

Agreement Between
the Republic of Korea and the federal Republic of Germany
for the Avoidance of Double Taxation and the prevention of Fiscal
Evasion with Respect to Taxes on Income and on Capital
(Amendment)

Signed at Berlin March 10, 2000
Entered into force October 31, 2002

The Republic of Korea and the Federal Republic of Germany,
Desiring to promote their mutual economic relations by avoiding double taxation and preventing
fiscal evasion,

Have agreed as follows:

Article 1. **【Personal Scope】** [2002.10.31]

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

Article 2. **【Taxes Covered】** [2002.10.31]

1.This Agreement shall apply to taxes on income and on capital imposed on behalf of a Contracting
State, of a Land or a political subdivision or local authority thereof, irrespective of the manner in
which they are levied.

2.There shall be regarded as taxes on income and on capital all taxes imposed on total income, on
total capital, or on elements of income or of capital, including taxes on gains from the alienation of
movable or immovable property, the payroll tax, and taxes on capital appreciation.

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

(a) in the Federal Republic of Germany: the income tax (Einkommensteuer), the corporation tax
(Körperschaftsteuer), the capital tax (Vermögensteuer), and the trade tax (Gewerbesteuer) including
the supplements levied thereon(hereinafter referred to as "German tax");

(b) in the Republic of Korea: the income tax, the corporation tax, the special tax for rural
development surcharged directly or indirectly on the tax base of the income tax or the corporation
tax, and the local inhabitant tax surcharged on the income tax or the corporation tax(hereinafter

referred to as "Korean tax").

4. The Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have

Article 3. **【General Definitions】** [2002.10.31]

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

(a) the term "Federal Republic of Germany" means the territory of the Federal Republic of Germany, as well as the area of the sea-bed, its sub-soil and the superjacent water column adjacent to the territorial sea, insofar as the Federal Republic of Germany exercises there sovereign rights and jurisdiction in conformity with international law and its national legislation for the purposes of exploring, exploiting, conserving and managing the living and non-living natural resources;

(b) the term "Republic of Korea" means the territory of the Republic of Korea including any area adjacent to the territorial sea of the Republic of Korea which, in accordance with international law, has been or may hereafter be designated under the laws of the Republic of Korea as an area within which the sovereign rights of the Republic of Korea with respect to the sea-bed and sub-soil and their natural resources may be exercised;

(c) the terms "a Contracting State" and "the other Contracting State" mean the Republic of Korea or the Federal Republic of Germany, as the context requires;

(d) the term "person" means an individual and a company;

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

(f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(h) the term "national" means:

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

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

(i) the term "competent authority" means

aa) in the case of the Federal Republic of Germany, the Federal Ministry of Finance or the agency

to which it has delegated its powers;

bb) in the case of the Republic of Korea, the Minister of Finance and Economy or his authorized representative.

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

Article 4. **【Resident】** [2002.10.31]

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 head or main office or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

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

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

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

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

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

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

Article 5. **【Permanent Establishment】** [2002.10.31]

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

2. The term "permanent establishment" includes especially:

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

3. A building site or construction or installation project or supervisory activities in connection therewith constitutes a permanent establishment only if it lasts more than twelve months.

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

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

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

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

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

Article 6. **【Income from Immovable Property】** [2002.10.31]

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

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7. **【Business Profits】** [2002.10.31]

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

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

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

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs 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】** [2002.10.31]

1. Profits from the operation of ships or aircraft in international traffic carried on by an enterprise of a Contracting State shall be taxable only in that State.

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 rental of ships or aircraft fully equipped, manned and supplied;
- (b) the occasional rental of a ship or aircraft on a bare boat charter; and
- (c) the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods and merchandise;

where such rental or such use, maintenance or rental, as the case may be, is incidental 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

Article 9. **【Associated Enterprises】** [2002.10.31]

1. Where

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

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

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

Article 10. **【Dividends】** [2002.10.31]

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

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

(a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;

(b) 15 per cent of the gross amount of the dividends in all other cases.

