

GOVERNMENT OF MAURITIUS

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*Government Notice No. 79 of 1978.*

**THE INCOME TAX ACT 1974**

**Regulations made by the Minister under section 137 of the Income Tax Act 1974**

1. These regulations may be cited as the Double Taxation Agreement (Germany) Regulations 1978.

2. In these regulations—

“Agreement” means the arrangement entered into with the Federal Republic of Germany in pursuance of section 83 of the Income Tax Act 1974 and set out in the Schedule to these regulations.

3. The Agreement shall come into operation on the respective dates specified in Article 30 thereof.

Made by the Minister on the 3rd April 1978.

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**SCHEDULE**

**AGREEMENT**

**BETWEEN**

**MAURITIUS**

**AND**

**THE FEDERAL REPUBLIC OF GERMANY**

**FOR THE AVOIDANCE OF DOUBLE TAXATION  
WITH RESPECT TO TAXES ON INCOME AND  
CAPITAL AND FOR THE ENCOURAGEMENT  
OF MUTUAL TRADE AND INVESTMENT**

**MAURITIUS**

**AND**

**THE FEDERAL REPUBLIC OF GERMANY**

DESIRING to avoid double taxation with respect to taxes on income and capital and to encourage mutual trade and investment—

Have agreed as follows:

**ARTICLE 1**

**PERSONAL SCOPE**

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

## ARTICLE 2

### TAXES COVERED

1. This Agreement shall apply to taxes on income and on capital imposed on behalf of each Contracting State or of its Länder, political subdivisions or local authorities, 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, as well as 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 (Gewerbsteuer)  
(hereinafter referred to as "German tax");

(b) in Mauritius—  
the income tax  
(hereinafter referred to as "Mauritius tax").

4. This Agreement shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes.

5. The provisions of this Agreement in respect of taxation of income or capital shall likewise apply to the German trade tax, computed on a basis other than income or capital.

6. The competent authorities of the Contracting States shall notify to each other substantial changes which are made in their respective taxation laws.

## ARTICLE 3

### GENERAL DEFINITIONS

1. In this Agreement, unless the context otherwise requires:

(a) the terms "a Contracting State" and "the other Contracting State" mean the Federal Republic of Germany or Mauritius, as the context requires, and, when used in a geographical sense, the territory in which the tax law of the State concerned is in force;

(b) the term "person" means an individual or a company;

(c) the term "company" means any body corporate or any entity or any body of persons, corporate or not corporate, which is treated as a body corporate for tax purposes;

(d) the terms "resident of a Contracting State" and "resident of the other Contracting State" mean a person who is a resident of the Federal Republic of Germany or a person who is a resident of Mauritius, as the context requires;

- (e) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an industrial, mining, commercial, plantation, agricultural or similar undertaking carried on by a resident of a Contracting State and an industrial, mining, commercial, plantation, agricultural or similar undertaking carried on by a resident of the other Contracting State;
- (f) the term "national" means:
- (aa) in respect of the Federal Republic of Germany any German in the meaning of paragraph (1) of Article 116 of the Basic Law for the Federal Republic of Germany and any legal person, partnership or association deriving its status as such from the law in force in the Federal Republic of Germany;
  - (bb) in respect of Mauritius any citizen of Mauritius and any legal person, partnership or association deriving its status as such from the law in force in Mauritius;
- (g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (h) the term "competent authority" means in the case of the Federal Republic of Germany the Federal Minister of Finance, and in the case of Mauritius the Minister of Finance.

2. As regards the application of this Agreement by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of this Agreement.

## ARTICLE 4

### FISCAL DOMICILE

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that Contracting State in respect only of income from sources therein or capital situated in that State. The terms "resident of the Federal Republic of Germany" and "resident of Mauritius" shall be construed accordingly.

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

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

- (b) if the Contracting 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 Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
- (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
- (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall determine the question by mutual agreement.

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

## ARTICLE 5

### PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.
2. The term "permanent establishment" shall include especially:
  - (a) a place of management;
  - (b) a branch;
  - (c) an office;
  - (d) a factory;
  - (e) a store or warehouse;
  - (f) a workshop;
  - (g) a mine, quarry or other place of extraction of natural resources;
  - (h) a building site or construction or assembly project which exists for more than six months.
3. The term "permanent establishment" shall not be deemed 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 for collecting information, for the enterprise;
  - (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom paragraph (5) applies—shall be deemed to be a permanent establishment in the first-mentioned State if:

- (a) he has, and habitually exercises in that first-mentioned State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
- (b) he has no such authority, but habitually maintains in that first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly delivers goods or merchandise on behalf of the enterprise.

