

P R O T O C O L

**amending the Convention of July 9th, 1962,
between the Government of the State of Israel
and the Government of the Federal Republic of Germany
for the Avoidance of Double Taxation
with respect to Taxes on Income and to the
Gewerbsteuer (trade tax)**

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Gewerbsteuer (trade tax)

The State of Israel
and the
Federal Republic of Germany

Desiring to amend the above-mentioned Convention - the Convention hereafter bearing the title 'Convention between the State of Israel and the Federal Republic of Germany for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital and to the Gewerbsteuer (trade tax)''

have agreed as follows :

Article I

Article 1 of the Convention shall be deleted and replaced by the following Article 1:

"Article 1

(1) This Convention shall apply to taxes on income and on capital imposed on behalf of the Federal Republic of Germany or the State of Israel, a Land or a political subdivision or local authority thereof, irrespective of the manner in which they are levied.

(2) There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

(3) The existing taxes to which this Convention shall apply are, in particular:

a) in the Federal Republic of Germany:

- aa) the Einkommensteuer (income tax) including the Ergänzungsabgabe (surcharge) thereon,
- bb) the Körperschaftsteuer (corporation tax) including the Ergänzungsabgabe (surcharge) thereon,
- cc) the Vermögensteuer (capital tax), and
- dd) the Gewerbesteuer (trade tax) (hereinafter referred to as "Federal Republic tax").

b) in the State of Israel:

- aa) the income tax including the capital gains tax and the company tax,
- bb) the security charge,
- cc) the land appreciation tax, and
- dd) the property tax (hereinafter referred to as "Israeli tax").

(4) This Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes. At the end of each year, the competent authorities of the Contracting States shall, if necessary, notify to each other any changes which have been made in their respective taxation laws.

(5) The competent authorities of the Federal Republic of Germany and the State of Israel shall by mutual agreement resolve any doubts which arise as to taxes to which this Convention ought to apply.

(6) This Convention applies to persons who are residents of the territories of either, or both of the Contracting Parties. "

Article II

(1) Sub-paragraph 8 of paragraph (1) of Article 2 of the Convention shall be deleted and replaced by the following sub-paragraph:

"8) The term "dividends" means income arising from shares, participations in a limited liability company (Gesellschaft mit beschränkter Haftung), mining shares (Kuxen) and "jouissance shares (Genußscheine) other than income referred to in Article 3 paragraph (2) .. The term shall also include income derived by a sleeping partner, who does not participate in the capital of the undertaking, from his participation as such and distribution on investment trust certificates. "

(2) Paragraph (2) of Article 3 of the Convention shall be deleted and replaced by the following paragraph:

"(2) The term "immovable property" shall be defined in accordance with the laws 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 of agricultural and forestry enterprises, 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 mineral deposits, sources and other natural resources. The term shall also include shares and similar rights in a company, other than shares and rights dealt in on a Stock Exchange, the assets of which consist exclusively of real property, situated in the Contracting State of which such company is a resident, and of assets accessory thereto or assets material for the normal administration, repair and upkeep thereof provided that such shares and similar rights and the income arising from such shares and similar rights are liable to tax in that Contracting State. Ships, boats and aircraft shall not be regarded as immovable property."

Article III

Subparagraph a) of paragraph (3) of Article 13 of the Convention shall be deleted and replaced by the following subparagraph:

- a) Income within the meaning of paragraph (1) above paid by a resident of Israel to the Deutsche Bundesbank, the Kreditanstalt für Wiederaufbau or the Deutsche Gesellschaft für wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) m. b. H. shall be taxable only in the Federal Republic.

Article IV

Paragraphs (1) and (2) of Article 14 of the Convention shall be deleted and replaced by the following paragraphs:

"(1) Copyright royalties and other payments, whether recurring or not, paid as consideration for the use of, or the right to use, any literary, dramatic, musical or artistic work shall be taxable only in the territory of which the recipient is a resident.

(2) Royalties and other payments, whether recurring or not, paid to a resident of one of the territories by a resident of the other territory as

consideration for the use of, or the right to use, any patent, trade mark, design or model, plan, secret process or formula, or in respect of motion picture films or films for use in connection with television, may not be taxed in that other territory at a rate exceeding 5 per cent."

Article V

The following new Article shall be inserted immediately after Article 17 of the Convention:

" Article 17 A

(1) Capital represented by immovable property, as defined in Article 3, paragraph (2), may be taxed in the territory in which such property is situated.

(2) Capital represented by movable property forming part of the business property of a permanent establishment of an enterprise, or movable property pertaining to a fixed base for the performance of professional services, may be taxed in the territory in which the permanent establishment or fixed base is situated.

