AGREEMENT BETWEEN THE GOVERNMENT OF INDIA AND THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY FOR AVOIDANCE OF DOUBLE TAXATION OF INCOME New Delhi, 18 March 1959

Whereas the Government of India and the Government of the Federal Republic of Germany desire to conclude an Agreement for the avoidance of double taxation of income;

Now, therefore, it is hereby agreed as follows :

Article I

(1) The taxes which are the subject of the present Agreement are :

(a) *in India :*

the income tax,

the super tax,

the surcharge

imposed under the Indian Income-tax Act, 1922 (11 of 1922) (hereinafter referred to as "Indian tax");

(b) *in the Federal Republic of Germany :*

the Einkommensteuer (income tax),

the Korperschaftstouer (corporation tax),

the Notopfer Berlin (Berlin emergancy aid tax) (hereinafter referred to as "Federal Republic tax").

(2) The present Agreement shall also apply to any other taxes of a substantially similar character imposed in India or the Federal Republic of Germany subsequent to the date of signature of the present Agreement.

Article II

(1) In the present Agreement, unless the context otherwise requires :

(a) the term "Federal Republic" means the Federal Republic of Germany; "the territory of the Federal Republic of Germany" means the territory in which the Basic Law for the Federal Republic of Germany is in force;

(b) the terms "India" and the "territory of India" shall have the meanings assigned to them in Article I of the Constitution of India;

(c) the terms "one of the territories" and "the other territory" mean the Federal Republic of Germany or India as the context requires;

(d) the term "person" includes natural persons, companies and all other entities which are treated as taxable units under the tax laws in force in the respective territories;

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

(f) the term "tax" means Federal Republic tax or Indian tax, as the context requires;

(g) the terms "resident of the Federal Republic" and "resident of India" mean, respectively, a person who is resident in the Federal Republic for the purposes of Federal Republic tax and not resident in India for the purposes of Indian tax, and a person who is resident in India for the purposes of Indian tax and not resident in the Federal Republic for the purposes of Federal Republic Tax. A company shall be regarded as resident in the Federal Republic, if it is incorporated in the Federal Republic or its business is wholly managed and controlled in the Federal Republic; a company shall be regarded as resident in India if it is incorported in India or its business is wholly managed and controlled in India;

(h) the terms "Federal Republic enterprise" and "Indian enterprise" mean, respectively, an industrial or commercial enterprise or undertaking carried on by a resident of the Federal Republic, and an industrial or commerical enterprise or undertaking carried on by a resident of India; and the terms "enterprise of one of the territories" and "enterprise of the other territory" mean a Federal Republic enterprise or an Indian enterprise, as the context requires;

(i) the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on;

(aa) The term "fixed place of business" shall include a branch, an office, a factory, a workshop, a warehouse, a mine, quarry, or other place of extraction of natural resources and a permanant sales exhibition.

(bb) An enterprise of one of the territories shall be deemed to have a fixed place of business in the other territory if it carries on in that other territory a construction, installation or assembly project or the like.

(cc) The use of mere storage facilities or the maintenance of a place of business exclusively for the purchase of goods or merchandise and not for any processing of such goods or merchandise in the territory of purchase, shall not constitute a permanent establishment.

(dd) A person acting in one of the territories for or on behalf of an enterprise of the other territory shall be deemed to be a permanent establishment in the first-mentioned territory, but only if

1. he has and habitually exercises in the first-mentioned territory a general authority to negotiate and enter into contracts for or on behalf of the enterprise, unless the activities of the person are limited exclusively to the purchase of goods or merchandise for the enterprise, or

2. he habitually maintains in the first-mentioned territory a stock of goods or merchandise belonging to the enterprise from which the person regularly delivers goods or merchandise for or on behalf of the enterprise, or

3. he habitually secures orders in the first-mentioned territory, exclusively or almost exclusively, for the enterprise itself, or for the enterprise and other enterprises which are controlled by it or have a controlling interest in it.

(ee) A broker of a genuinely independent status who merely acts as an intermediary between an enterprise of one of the territories and a prospective customer in the other territory shall not be deemed to be a permanent establishment in that other territory where such activities do not involve securing of orders within the meaning of subparagraph (dd) 3, above.

(ff) The fact that a company, which is a resident of one of the territories, has a subsidiary company which either is a resident of the other territory or carries on a trade or business in that other territory (whether through a permanent establishment or otherwise) shall not, of itself, constitute that subsidiary company a permanent establishment of its parent company;

(j) the term "pension" means periodic payments made in consideration of services rendered or by way of compensation for injuries received;

(k) the term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time;

(l) the term "competent authority" means in the case of India, the Central Government in the Ministry of Finance, Department of Revenue, and in the case of the Federal Republic of Germany, the Federal Minister of Finance.