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

6. 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 make either company a permanent establishment of the other.

## ARTICLE 6

### IMMOVABLE PROPERTY

1. Income from immovable property may be taxed in the Contracting State in which such property is situated.

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

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

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

## ARTICLE 7

### BUSINESS PROFITS

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

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

3. In the determination of the profits of a permanent establishment, there shall be allowed as 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. In so far as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph (2) shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles laid down in this Article.

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

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

## ARTICLE 8

### SHIPS AND AIRCRAFT

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

2. The provisions of paragraph (1) shall likewise apply in respect of participations in pools, in a joint business or in an international operations agency of any kind by enterprises engaged in the operation of ships or aircraft in international traffic.

3. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

## ARTICLE 9

### ASSOCIATED ENTERPRISES

Where—

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State.

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

## ARTICLE 10

### DIVIDENDS

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

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

- (a) 5 per cent of the gross amount of the dividends if the recipient is a company (excluding partnerships) which owns directly at least 25 per cent of the capital of the company paying the dividends;
- (b) in all other cases, 15 per cent of the gross amount of the dividends.

3. Notwithstanding the provisions of paragraph (2), dividends paid to a resident of the Federal Republic of Germany by a company being a resident of Mauritius may be taxed according to the law of Mauritius, as long as under Mauritius law in the determination of the taxable profits of a company the dividends are allowed as deduction. But the rate of tax on dividends paid to an individual being a resident of the Federal Republic of Germany shall not exceed the rate of tax payable under Mauritius law on dividends paid to a company being a resident of the Federal Republic of Germany.

4. Notwithstanding the provisions of paragraph (2), German tax on dividends paid to a company being a resident of Mauritius by a company being a resident of the Federal Republic of Germany, at least 25 per cent of the capital of which is owned directly or indirectly by the former company itself, or by it together with other persons controlling it or being under common control with it, shall not exceed 25 per cent of the gross amount of such dividends as long as the rate of German corporation tax on distributed profits is lower than that on undistributed profits and the difference between those two rates is not less than 20 percentage points.

5. The term "dividends" as used in this Article means income from shares, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident, and income derived by a sleeping partner from his participation as such and distributions on certificates of an investment-trust.

6. The provisions of paragraphs (1), (2), (3) and (4) shall not apply if the recipient 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 professional 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 a case the provisions of Articles 7 or Article 14, as the case may be, shall apply.

7. 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 to persons who are not residents of that other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

## ARTICLE 11

### INTEREST

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

2. However, subject to the provision of paragraph (3), such interest may also be taxed in the Contracting State in which it arises and according to the law of that State.

3. Notwithstanding the provision of paragraph (2), interest arising in a Contracting State shall be exempt from tax in that State if it is paid to the Government of the other Contracting State, to a local authority thereof, or to any agency or entity created or organised by the Government thereof in order to carry out governmental functions, or to a company which is a resident of and subject to tax in that other Contracting State and is genuinely carrying on a banking enterprise or is controlled directly or indirectly by one or more companies genuinely carrying on such an enterprise.

4. The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the State from the income is derived. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs (1), (2) and (3) shall not apply if the recipient 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 professional 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 a case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a Land, a political subdivision or a local authority thereof 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 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 Contracting State in which the permanent establishment is situated.

7. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, 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 recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

## ARTICLE 12

### ROYALTIES

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

2. However, such royalties may be taxed in the Contracting State in which they arise and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of such 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 or tapes for television or 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 recipient of the royalties, being a resident of a Contracting State, carries on business in the the other Contracting State in which the royalties arise through a permanent establishment situated therein, or performs in that other State professional 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 a 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 or a local authority thereof 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 in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, 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 recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

## ARTICLE 13

### CAPITAL GAINS

1. Gains from the alienation of immovable property, as defined in paragraph (2) of Article 6, may be taxed in the Contracting State in which such property is situated.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State. However, gains from the alienation of movable property of the kind referred to in paragraph (3) of Article 23 shall be taxable only in the Contracting State in which such movable property is taxable according to the said Article.

3. Gains from the alienation of shares of a company which is a resident of a Contracting State may be taxed in that State.