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

3. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as other income which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a

resident. The term "dividends" includes likewise in the Federal Republic of Germany income of a sleeping partner ("stiller Gesellschafter") from his participation as such, income from a "partiarisches Darlehen", "Gewinnobligationen" and similar profit-depending remuneration as well as distributions on certificates of an investment fund.

4. Notwithstanding the paragraphs 2 and 3, income derived from rights or debt-claims participating in profits (including in the Federal Republic of Germany income derived by a sleeping partner ("stiller Gesellschafter") from his participation as such, from a "partiarisches Darlehen" and from "Gewinnobligationen") that is deductible in determining of profits of the debtor may be taxed in the Contracting State in which they arise, and according to the laws of that State.

However, the tax so charged shall not exceed 25 per cent of the gross amount of this income.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State, independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

Article 11. **【Interest】** [2002.10.31]

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

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

3. Notwithstanding the provisions of paragraph 2,

(a) interest arising in the Federal Republic of Germany, a Land, a political subdivision or a local authority thereof and paid to the Republic of Korea, the Bank of Korea, the Korea

Export-Import Bank, the Korea Development Bank and similar financial institution as may be specified by mutual agreement between the competent authorities of the Contracting States as well as interest paid in consideration of a loan guaranteed by the Korea Export Insurance Corporation shall be exempt from German tax;

(b) interest arising in the Republic of Korea and paid to the Federal Republic of Germany, the Deutsche Bundesbank, the Kreditanstalt für Wiederaufbau or the Deutsche Finanzierungsgesellschaft für Beteiligungen in Entwicklungsländern and similar financial institution as may be specified by mutual agreement between the competent authorities of the Contracting States as well as interest paid in consideration of a loan guaranteed by HERMES-Deckung shall be exempt from Korean tax.

4. Notwithstanding the provisions of paragraph 2, interest as defined in paragraph 1 may be taxed only in the Contracting State of which the recipient is a resident if the recipient is the beneficial owner of the interest and the interest is paid

(a) in connection with the sale of commercial or scientific equipment on credit, or

(b) in connection with the sale of goods by an enterprise to another enterprise on credit.

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 profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article. However, the term "interest" shall not include income dealt with in Article 10.

6. The provisions of paragraphs 1, 2 and 4 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.

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

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 exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in

the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12. **【Royalties】** [2002.10.31]

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

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

(a) 2 per cent of the gross amount of such royalties which are paid for the use of, or the right to use, industrial, commercial, or scientific equipment; and

(b) 10 per cent of the gross amount of such royalties in all other cases.

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, 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 provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

6. Where, by reason of a special relationship between the payer and the beneficial owner or

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

Article 13. **【Capital Gains】** [2002.10.31]

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 derived by a resident of a Contracting State from the alienation of shares issued by a company being a resident of the other Contracting State may be taxed in that other Contracting State, if:

(a) the alienator (together with such shares held or owned by any other related persons as may be aggregated therewith) has held at least 25 per cent of the total shares of the company at any time during the taxable year in which the alienation takes place, and the total of the shares alienated by the alienator and such related persons during that taxable year amounts to at least 5 per cent of the total shares of such company; or

(b) the property of the company consists not less than 50 per cent of immovable property situated in the other Contracting State.

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

4. Gains derived by a resident of a Contracting State 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 Contracting State.

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

6. With respect to paragraph 2 sub- paragraph (a), in pursuance of the laws of one Contracting State whose tax is being determined, a person is treated to be related to another person if either person owns or controls directly or indirectly the other, or if any third person or persons owns or

controls directly or indirectly both.

Article 14. **【Independent Personal Services】** [2002.10.31]

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base. For the purpose of this Agreement, where an individual who is a resident of a Contracting State is present in the other Contracting State for a period or periods exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, he shall be deemed to have a fixed base regularly available to him in that other State and the income that is derived from his activities that are performed in that other State shall be attributable to that fixed base.

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

Article 15. **【Dependent Personal Services】** [2002.10.31]

1. Subject to the provisions of Articles 16, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the 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. 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 by an enterprise of a Contracting State may be taxed in that Contracting State.