(3) Ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft, shall be taxable only in the territory in which the place of effective management of the enterprise is situated.

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

Article VI

Paragraph (1) of Article 18 of the Convention shall be deleted and replaced by the following paragraph:

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

- a) Unless the provisions of sub-paragraph b) apply, there shall be excluded from the basis upon which the Federal Republic tax is imposed, any item of income derived from Israel and any item of capital situated within Israel, which, according to this Convention, may be taxed in Israel. The Federal Republic, however, retains the right to take into account in the determination of its rate of tax the items of income and capital so excluded. In the case of income from dividends, the foregoing provisions of this sub-paragraph shall apply only to such dividends as are paid to a company being a resident of the Federal Republic by a company being a resident of Israel if at least 25 per cent of the capital of the Israeli company is held directly by the Federal Republic company. There shall also be excluded from the basis upon which the Federal Republic tax is imposed any shareholding, the dividends of which, if paid, would be excluded from the basis upon which tax is imposed according to the immediately foregoing sentence.
- b) Israeli tax payable under the laws of Israel and in accordance with this Convention on the following items of income shall be allowed as a credit against such Federal Republic tax on income as is payable in respect of these following items of income:
- aa) dividends not dealt with in sub-paragraph a) above;
 - bb) interest within the meaning of Article 13, paragraph (1) of this Convention;
 - cc) royalties and other like payments referred to in Article 14 of this Convention; and
 - dd) salaries, wages and other similar remuneration paid out of public funds of Israel in respect of services not being exempt from Federal Republic tax under Article 10, paragraphs (2) and (4) of this Convention.

- c) If in the cases aa) and bb) of sub-paragraph b) above, Israeli tax on dividends or interest has been wholly relieved or reduced for a limited period of time under provisions of Israeli tax law for the encouragement of the Israeli economy, there shall be allowed as a credit against Federal Republic tax on such income an amount of not less than 25 per cent of such dividends or 15 per cent of such interest. The credit allowed under the foregoing sentence shall, however, not exceed the tax which would have been imposed by Israel if no such relief or reduction had been granted.
- d) The provisions of sub-paragraphs a) and c) shall apply to the profits of, and to the capital represented by property forming part of the business property of a permanent establishment, to dividends paid by, and to the shareholding in a company, or to gains referred to in Article 7, paragraph (2) of this Convention only if the resident of the Federal Republic concerned proves that the income of the permanent establishment or company is derived exclusively or almost exclusively
- aa) from the following types of activities:
 - extracting, producing, processing or selling goods and merchandise, giving technical advice or rendering services, or doing banking or insurance business,
 - or
 - bb) from dividends paid by one or more companies, being residents of Israel, more than 50 per cent of the capital of which is owned by the first-mentioned company, which themselves derive their income exclusively or almost exclusively from the types of activities mentioned above.

Otherwise sub-paragraph b) shall apply. "

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ARTICLE VII

This protocol shall also apply to Land Berlin provided that the Government of the Federal Republic of Germany has not delivered a contrary declaration to the Government of the State of Israel within three months from the date of entry into force of the protocol.

Article VIII

(1) This Protocol shall be ratified and the instruments of ratification shall be exchanged at as soon as possible.

(2) This Protocol shall come into force one month after the date of exchange of instruments of ratification, and shall thereupon have effect:

- a) in respect of the Federal Republic tax, for taxes which are levied for the calendar year 1970 and for subsequent calendar years, and
- b) in respect of the Israeli tax, for taxes which are levied for the tax year 1970 and for subsequent tax years.

(3) The provisions contained in the exchange of letters of 9th July, 1962, in so far as they may pertain to Article 14 and sub-paragraph b) of paragraph (1) of Article 18 shall, after the coming into force of this Protocol, cease to have effect for the calendar years for which this Protocol has effect.

Article IX

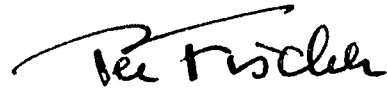
(1) This Protocol shall form an integral part of the Convention of 9th July, 1962, and shall continue in force as long as that Convention remains effective.

(2) The competent authorities of the territories are authorized to publish the text of the Convention, as modified by this Protocol, after this Protocol comes into force.

Done, on 20th July 1977 at Jerusalem in duplicate in the German, Hebrew and English languages, each text being authentic. In case of divergent interpretation of the German and Hebrew texts the English text shall prevail.



For the State of Israel:



For the Federal Republic
of Germany: