD after the signature of this Agreement in the case of dividends paid to a company (not including partnerships) which is not resident in this territory and which directly owns at least 25 per cent of the capital of the company paying the dividends, the competent authority referred to in paragraph (1) h) (i) of Article 3 may request that this lower rate also be applied to dividends paid to companies (not including partnerships) resident in the territory referred to in paragraph (3) a) of Article 2 and which directly own at least 25 per cent of the capital of the company paying the dividends. From the date of receipt of the request for the lower tax rate according to the above-mentioned sentence, this lower rate will also apply to dividends paid to companies (not including partnerships) resident in the territory referred to in

paragraph (3) b) of Article 2 and which directly own at least 25 per cent of the capital of the company paying the dividends.

(4) Notwithstanding the provisions of paragraphs (2) and (3) of this Article, the tax so charged shall not exceed 15 per cent of the gross amount of the dividends if the distributing company is a real estate investment company of the territory referred to in paragraph (3) a) of Article 2 that is tax-exempt regarding all or parts of its profits or that can deduct the distributions in determining its profits. A real estate investment company is a company according to paragraph 1 of section 1 of the Act on Real Estate Stock Corporations with Listed Shares (REIT Act).

(5) The term "dividends" as used in this Article means income from 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 territory of which the company making the distribution is a resident or other income which is subjected to the same taxation treatment as income from shares by the laws of the territory of which the company making the distribution is a resident.

(6) The provisions of paragraphs (1) to (4) shall not apply if the beneficial owner of the dividends, being a resident of a territory, carries on business in the other territory 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.

(7) Where a company which is a resident of a territory derives profits or income from the other territory, that other territory 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 territory or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other territory, 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 territory.

Article 11

Interest

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

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

(3) Notwithstanding the provisions of paragraph (2) of this Article, interest arising in a territory shall be exempt from tax in that territory if:

- a) it is paid to and beneficially owned by an authority of the other territory, or any public institution of that other territory as may be agreed between the competent authorities; or
- b) it is paid in consideration of a loan guaranteed by an authority of the other territory in respect of export or foreign direct investment.

(4) Notwithstanding the provisions of paragraphs (2) and (3) of this Article, the tax so charged shall not exceed 15 per cent of the gross amount of the interest if the interest is the distributed income of a real estate investment trust or a real estate asset trust of the territory referred to in paragraph (3) b) of Article 2 that is tax-exempt regarding all or parts of its profits or that can deduct the distributions in determining its profits. A real estate investment trust and a real estate asset trust are the trusts governed by the provisions of the Real Estate Securitization Act.

(5) 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 profit, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. However, the term "interest" shall not include for the purpose of this Article penalty charges for late payment and interest on debt-claims resulting from deferred payments for goods, merchandise or services supplied by an enterprise.

(6) The provisions of paragraphs (1) to (4) shall not apply if the beneficial owner of the interest, being a resident of a territory, carries on business in the other territory 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.

(7) Interest shall be deemed to arise in a territory when the payer is a resident of that territory. Where, however, the person paying the interest, whether he is a resident of a territory or not, has in a territory 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 territory in which the permanent establishment is situated.

(8) 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 territory, due regard being had to the other provisions of this Agreement.

Article 12

Royalties

(1) Royalties arising in a territory and paid to a resident of the other territory may be taxed in that other territory.

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

(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, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience. Subject to the provisions of Article 16, 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 as well as films or tapes of entertainers' or sportspersons' performances used for radio or television broadcasting.

(4) The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the royalties, being a resident of a territory, carries on business in the other territory 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.

(5) Royalties shall be deemed to arise in a territory when the payer is a resident of that territory. Where, however, the person paying the royalties, whether he is a resident of a territory or not, has in a territory 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 territory in which the permanent establishment is situated.

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

Article 13

Capital Gains

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

(2) Gains from the alienation of shares and similar rights in a company, the assets of which consist - directly or indirectly - principally of immovable property situated in a territory, may be taxed in that territory.

(3) Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a territory has in the other territory, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other territory.

(4) Gains derived by an enterprise of a territory 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 that territory.