4. Gains from the alienation of any property other than those mentioned in paragraphs (1), (2) and (3) shall be taxable only in the Contracting State of which the alienator is a resident.

5. The provisions of paragraph (4) shall not affect the right of a Contracting State to levy according to its own law a tax on capital gains from the alienation of any property derived by an individual who is a resident of the other Contracting State and has been a resident of the first-mentioned Contracting State at any time during the five years immediately preceding the alienation of the property.

## ARTICLE 14

### INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless 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 Contracting State but only so much of it as is 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, lawyers, engineers, architects, dentists and accountants.

## ARTICLE 15

### DEPENDENT PERSONAL SERVICES

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

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

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the relevant fiscal year of that other State; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the provisions of paragraphs (1) and (2), remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

## ARTICLE 16

### DIRECTORS' FEES

Directors' fees and 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

### ARTISTS AND ATHLETES

1. Notwithstanding the provisions of Articles 7, 14 and 15, income derived by public entertainers, such as theatre, motion picture, radio or television artists, and musicians, and by athletes, from their personal activities as such or income derived from the furnishing by an enterprise of the services of such public entertainers or athletes, may be taxed in the Contracting State in which these activities are exercised.

2. The provisions of paragraph (1) shall not apply if the visit of public entertainers or athletes to a Contracting State is supported wholly or substantially from public funds of the other Contracting State, of its Land or political subdivision or a local authority thereof.

## ARTICLE 18

### PENSIONS

1. Subject to the provisions of paragraph (1) of Article 19, pensions and other similar remuneration paid in consideration of past employment to a resident of a Contracting State and any annuity paid to such a resident shall be taxable only in that Contracting State.

2. The term "annuity" means a stated sum payable periodically at stated times during life or during 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

### GOVERNMENTAL FUNCTIONS

1. Remuneration including pensions paid by, or out of funds created by a Contracting State, a Land, a political subdivision or a local authority thereof to any individual in respect of an employment shall be taxable only in that State. If, however, the employment is exercised in the other Contracting State by a national of that State not being a national of the first-mentioned State, the remuneration shall be taxable only in that other State.

2. The provisions of Articles 15, 16, 17, and 18 shall apply to remuneration in respect of an employment in connection with any business carried on by a Contracting State, a Land, a political subdivision or a local authority thereof for the purpose of profits.

3. 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, those Länder, political subdivisions or local authorities thereof, to a specialist or volunteer seconded to the other Contracting State with the consent of that other State.

## ARTICLE 20

### PROFESSORS AND TEACHERS

Remuneration which a professor or teacher who is, or immediately before was, a resident of a Contracting State and who visits the other Contracting State with the approval of the government of the latter State for a period not exceeding two years for the purpose of carrying out advanced study or research or for teaching at a university, college, school or other educational institution receives for such work shall not be taxed in that other State, provided that such remuneration is derived by him from outside that other State.

## ARTICLE 21

## STUDENTS AND TRAINEES

1. An individual who was a resident of a Contracting State immediately before visiting the other Contracting State and is temporarily present in that other State solely as a student at a university, college, school or other similar educational institution in that other State or as a business apprentice (including in the case of the Federal Republic of Germany a Volontär or a Praktikant) shall, from the date of his first arrival in that other State in connection with that visit, be exempt from tax in that other State :

- (a) on all remittances from abroad for purposes of his maintenance, education or training; and
- (b) for a period not exceeding in the aggregate four years, on any remuneration not exceeding 8000 DM or the equivalent in Mauritius currency for the fiscal year for personal services rendered in that other Contracting State with a view to supplementing the resources available to him for his maintenance, study or training.

2. An individual who was a resident of a Contracting State immediately before visiting the other Contracting State and is temporarily present in that other State solely for the purpose of study, research or training as a recipient of a grant, allowance or award from a scientific, educational, religious or charitable organisation or under a technical assistance programme entered into by the Government of a Contracting State shall, from the date of his first arrival in that other State in connection with that visit, be exempt from tax in that other State :

- (a) on the amount of such grant, allowance or award; and
- (b) on all remittances from abroad for the purposes of his maintenance, education or training.

## ARTICLE 22

## INCOME NOT EXPRESSLY MENTIONED

1. Items of income of a resident of a Contracting State, which are not expressly mentioned in the foregoing Articles of this Agreement shall be taxable only in that State.

2. The provisions of paragraph (1) shall not apply if the recipient of the 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 professional 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 a case the provisions of Article 7 or Article 14, as the case may be, shall apply.