Article 16. **【Directors' Fees】** [2002.10.31]

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

Article 17. **【Artistes and Sportsmen】** [2002.10.31]

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

2. Notwithstanding the provisions of Article 12, the income derived by the persons mentioned in paragraph 1 from their personal activities exercised in the other Contracting State shall also include remuneration of any kind paid for the use of, or the right to use the name, the picture or other personal rights of such persons.

3. Where income as defined in paragraphs 1 and 2 accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

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

Article 18. **【Pensions, Annuities and Similar Payments】** [2002.10.31]

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

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

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

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

Article 19. **【Government Service】** [2002.10.31]

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State, a Land, a political subdivision or a local authority thereof to an individual in respect of services rendered to that State, a Land, a political subdivision or a local authority shall be taxable only in that State.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and if the individual is a resident of that State who

aa) is a national of that State; or

bb) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Notwithstanding the provisions of Article 18, any pension paid by a Contracting State, a Land, a political subdivision or a local authority thereof to an individual in respect of services rendered to that State, a Land, a political subdivision or a local authority shall be taxable only in that State.

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

3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State, a Land, a political subdivision or a local authority thereof.

4. The provisions of paragraph 1 shall likewise apply in respect of remuneration paid, under a development assistance programme of a Contracting State, a Land, a political subdivision or a local authority thereof, out of funds exclusively supplied by that State, Land, political subdivision or local authority, to a specialist or volunteer seconded to the other Contracting State with the consent of that other State.

5. The provisions of paragraphs 1 and 2 shall also apply to remuneration or pension paid by:

(a) in the case of the Federal Republic of Germany:

- aa) Deutsche Bundesbank,
 - bb) Goethe Institut, and
 - cc) DAAD.
- (b) in the case of the Republic of Korea:
- aa) the Bank of Korea,
 - bb) the Korea Export-Import Bank, and
 - cc) the Korea Trade Promotion Agency.

Article 20. **【Professors, Teachers and Students】** [2002.10.31]

1. An individual who visits a Contracting State at the invitation of that State or of a university, college, school, museum or other cultural institution of that State or under an official programme of cultural exchange for a period not exceeding two years solely for the purpose of teaching, giving lectures or carrying out research at such institution and who is, or was immediately before that visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned State on his remuneration for such activity, provided that such remuneration is derived by him from outside that State.

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

3. With respect to paragraph 2, in respect of grants, scholarships and remuneration from employment not covered by paragraph 2, a student or business apprentice described in paragraph 2 shall, in addition, be entitled during such education or training to the same exemptions, reliefs or reductions in respect of taxes available under the same conditions to residents of the State which he is visiting.

Article 21. **【Other Income】** [2002.10.31]

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. Where, by reason of a special relationship between the resident of a Contracting State referred to in paragraph 1 and some other person, or between both of them and some other person, the amount of the income referred to in paragraph 1 exceeds the amount (if any) which would have been agreed upon between them 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 income shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 22. **【Capital】** [2002.10.31]

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

3. Capital represented by ships and aircraft operated in international traffic, and by movable property pertaining to the operation of such ships and aircraft, shall be taxable only in the Contracting State of which the enterprise is a resident.

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Article 23. **【Avoidance of Double Taxation in the State of Residence】** [2002.10.31]

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

(a) Unless foreign tax credit is to be allowed under sub-paragraph (b), there shall be exempted from the assessment basis of the German tax any item of income arising in the Republic of Korea and any item of capital situated within the Republic of Korea which, according to this Agreement, may be taxed in the Republic of Korea. The Federal Republic of Germany, however, retains the right to take into account in the determination of its rate of tax the items of income and capital so exempted. In the case of items of income from dividends the preceding provision shall apply only to such dividends as are paid to a company (not including partnerships) being a resident of the Federal Republic of Germany by a company being a resident of the Republic of Korea at least 25 per cent of the capital of which is owned directly by the German company and which were not

deducted when determining the profits of the company distributing these dividends.