(5) Gains from the alienation of any property other than that referred to in paragraphs (1) to (4), shall be taxable only in the territory of which the alienator is a resident.

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

Article 14

Income from Employment

(1) Subject to the provisions of Articles 15 to 18, salaries, wages and other similar remuneration derived by a resident of a territory in respect of an employment shall be taxable only in that territory unless the employment is exercised in the other territory. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other territory.

(2) Notwithstanding the provisions of paragraph (1), remuneration derived by a resident of a territory in respect of an employment exercised in the other territory shall be taxable only in the first-mentioned territory if:

- a) the recipient is present in the other territory for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other territory, and
- c) the remuneration is not borne by a permanent establishment which the employer has in the other territory.

(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 operated in international traffic, may be taxed in the territory of which the enterprise operating the ship or aircraft is a resident.

Article 15

Directors' Fees

Directors' fees and other similar payments derived by a resident of a territory in his capacity as a member of the board of directors of a company which is a resident of the other territory may be taxed in that other territory.

Article 16

Artistes and Sportspersons

(1) Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a territory as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musi-

cian, or as a sportsperson, from his personal activities as such exercised in the other territory , may be taxed in that other territory.

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

(3) The provisions of paragraphs (1) and (2) shall not apply to income accruing from the exercise of activities by entertainers or sportspersons in a territory where the visit to that territory is financed entirely or mainly from public funds of the other territory or by an organisation which in that other territory is recognised as a charitable organisation. In such a case the income may be taxed only in the territory 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 territory from the other territory may be taxed in that other territory.

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

(3) Notwithstanding the provisions of paragraph (1), recurrent or non-recurrent payments made by a resident of a territory to a resident of the other territory 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 territory.

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

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

Article 18

Public Service

(1)

- a) Salaries, wages and other similar remuneration, other than a pension, paid by an authority administering a territory or a subdivision thereof, or by a local authority of that territory or some other legal entity under public law of that territory as approved by the competent authority of that territory to an individual in respect of services rendered in charge of public or administrative functions on behalf of such an authority or such other legal entity under public law of that territory shall be taxable only in that territory.
- b) However, such salaries, wages, and other similar remuneration shall be taxable only in the other territory if the services are rendered in that territory and if the individual is a resident of that territory and
 - i) is a national of that territory; or
 - ii) did not become a resident of that territory solely for the purpose of rendering the services.

(2)

- a) Any pension paid by, or out of funds created by, an authority administering a territory or some other above-mentioned legal entity under public law of that territory to an individual in respect of services rendered to that territory or that other legal entity under public law shall be taxable only in that territory.

- b) However, such pension shall be taxable only in the other territory if the individual is a resident of, and a national of, that territory.

(3) The provisions of Articles 14, 15, 16 or 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 territory or some other above-mentioned legal entity under public law of that territory.

Article 19

Visiting Professors, Teachers and Students

(1) An individual who visits a territory at the invitation of that territory or of a university, college, school, museum or other cultural institution of that territory 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 territory shall be exempt from tax in the first-mentioned territory on his remuneration for such activity, provided that such remuneration is derived by him from outside the first-mentioned territory.

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

Article 20

Other Income

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

(2) The provisions of paragraph (1) shall not apply to income, other than income from immovable property, if the recipient of such income, being a resident of a territory, carries on

business in the other territory 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, owned by a resident of a territory and situated in the other territory, may be taxed in that other territory.

(2) Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a territory has in the other territory may be taxed in that other territory.

(3) Capital of an enterprise of a territory represented by ships and aircraft operated in international traffic, and by movable property pertaining to the operation of such ships and aircraft, shall be taxable only in that territory.

(4) All other elements of capital of a resident of a territory shall be taxable only in that territory.

Article 22

Avoidance of Double Taxation in the Territory of Residence

(1) Tax shall be determined in the case of a resident of the territory referred to in paragraph (3) a) of Article 2 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 tax under the laws of the territory referred to in paragraph (3) a) of Article 2 any item of income arising in the territory referred to in paragraph (3) b) of Article 2 and any item of capital situated within the territory referred to in paragraph (3) b) of Article 2 which, according to this Agreement, may be taxed in the territory referred to in paragraph (3) b) of Article

2. In the case of items of income from dividends the preceding provision shall apply only to such dividends as are paid to a company (not including partnerships) being a resident of the territory referred to in paragraph (3) a) of Article 2 by a company being a resident of the territory referred to in paragraph (3) b) of Article 2 at least 25 per cent of the capital of which is owned directly by the first-mentioned 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 the law of the territory referred to in paragraph (3) a) of Article 2 regarding credit for foreign tax, there shall be allowed as a credit against tax payable on income in respect of the following items of income the tax paid under the laws of the territory referred to in paragraph (3) b) of Article 2 and in accordance with this Agreement:
 - (i) dividends not dealt with in sub-paragraph a);
 - (ii) interest;
 - (iii) royalties;
 - (iv) items of income that may be taxed in the territory referred to in paragraph (3) b) of Article 2 according to paragraph (2) of Article 13;
 - (v) items of income that may be taxed in the territory referred to in paragraph (3) b) of Article 2 according to paragraph (3) of Article 14
 - (vi) directors' fees;
 - (vii) items of income in the meaning of Article 16;
 - (viii) items of income in the meaning of paragraph (1) of Article 17.

- 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 the territory referred to in paragraph (3)a) of Article 2 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 the territory referred to in paragraph (3) b) of Article 2 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 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) The territory referred to in paragraph (3) a) of Article 2, 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 the tax under the laws of that territory.
- 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):
 - (i) if in the territories items of income or capital are placed under different 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
 - (ii) if after due consultation with the competent authority of the territory referred to in paragraph (3) b) of Article 2 the competent authority of the territory referred to in paragraph (3) a) of Article 2 informs the competent authority of the first-mentioned territory of other items of income to which it intends to apply the provisions of sub-paragraph b). Double Taxation is then avoided for this income by allowing a tax credit from the first day of the calendar year, next following that in which the information was given.

(2) Tax shall be determined in the case of a resident of the territory referred to in paragraph (3) b) of Article 2 as follows:

Where a resident of the territory referred to in paragraph (3) b) of Article 2 derives income from the other territory, the amount of tax on that income paid in that other territory (but ex-

cluding, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid) and in accordance with the provisions of this Agreement, shall be credited against the tax levied in the first-mentioned territory on that resident. The amount of credit, however, shall not exceed the amount of the tax in the first-mentioned territory on that income computed in accordance with its taxation laws and regulations.

Article 23

Non-discrimination

(1) Residents of a territory shall not be subjected in the other territory to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which residents of that other territory in the same circumstances, especially with respect to residence, are or may be subjected.

(2) The taxation on a permanent establishment which an enterprise of a territory has in the other territory shall not be less favourably levied in that other territory than the taxation levied on enterprises of that other territory carrying on the same activities. This provision shall not be construed as obliging a territory to grant to residents of the other territory any personal allowances, reliefs and reductions for taxation purposes which it grants only to its own residents.

(3) Except where the provisions of paragraph (1) of Article 9, paragraph (8) of Article 11, or paragraph (6) of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a territory to a resident of the other territory 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 territory. Similarly, any debts of an enterprise of a territory to a resident of the other territory 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 territory.

(4) Enterprises of a territory, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other territory, shall not be subjected in the first-mentioned territory 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 territory are or may be subjected.

(5) The provisions of this Article shall apply to taxes which are the subject of this Agreement.

Article 24

Mutual Agreement Procedure

(1) Where a person considers that the actions of one or both of the territories 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 territories, present his case to the competent authority of the territory of which he is a resident. 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 territory, 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 territories.

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

(4) The competent authorities of the territories 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 territories 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 territory, 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 territory shall be treated as secret in the same manner as information obtained under the domestic laws of that territory 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, 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 court proceedings or in judicial decisions.