(2) In the application of the provisions of this Agreement in one of the territories any term not otherwise defined in this Agreement shall, unless the context otherwise requires, have the meaning which it has under the laws in force in that territory relating to the taxes which are the subject of this Agreement.

Article III

(1) Subject to the provisions of paragraph (3) below, tax shall not be levied in one of the territories on the industrial or commercial profits of an enterprise of the other territory unless profits are derived in the first-mentioned territory through a permanent establishment of the said enterprise situated in the first-mentioned territory. If profits are so derived, tax may be levied in the first-mentioned territory on the profits attributable to the said permanent establishment.

(2) There shall be attributed to the permanent establishment of an enterprise of one of the territories situated in the other territory, the industrial or commercial profits which it might be expected to derive in that other territory if it were an independent enterprise engaged in the same or simialr activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is the permanent establishment. In any case where the correct amount of profits attributable to a permanent establishment is incapable of determination, or the ascertainment thereof presents exceptional difficulties, the profits attributable to the establishment may be estimated on a reasonable basis.

(3) For the purposes of this Agreement the term "Industrial or commerical profits" shall not include income in the form of rents, royalties, interest, dividends, management charges, remuneration for labour or personal services or income from the operation of ships or aircraft but shall include rents or royalties in respect of cinematographic films.

Article IV

Where a resident of one of the territories carries on business with a resident of the other territory and it appears to the taxation authorities of the first-mentioned territory that owing to the close connection between such persons the course of business is so arranged that the business done produces to the resident of the first-mentioned territory either no profits or less than ordinary profits which might be expected to arise in that business, tax shall be leviable in the former territory on such profits as may reasonably be deemed to have arisen therefrom.

Article V

(1) Income derived from the operation of aircraft by an enterprise of one of the territories shall not be taxed in the other territory, unless the aircaft is operated wholly or mainly between places within that other territory.

(2) Paragraph (1) shall likewise apply in respect of participations in pools of any kind by enterprises engaged in air transport.

Article VI

(1) Where an enterprise of one of the territories derives profits through shipping operations the tax leviable on such profits in

the other territory shall be reduced by an amount equal to fifty per cent thereof.

(2) Paragraph (1) shall not apply to profits arising as a result of coastal traffic, the term "coastal traffic" means traffic which originates and terminates in the territorial waters of the same territory.

(3) This Article shall not, in the case of India, affect the provisions of Sections 44A and 44B of the Indian Income-tax Act, 1922, relating to the assessment of profits from occassional shipping or tramp steamers. When an adjustment is to be made under Section 44C of the Indian Income-tax Act, 1922, in the case of occassional shipping or tramp steamers, the provisions of paragraph (1) will apply.

Article VII

Dividends paid by a company which is a resident of one of the territories to a resident of the other territory may be taxed in both territories.

Article VIII

Interest on bonds, securities, notes, debentures or any other form of indebtedness, derived by a resident of one of the territories from sources in the other territory may be taxed in both territories.

Article IX

Income from immovable property may be taxed in the territory in which the property is situated. For this purpose any rent or royalty or other income derived from the operation of a mine, quarry or any other extraction of natural resources shall be regarded as income from immovable property.

Article X

Capital gains arising from the sale, exchange or transfer of a capital asset, whether movable or immovable, may be taxed in the territory in which the capital asset is situtated at the time of such sale, exchange or transfer. For this purpose the *situs* of the shares of a company shall be deemed to be in the territory where the company is incorporated.

Article XI

(1) Remuneration, including pensions and annuities, paid out of public funds of India in respect of present or past services shall not be taxed in the Federal Republic unless the payment is made to a citizen of the Federal Republic.

(2) Remuneration, including pensions and annuities, paid out of public funds of the Federal Republic or its Laender or political sub-divisions thereof in respect of present or past services shall not be taxed in India unless the payment is made to a citizen of India.

(3) The provisions of paragraphs (1) and (2) of this Article shall not apply to payments in respect of services in connection with any trade or business carried on by either of the Contracting Parties, or political sub-divisions thereof for purposes of profit.

(4) The provisions of paragraphs (1) and (2) of this Article shall also apply to remuneration, including pensions and annuities, paid by the Federal Bank, the Federal Railways and the Postal Administration of the Federal Republic and the corresponding organisations of India.

Article XII

(1) Profits or remuneration from professional services (including services as a director) or from services as an employee derived by an individual who is a resident of one of the territories may be taxed in the other territory only if such services are rendered in that other territory.

(2) An individual who is a resident of India shall not be taxed in the Federal Republic on profits or remuneration referred to in paragraph (1) if

(a) he is temporarily present in the Federal Republic for a period or periods not exceeding in the aggregate 183 days during a taxable year,

(b) the services are rendered for or on behalf of a resident of India,

(c) the profits or remuneration are subject of Indian tax, and

(d) the profits or remuneration are not deducted in computing the profits of an enterprise chargeable to Federal Republic tax.

(3) An indivdual who is a resident of the Federal Republic shall not be taxed in India on the profits or remuneration referred to in paragraph (1) if

(a) he is temporarily present in India for a period or periods not exceeding in the agregate 183 days during a relevent "previous year",

(b) the services are rendered for or on behalf of a resident of the Federal Republic,

(c) the profits or remuneration are subject to Federal Republic tax, and

(d) the profits or remuneration are not deducted in computing the profits of an enterprise chargeable to Indian tax.

(4) Where an individual permanently or predominantly renders services on ships or aircraft operated by an enterprise of one of the territories such services shall be deemed to be rendered in that territory.

Article XIII

Any pension or annuity (other than pension or annuities to which Article XI applies) derived by a resident of one of the territories from a source in the other territory may be taxed in that other territory.

Article XIV

A professor or teacher from one of the territories, who receives remuneration for teaching, during a period of temporary residence not exceeding two years, at a university, college school or other eductional institution in the other territory, shall not be taxed in that other territory in respect of that remuneration.

Article XV

(1) An individual from one of the territories who is temporarily present in the other territory solely

(a) as a student at a recognized university, college or shoool in such other territory,

(b) as a business apprentice (including in the Federal Republic a Volontar or a Praktikant), or

(c) as the recipient of a grant, allowance or award for the primary purpose of study or research from a religious, charitable, scientific or educational organisation

shall not be taxed in the other territory in respect of remittances from abroad for the purposes of his maintenance, education or training, in respect of a scholarship, and in respect of any amount representing remuneration for an employment in that other territory.

(2) An individual from one of the territories who is temporarily present in the other territory for a period not exceeding one year, as an employee of, or under contract with, an enterprise of the former territory or an organisation referred to in paragraph (1) sub-paragraph (c) above, solely to acquire technical, professional or business experience from a person other than such enterprise or organisation, shall not be taxed in that other territory on remuneration for such period, unless the amount thereof exceeds 15,000 DM or its equivalent in Indian currency.

(3) An individual from one of the territories temporarily present in the other territory under arrangements with the Government of that other territory solely for the purpose of training, research or study shall not be taxed in that other territory on remuneration received in respect of such training, research or study, unless the amount thereof exceeds 25,000 DM or its equivalent in Indian Currency.

Article XVI

(1) The laws in force in either of the territories will continue to govern the assessment and taxation of income in the respective territories except where express provision to the contrary is made in this Agreement.

(2) Subject to the provisions of paragraph (1) above, tax shall be determined in the case of a resident of India as follows :

Where there is included in an assessment made in India any income from sources in the Federal Republic on which, in accordance with the present Agreement, tax is levied in the Federal Republic, there shall be allowed as a credit against the tax payable in India, a sum equal to the Federal Republic tax actually levied or the Indian tax, whichever is lower.

(3) Subject to the provisions of paragraph (1) above, tax shall be determined in the case of a resident of the Federal Republic as follows :

(a) Unless the provisions of sub-paragraph (b) below apply, there shall be excluded from the basis upon which Federal Republic tax is imposed, any item of income from sources within India

which, according to this Agreement, may be taxed in India. The Federal Republic, however, retains the right to take into account in the determination of its rate of tax the items of income so excluded. However, the foregoing provisions shall in the case of income from dividends 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 India more than 25 per cent of the voting shares of which are owned by the first-mentioned company.

(b) There shall be allowed as indicated below a credit against the Federal Republic tax payable in respect of the following items of income from sources within India :

(aa) on dividends not dealt with in sub-paragraph (a) above, the Indian super tax including surcharge levied theron, but in any case at least the amount of 50 per cent of the Federal Republic tax;

(bb) on interest within the meaning of Article VIII the Indian tax levied thereon, but in any case at least an amount of 50 per cent of the Federal Republic tax;

(cc) on profits through shipping operations, on royalties, and on remuneration within the meaning of Article XI, the Indian tax levied thereon.

Article XVII

The competent authorities shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of the present Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of the present Agreement. No information as aforesaid shall be exchanged by the competent authority of one of the territories which would disclose any trade, business, industrial or professional secret or any trade process to the authority of the other territory.