## ARTICLE 23

## CAPITAL

1 Capital represented by immovable property, as defined in paragraph (2) of Article 6, may be taxed in the Contracting State 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 by movable property pertaining to a fixed base used for the performance of professional services, may be taxed in the Contracting State 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 Contracting State in which the place of effective management of the enterprise is situated.

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

## ARTICLE 24

### RELIEF FROM DOUBLE TAXATION

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

(a) Unless the provisions of subparagraph (b) apply, there shall be excluded from the basis upon which German tax is imposed, any item of income arising in Mauritius and any item of capital situated within Mauritius, which, according to this Agreement, may be taxed in Mauritius. 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 excluded. The foregoing provisions shall apply to dividends only if the dividends are paid to a company being a resident of the Federal Republic of Germany by a company being a resident of Mauritius if at least 25 per cent of the capital of the Mauritius company is owned directly by the German company. There shall also be excluded from the basis upon which German tax is imposed any participation the dividends of which are excluded or, if paid, would be excluded, according to the immediately foregoing sentence from the basis upon which German tax is imposed.

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

(aa) dividends, not dealt with in subparagraph (a);

(bb) interest to which paragraph (2) of Article 11 applies;

(cc) royalties;

(dd) gains to which paragraphs (3) and (5) of Article 13 apply;

(ee) remuneration to which Article 16 applies;

(ff) income to which Article 17 applies;

(gg) income from immovable property to which Article 6 applies, and on capital to which paragraph (1) of Article 23 applies, unless the property from which such income arises, or such capital, forms part of a permanent establishment, referred to in Article 7, situated in Mauritius, or of a fixed base referred to in Article 14, situated in Mauritius.

(c) For the purposes of credit referred to in subparagraph (b) Mauritius tax on dividends shall be deemed to include any amount which would have been payable as Mauritius tax under Mauritius law and in accordance with this Agreement for any year but for an exemption of tax granted for that year or any part thereof under:

(aa) sections 33 and 34 of the Mauritius Income Tax Act (No. 41 of 1974) as amended, so far as it was in force on, and has not been modified since, the date when this Agreement was signed, or has been modified only in minor respects so as not to affect its general character; or

(bb) any other provisions which may subsequently be made granting an exemption which is agreed by the competent authorities of the Federal Republic of Germany and Mauritius to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respect so as not to affect its general character.

2. Tax shall be determined in the case of a resident of Mauritius as follows:

(a) Income other than that mentioned in subparagraph (b) shall be exempt from Mauritius tax when the income is taxable in the Federal Republic of Germany under this Agreement.

(b) As regards income mentioned in Articles 10, 11, 12, 13 paragraph (3) and (5), 16, and 17 Mauritius shall allow to a resident of Mauritius receiving such income from the Federal Republic of Germany a tax credit corresponding to the amount of tax levied in the Federal Republic of Germany in accordance with the above-mentioned Articles. Such tax credit not exceeding the amount of Mauritius tax levied on such income, shall be allowed against Mauritius tax.

(c) For the purposes of subparagraph (a), Mauritius tax may be computed on income chargeable in Mauritius by virtue of this Agreement at the rate appropriate to the total of the income chargeable in accordance with Mauritius law.

## ARTICLE 25

### NON-DISCRIMINATION

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities or any other personal circumstances which it grants to its own residents.

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

4. In this Article the term "taxation" means taxes of every kind and description.

## ARTICLE 26

### MUTUAL AGREEMENT PROCEDURE

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident, or if his case comes under paragraph (1) of Article 25, to that of the Contracting State of which he is a national. This case must be presented within three years from the first notification of the action giving rise to taxation not in accordance with the Agreement.

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

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

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of applying the provisions of this Agreement.

## ARTICLE 27

### EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons, authorities or courts other than those concerned with the assessment or collection of the taxes which are the subject of this Agreement or the determination of appeals or the prosecution of offences in relation thereto.

2. In no case shall the provisions of paragraph (1) be construed so as to impose on one of the Contracting States the obligation:

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

(b) to supply particulars which are 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.

## ARTICLE 28

### DIPLOMATIC AND CONSULAR PRIVILEGES

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

2. In so far as, due to such privileges granted to a person under the general rules of international law or under the provisions of special international agreements, income or capital are not subject to tax in the receiving State, the right to tax shall be reserved to the sending State.

3. For the purposes of this Agreement, persons who are members of a diplomatic or consular mission of a Contracting State in the other Contracting State or in a third State, as well as persons connected with such persons, and who are nationals of the sending State, shall be deemed to be residents of the sending State if they are subjected therein to the same obligations in respect of taxes on income and capital as are residents of that State.

## ARTICLE 29

### LAND BERLIN

This Agreement shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of Mauritius within three months of the date of entry into force of this Agreement.

## ARTICLE 30

### ENTRY INTO FORCE

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

2. This Agreement shall enter into force on the thirtieth day after the date of exchange of the instruments of ratification and shall have effect:

(a) in the Federal Republic of Germany in respect of taxes which are levied for the assessment period beginning on January 1, 1979 and for subsequent assessment periods;

(b) in Mauritius in respect of taxes which are levied for the assessment year beginning on July 1, 1979 and for subsequent assessment years;

(c) in both Contracting States in respect of taxes withheld at source on dividends, interest and royalties paid after December 31, 1978.

## ARTICLE 31

## TERMINATION

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

- (a) in the Federal Republic of Germany in respect of taxes which are levied for any assessment period following that in which the notice of termination is given;
- (b) in Mauritius in respect of taxes which are levied for any year of assessment following that in which the notice of termination is given;
- (c) in both Contracting States in respect of taxes withheld at source on dividends, interest and royalties paid after December 31 of the year in which the notice of termination is given.

DONE at Port Louis, Mauritius this fifteenth day of March 1978 in two originals, each in the German and English languages, both texts being equally authentic.

For Mauritius

V. RINGADOO  
*Minister of Finance*

For the Federal Republic  
of Germany

K. SCHMIDT  
*Ambassador Extraordinary  
and Plenipotentiary*

**PROTOCOL  
MAURITIUS**

AND

**THE FEDERAL REPUBLIC OF GERMANY**

have agreed at the signing at Port Louis, Mauritius on the 15th March 1978 of the Agreement between the two States for the avoidance of double taxation with respect to taxes on income and capital and for the encouragement of mutual trade and investment upon the following provisions which shall form an integral part of the said Agreement.

1. *With reference to Articles 6 to 14 and 17,*

where more than 25 per cent of the capital of a company or of the interest in a partnership which is a resident of Mauritius is held directly or indirectly by persons who are not residents of Mauritius, the provisions of Articles 6 to 14 and 17 of the Agreement shall apply to income derived from the Federal Republic of Germany by such company or partnership only if it proves that the income is subject to Mauritius tax and the tax so payable is equal to the Mauritius tax payable on the income under general Mauritius tax law.

2. *With reference to paragraph (3) of Article 7,*

it is understood, that no deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursements of actual expenses) by the permanent establishment to the head office of the enterprise or any of

its offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or except in the case of banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, it is understood, that no account shall be taken, in determining the profits of a permanent establishment, of amounts charged (otherwise than towards reimbursement, of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other officers, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of banking enterprise by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

3. *With reference to Article 11,*

it is understood that paragraph (3) of Article 11 shall apply to the Kreditanstalt für Wiederaufbau and the Deutsche Gesellschaft für wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft).

4. *With reference to Article 24,*

(a) only the provision of subparagraph (b) of paragraph (1) of Article 24 of the Agreement, with the exclusion of subparagraph (c) of paragraph (1) of Article 24 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 paragraphs (1) and (2) of Article 13 of the Agreement unless the resident of the Federal Republic of Germany concerned proves that the receipts of the permanent establishment or company are derived exclusively or almost exclusively:

(aa) from producing or selling goods and merchandise, giving technical advice or rendering engineering services, or doing banking or insurance business, within Mauritius; or

(bb) from dividends paid by one or more companies, being residents of Mauritius, more than 25 per cent of the capital of which is owned by the first-mentioned company, which themselves derive their receipts exclusively or almost exclusively from producing or selling goods of merchandise, giving technical advice or rendering engineering services, or doing banking or insurance business, within Mauritius.

(b) Where a company being a resident of the Federal Republic of Germany distributes income derived from Mauritius, paragraph (1) of Article 24 of the Agreement shall not preclude the compensatory imposition of corporation tax on such distributions in accordance with the provision of German tax law.

For Mauritius

V. RINGADOO  
*Minister of Finance*

For the Federal Republic  
of Germany

K. SCHMIDT  
*Ambassador Extraordinary*