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

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

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

bb) interest;

cc) royalties;

dd) items of income that may be taxed in the Republic of Korea according to paragraph 2 of Article 13;

ee) items of income that may be taxed in the Republic of Korea according to paragraph 3 of Article 15;

ff) directors' fees;

gg) items of income of artistes and sportsmen.

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

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

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

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

bb) if after due consultation with the competent authority of the Republic of Korea, the Federal Republic of Germany notifies the Republic of Korea, through the diplomatic channel, of other items

of income to which it intends to apply the provisions of sub-paragraph (b). Double taxation is then avoided for the notified income by allowing a tax credit from the first day of the calendar year in which the notification was made.

(f) For the purpose of tax credit referred to in aa), bb) and cc) of sub-paragraph (b), the Korean tax shall, irrespective of the amount of tax actually paid, be deemed to have been paid in the amount as high as the amount resulting from the applicable tax rates at source mentioned in Articles 10, 11 and 12 of this Agreement as the case may be. This sub-paragraph shall cease to have effect concerning income which arise or accrue after 31 December 2003.

2. Subject to the provisions of Korean tax law regarding the allowance as a credit against Korean tax of tax payable in any country other than the Republic of Korea (which shall not affect the general principle hereof):

Where a resident of the Republic of Korea derives income which may be taxed in the Federal Republic of Germany under the laws of the Federal Republic of Germany in accordance with the provisions of the Agreement, in respect of that income, the amount of German tax payable shall be allowed as a credit against the Korean tax payable imposed on that resident. The amount of credit shall not, however, exceed that part of Korean tax as computed before the credit is given, which is appropriate to that income.

Article 24. **【Non-discrimination】** [2002.10.31]

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. Stateless persons who are residents of a Contracting State shall not be subjected in either Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of the State concerned in the same circumstances 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 favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants only to its own residents.

4. 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 Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

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

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

Article 25. **【Mutual Agreement Procedure】** [2002.10.31]

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

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

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

Article 26. **【Exchange of Information】** [2002.10.31]

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

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

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

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

Article 27. **【Application of the Agreement in Special Cases】** [2002.10.31]

1. This Agreement shall not be interpreted to mean that

(a) a Contracting State is prevented from applying its domestic legal provisions, on the prevention of tax evasion or tax avoidance as long as those provisions are in accordance with the principles contained in this Agreement,

(b) the Federal Republic of Germany is prevented from levying taxes on amounts which are to be included in the items of income of a resident of the Federal Republic of Germany under the Fourth Part of the German Law on External Tax Relations (Aussensteuergesetz);

(c) the Republic of Korea is prevented from levying taxes on amount which are to be included in the items of income of a resident of the Republic of Korea under the Fourth Part of the Republic of Korea's Law for Coordination of International Tax Affairs.

2. Subject to the provisions of paragraph 1, the limitations mentioned in the provisions of paragraph 2 of Article 10, paragraph 2 of Article 11, paragraph 2 of Article 12 and of Article 21 shall not apply if it was the main purpose of any person concerned, in creating or assigning of the shares or other rights in respect of which the dividend is paid, or in creating or assigning the debt-claims in

respect of which the interest is paid, or in creating or assigning rights in respect of which the royalties are paid, or in creating or assigning of the rights in respect of which the other income is paid, to take advantage of Articles 10, 11, 12 and 21 by means of that creation or assignment without economic reason appropriate to the business operation concerned.

3. If the above provisions result in double taxation, the competent authorities shall consult pursuant to paragraph 3 of Article 25 on how to avoid double taxation.

Article 28. **【Members of Diplomatic Missions and Consular Posts】** [2002.10.31]

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

2. Insofar as, to the extent that, due to fiscal privileges granted to diplomatic agents or consular officers under the general rules of international law or under the provisions of special international agreements, items of income or capital are not subject to tax in the receiving State, the sending State shall have the right to tax such items of income or capital.

3. Notwithstanding the provisions of Article 4, an individual who is a member of a diplomatic mission, a consular post or a permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed for the purposes of this 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 items 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 total income or on capital as are residents of that State.