Article XVIII

Where a resident of one of the territories shows proof that the action of the taxation authorities of the other territory resulted or will result in double taxation contrary to the provisions of the present Agreement, he shall be entitled to present his case to the competent

authority of the territory of which he is a resident. Should his claim be deemed worthy of consideration, the competent authority to which the claim is made shall endeavour to come to an agreement with the competent authority of the other territory with a view to avoiding double taxation.

Article XIX

(1) This Agreement shall apply to Land Berlin provided that the Government of the Federal Republic of Germany has not delivered a contrary declaration to the Government of India within three months from the date of entry into force of the Agreement.

(2) Upon the application of this Agreement to Land Berlin, references in the Agreement to the Federal Republic shall be deemed also to be references to Land Berlin.

Article XX

(1) The present Agreement shall be ratified.

(2) The instruments of ratification shall be exchanged at Bonn as soon as possible.

(3) This Agreement shall come into force after the expiration of a month following the date on which the instruments of ratification are exchanged and shall thereupon have effect

(a) in respect of Indian tax in relation to the income for any "previous year" relevant to any year of assessment beginning on or after the 1st April, 1958, and

(b) in respect of the Federal Republic tax, for taxes which are levied for the calendar year 1957 and for subsequent calendar years.

Article XXI

This Agreement shall continue in effect indefinitely but either of the Contracting Parties may on or before the 30th day of June in any calendar year after 1960 give to the other Contracting Party notice of termination, and in such event this Agreement shall cease to be effective—

(a) in respect of Indian tax, in relation to the income which arises on or after the 1st January following the year in which the notice of termination is given, and

(b) in respect of Federal Republic tax, for taxes which are levied for the calendar years following the year in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned duly authorised thereto have signed this Agreement and have affixed thereto their seals.

DONE at New Delhi on 18th March, 1959 in duplicate, in the English, German and Hindi languages, all the three texts being equally authentic, except in the case of doubt when the English text shall prevail.

Sd./-
(Dr. B. GOPALA REDDY),
Minister for Revenue and
Civil Expenditure.
Government of India.

Sd./-
(Dr. W. MELCHERS),
Ambassador of the Federal
Republic of Germany in India.

LETTERS

MINISTER FOR REVENUE AND CIVIL EXPENDITURE

New Delhi, the 18th day of March, 1959

Dear Sir,

The Agreement between the Government of India and the Government of the Federal Republic of Germany for the Avoidance of Double Taxation of Income being signed today, I have the honour, on behalf of the Government of India, to inform you that the two Contracting Parties have agreed that the provisions referred to shall be applied as follows :

1. Article II (1)(i)(dd)

The term "person" as used in the provision referred to includes an employee as well as person who, though being of independent status, performs activities similar to those of an employee.

2. Article II(1)(i)(dd)(3)

The term "almost exclusively" shall be understood to mean that the person's activities for or on behalf of enterprises other than those

referred to therein are of such minor importance in relation to his activities for or on behalf of the enterprises mentioned therein that for all practical purposes such person may be regarded as working solely for or on behalf of the latter enterprises.

Enterprises controlled by the same person shall be treated as one enterprise.

I should be grateful if you would confirm your agreement with the above definitions and that, in such case, this note and your reply thereto should be deemed to be part of the Agreement.

Please accept, Mr. Ambassador, the assurance of my high consideration.

Dr. B. GOPALA REDDY.

To
His Excellency Dr. W. MELCHERS,
Ambassador of the Federal Republic
of Germany in India,
New Delhi.

New Delhi, the 18th March, 1959

Mr. MINISTER,

With reference to the Agreement signed to-day, between the Government of the Federal Republic and the Government of India for the Avoidance of Double Taxation of Income, you on behalf of the Government of India informed me of the following :

(Not printed)

I have the honour to inform you that this proposal meets with the approval of the Government of the Federal Republic of Germany. Your note of today's date and my reply thereto shall therefore be part of the Agreement.

Accept, Mr. Minister, the assurance of my high consideration.

Dr. W. MELCHERS.

To
Dr. B. GOPALA REDDY,
Minister for Revenue and Civil Expenditure,
New Delhi.

Notification No. 87 (25/33/57-IT), dated 13-9-1960

G.S.R. 1090.—Whereas the annexed agreement for the avoidance of double taxation of income between the Government of India and the Government of the Federal Republic of Germany has been ratified and the Instruments of Ratification exchanged as required by Article XX of the said Agreement :

Now, therefore, in exercise of the powers conferred by Section 49A of the Indian Income-tax Act, 1922 (11 of 1922), the Central Government hereby directs that all provisions of the said Agreement shall be given effect to in the Union of India.