

GOVERNMENT NOTICE NO. 194

REPUBLIC OF TRINIDAD AND TOBAGO

THE INCOME TAX ORDINANCE, CH. 33 No. 1

ORDER

MADE BY THE PRESIDENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO
UNDER SECTION 47(1) OF THE INCOME TAX ORDINANCE, AS ENACTED BY
SECTION 32 OF THE FINANCE ACT, 1966

**THE DOUBLE TAXATION RELIEF (FEDERAL REPUBLIC OF GERMANY)
ORDER, 1976**

WHEREAS it is provided by subsection (1) of section 47 of the Income Tax Ordinance that if the President by Order published in the *Gazette* declares that arrangements specified in the Order have been made with the Government of any country with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that country, and that it is expedient that those arrangements shall have effect:

And whereas by an Agreement dated the 4th day of April, 1973, made between the Government of Trinidad and Tobago and the Government of the Federal Republic of Germany, arrangements were made *inter alia* for the avoidance of double taxation:

Now, therefore, the President in pursuance of the said subsection (1) of section 47 of the Income Tax Ordinance is pleased to order, and it is hereby ordered as follows:-

1. This Order may be cited as the Double Taxation Relief (Federal Republic of Germany) Order, 1976.

2. It is hereby declared: -

- (a) that the arrangements specified in the Schedule have been made with the Government of the Federal Republic of Germany;
- (b) that it is expedient that those arrangements should have effect.

SCHEDULE

AGREEMENT BETWEEN TRINIDAD AND TOBAGO AND THE FEDERAL REPUBLIC OF GERMANY FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND FOR THE ENCOURAGEMENT OF INTERNATIONAL TRADE AND INVESTMENT

TRINIDAD AND TOBAGO AND THE FEDERAL REPUBLIC OF GERMANY

Desiring to conclude an Agreement for the Avoidance of Double Taxation with respect to Taxes on Income and for the Encouragement of International 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 imposed on behalf of each Contracting State or of its Lander, political subdivisions or local authorities, irrespective of the manner in which they are levied.

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

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

(a) in the Federal Republic of Germany:

the Einkommensteuer (income tax) including the Ergänzungsabgabe (surcharge) thereon, the Körperschaftsteuer (corporation tax) including the Ergänzungsabgabe (surcharge) thereon, and the Gewerbesteuer (trade tax); (hereinafter referred to as "German tax");

(b) in Trinidad and Tobago:

the income tax, the corporation tax, and the unemployment levy;

(hereinafter referred to as "Trinidad and Tobago 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 shall likewise apply to the German trade tax, computed on a basis other than income.

Article 3

General Definitions

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

(a) the term "Federal Republic of Germany", when used in a geographical sense, means the territory in which the Basic Law for the Federal Republic of Germany is in force, as well as any area adjacent to the

territorial waters of the Federal Republic of Germany designated in accordance with international law as related to the rights which the Federal Republic of Germany may exercise with respect to the sea-bed and sub-soil and their natural resources, as domestic area for tax purposes;

- (b) the term "Trinidad and Tobago", when used in a geographical sense, means the territory of Trinidad and Tobago as well as any area adjacent to the territorial waters of Trinidad and Tobago designated in accordance with international law as related to the rights which Trinidad and Tobago may exercise with respect to the sea-bed and sub-soil and their natural resources, as domestic area for tax purposes;
- (c) the terms a "Contracting State" and the "the other Contracting State" mean the Federal Republic of Germany or Trinidad and Tobago, as the context requires;
- (d) the term "person" means an individual, a company and any other body of persons;
- (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 "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 and association deriving its status as such from the law in force in the Federal Republic of Germany;
 - (bb) in respect of Trinidad and Tobago any individual possessing the nationality of Trinidad and Tobago and any legal person, partnership and association deriving its status as such from the law in force in Trinidad and Tobago;
- (h) the term "competent authority" means in the case of the Federal Republic of Germany the Federal Minister of Economics and Finance, and in the case of Trinidad and Tobago the Minister of Finance or his authorised representative.

2. As regards the application of the 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 that State relating to the taxes which are the subject of the 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.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then this case shall be determined in accordance with the following rules:-

- (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 interest);
- (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 settle 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 Contracting 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, subject to paragraphs 3 and 4, include especially:-

- (a) a place of management;
- (b) a branch;
- (c) a store;
- (d) an office;
- (e) a factory;
- (f) a warehouse;
- (g) a workshop;
- (h) a mine, quarry or other place of extraction of natural resources;
- (i) 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 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;
- (b) he has, and habitually exercises in that State, an authority to fill orders on behalf of the enterprise from a stock of goods or merchandise which he maintains in that State and which belongs to 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 genuinely 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 constitute for 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 right 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 all reasonable expenses which are incurred for the purpose 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 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. The term "profits of an enterprise" does not include dividends, interest, royalties, rents or payments mentioned in paragraph 4 of Article 14 received by an enterprise of a Contracting State and not effectively connected with a permanent establishment which the enterprise has in the other Contracting State.