4. This Agreement shall not apply to international organizations, to organs or officials thereof, and to members of a diplomatic mission or consular post of a third State and persons related to them, being present in a Contracting State but not being treated in either Contracting State for purposes of taxes on income and on capital as residents are treated.

Article 29. **【Entry into Force】** [2002.10.31]

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

2. This Agreement shall enter into force on the day after the exchange of the instruments of ratification and shall have effect in both Contracting States:

(a) in the case of taxes withheld at source, in respect of amounts paid on or after the first day

of January of the calendar year next following that in which the Agreement entered into force;

(b) in the case of other taxes, in respect of taxes levied for periods beginning on or after the first day of January of the calendar year next following that in which the Agreement entered into force.

3. Upon the entry into force of this Agreement, the Agreement between the Republic of Korea and the Federal Republic of Germany for the Avoidance of Double Taxation with Respect to Taxes on Income and Capital signed on 14th December 1976 shall cease to have effect:

(a) in the case of taxes withheld at source, in respect of amounts paid after the 31st day of December of the calendar year ending before the calendar year in which the provisions of this Agreement commence to have effect;

(b) in the case of other taxes, in respect of taxes levied for periods beginning after the 31st day of December of the calendar year ending before the calendar year in which the provisions of this Agreement commence to have effect.

Article 30. 【Termination】 [2002.10.31]

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

(a) in the case of taxes withheld at source, in respect of amounts paid on or after the first day of January of the calendar year next following that in which notice of termination is given;

(b) in the case of other taxes, in respect of taxes levied for periods beginning on or after the first day of January of the calendar year next following that in which notice of termination is given.

DONE at Berlin this tenth day of March 2000 in two originals, each in the Korean, German and English languages, all three texts being authentic. In the case of divergent interpretation of the Korean and the German texts, the English text shall prevail.

FOR THE REPUBLIC OF KOREA

FOR THE FEDERAL REPUBLIC OF GERMANY

[2002.10.31]

PROTOCOL

THE REPUBLIC OF KOREA AND

THE FEDERAL REPUBLIC OF GERMANY

have agreed at the signing at Berlin on 10th March of the Agreement between the two States for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital upon the following provisions which shall form an integral part of the said Agreement:

1. With reference to Article 12:

If after the signature of this Agreement the Republic of Korea has agreed with an OECD Member country that royalties may be taxed only in the Contracting State of which the beneficial owner of the royalties is a resident, then royalties mentioned in Article 12 of this Agreement may be taxed only in the Contracting State of which the beneficial owner of the royalties is a resident.

2. With reference to paragraph 3 of Article 12

It is understood that payments of any kind received as a consideration for the use of, or the right to use, a software shall be treated as royalties, if:

(a) the source code is transferred to the user in addition to the software; or

(b) the software is developed for, or adapted to, the specific demands of a particular end-user;
or

(c) the payments for the acquisition of the software are measured by reference to the productivity or use of such software.

3. With reference to Article 26

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

(a) The supplying agency shall make an effort to ensure that the data to be supplied are accurate and that they are necessary for and proportionate to the purpose for which they are supplied. Any bans on data supply prescribed under applicable domestic law shall be observed. If it emerges that inaccurate data or data which should not have been supplied have been supplied, the recipient shall be informed of this without delay. That recipient shall be obliged to correct or erase such data.

(b) Upon application the person concerned shall be informed of the supplied data relating to him and of the use to which such data are to be put. There shall be no obligation to furnish this information if on balance it turns out that the public interest in withholding it outweighs the interest of the person concerned in receiving it. In all other respects, the right of the person concerned to be informed of the existing data relating to him shall be governed by the domestic law of the Contracting State in whose sovereign territory the application for the information is

made.

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

(d) 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.

DONE at Berlin this tenth day of March 2000 in two originals, each in the Korean, German and English languages, all three texts being authentic. In the case of divergent interpretation of the Korean and the German texts, the English text shall prevail.

FOR THE REPUBLIC OF KOREA

FOR THE FEDERAL REPUBLIC OF GERMANY