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

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other territory;
- 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 territory;
- 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 territory in accordance with this Article, the other territory shall use its information gathering measures to obtain the requested information, even though that other territory 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 territory 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 territory 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 territories the taxes on dividends, interest, royalties or other items of income derived by a person who is a resident of the other territory are levied by withholding at source, the right of the first-mentioned territory 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 territory 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 territory in which the items of income arise may be made without deduction of tax or with deduction of tax only at the rate provided in the relevant Articles.

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

(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 territory 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 paragraph (3) of Article 24 on how to avoid double taxation.

Article 28
Protocol

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

Article 29
Entry into Force

(1) The German Institute in Taipei and the Taipei Representative Office in the Federal Republic of Germany will inform each other in writing about the adoption of this Agreement in their respective territories. This Agreement shall enter into force on the date of the later of these notifications.

(2) This Agreement shall have effect:

- a) in respect of taxes withheld at source, for 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.

Article 30
Termination

(1) This Agreement shall remain in force indefinitely, but its validity may be terminated by the competent authorities on or before 30 June of any calendar year after a period of five years from the entry into force of the Agreement. The German Institute in Taipei or the Taipei Representative Office in the Federal Republic of Germany will inform in writing the respective other side of the termination.

(2) This Agreement shall cease to have effect:

- a) in respect of taxes withheld at source, for 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 undersigned, being duly authorized, have signed this Agreement

Signed in duplicate in the German, Chinese and English languages, all three texts being authentic. In the case of divergent interpretation of the German and the Chinese texts, the English text shall prevail.

Taipei, 28 December 2011

Berlin, 19 December 2011

For the
German Institute in Taipei

For the
Taipei Representative Office in the
Federal Republic of Germany

Dr. Michael Zickerick

Dr. Wu-lien Wei

Protocol
to the Agreement
between
the German Institute in Taipei
and
the Taipei Representative Office in 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 December in Taipei
and on 19 December 2011 in Berlin

On signing the Agreement between the German Institute in Taipei and the Taipei Representative Office in 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 signatories have in addition agreed that the following provisions shall form an integral part of the said Agreement:

1. With reference to Article 2:

With respect to the territory referred to in the paragraph (3) b) of Article 2, it is understood that nothing in the Agreement affects the imposition of the Land Value Increment Tax.

2. With reference to Article 7:

- a) Where an enterprise of a territory sells goods or merchandise or carries on business in the other territory 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) 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 territory, the profits of such permanent establishment shall be determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the territory in which it is situated. Profits derived from the supply of goods to that permanent establishment or profits related to the part of the contract which is carried out in the territory in which the head office of the enterprise is situated shall be taxable only in that territory.

3. With reference to Articles 10 and 11:

Notwithstanding the provisions of Articles 10 and 11 of this Agreement, dividends and interest may be taxed in the territory in which they arise, and according to the law of that territory,

- 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 the territory referred to in paragraph (3) a) of Article 2 of the Agreement; and
- b) under the condition that they are deductible in the determination of profits of the debtor of such income.

4. With reference to Article 11:

The term "public institution" includes:

a) in respect to the territory referred to in the paragraph (3) a) of Article 2:

- (i) the Deutsche Bundesbank;
- (ii) the Kreditanstalt für Wiederaufbau, and
- (iii) the Deutsche Investitions- und Entwicklungsgesellschaft;

b) the Central Bank in respect to the territory referred to in the paragraph (3) b) of Article 2.

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 territory:

- 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. 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. The receiving agency shall be obliged to correct or erase such data.
- e) 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.

- f) If the domestic law of the supplying agency provided for special provisions for the erasion 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.
- g) The supplying and the receiving agencies shall be obliged to keep official records of the supply and receipt of personal data.
- h) 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.

The undersigned, being duly authorized, have signed this Protocol.

Signed in duplicate in the German, Chinese and English languages, all three texts being authentic. In the case of divergent interpretation of the German and the Chinese texts, the English text shall prevail.

Taipei, 28 December 2011

Berlin, 19 December 2011

For the
German Institute in Taipei

For the
Taipei Representative Office
in the Federal Republic of Germany

Dr. Michael Zickerick

Dr. Wu-lien Wei