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 participation in pools, in a joint business or in an international operation agency of any kind by enterprises engaged in the operation of ships or aircraft in international traffic.

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) 10 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) 20 per cent of the gross amount of the dividends in all other cases.

3. Notwithstanding the provisions of paragraph 2 German tax on dividends paid to a company being a resident of Trinidad and Tobago by a company being a resident of the Federal Republic, at least 25 per cent of the capital of which is held 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 25.75 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 20 units or more.

4. The term "dividends" as used in this Article means income from shares 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 shall also include distributions on certificates of an investment trust. It shall also include, in the case of the Federal Republic of Germany, income derived by a sleeping partner from his participation as such and, in the case of Trinidad and Tobago, any item of income which under the law of Trinidad and Tobago is treated as a distribution.

5. The provisions of paragraphs 1 to 3 shall not apply if the recipient of the dividends, being a resident of a Contracting State, has in the other Contracting State, of which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provisions of Article 7 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 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.

7. Where a company which is a resident of one of the Contracting States, having a permanent establishment in the other Contracting State, derives profits or income from that permanent establishment, any remittances of such profits by the permanent establishment to the resident of the first-mentioned State may be taxed in accordance with the law of the other Contracting State but the rate of tax imposed on such

remittances shall not exceed 10 per cent, provided that such tax shall not apply to the extent to which the profits remitted have been re-invested in the other Contracting State.

Article 11

Interest

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

2. However, such interest may be taxed in the Contracting State in which it arises and according to the law of that State, but the tax so charged shall not exceed:

(a) 10 per cent of the gross amount of the interest if the interest is paid to a bank which is a resident of the other Contracting State;

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

3. Notwithstanding the provisions of paragraph 2,

(a) interest arising in the Federal Republic of Germany and paid to the Government of Trinidad and Tobago, the Central Bank of Trinidad and Tobago or to any agency wholly owned or controlled by the Government of Trinidad and Tobago shall be exempt from German tax;

(b) interest arising in Trinidad and Tobago and paid to the German Government, the Deutsche Bundesbank, the Kreditanstalt für Wiederaufbau or to the Deutsche Gesellschaft für wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) shall be exempted from Trinidad and Tobago tax.

The competent authorities of the Contracting States shall determine by mutual agreement any other governmental institution to which this paragraph shall apply.

4. The term "interest" as used in this Article means income, not being a dividend in the meaning of Article 10, 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 which the income is derived.

5. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the interest, being a resident of a Contracting State, has in the other Contracting State a

permanent establishment with which the debt-claim from which the interest arises is effectively connected. In such a case, the provisions of Article 7 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 payment 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 received by 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 10 per cent of the gross amount of such payments.

3. Notwithstanding the provisions of paragraph 2, royalties paid as a consideration for the use of, or the right to use, any copyright (excluding cinematograph films or tapes for television or broadcasting) shall be exempt from tax in the Contracting State from which they arise.

4. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trademark, 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.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State a permanent establishment with which the right or property giving rise to the royalties is effectively connected. In such a case, the provisions of Article 7 shall apply.

6. 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.

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 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

Gains from the Alienation of Property deemed to be Income

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 ships, and aircraft operated in international traffic and movable property pertaining to the operation of such 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 operating such ships or aircraft is situated.

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 such services or such activities are performed in the other Contracting State. If the services or the activities are so performed, such income as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, income derived by a resident of a Contracting State in respect of such services or such activities performed in the other Contracting State shall be taxable only in the first-mentioned State if he is present in that other State for the purpose of performing his services or activities for a period or periods not exceeding in the aggregate 30 days in the calendar year concerned.

3. 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.

4. The provisions of paragraph (1) shall also apply to payments made by an enterprise of a Contracting State to an enterprise of the other Contracting State for the provision of professional and technical services, provided that such payments are not attributable to a permanent establishment which the last-mentioned enterprise has in the other State. However, the tax charged in the first-mentioned State shall not exceed 5 per cent of the gross amount of such payments attributable to the services performed in that State.

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 calendar year concerned; and
- (b) the remuneration is paid by, or on behalf of , and employer who is not a resident of the other State; and
- (c) the remuneration is not borne by permanent establishment or a fixed base which the employer has in the other State.

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

Artistes and Athletes

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

2. Where the services of a public entertainer or an athlete are provided in a Contracting State by an enterprise of the other Contracting State, the income derived from providing those services by such enterprise may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the artiste or athlete are exercised.

Article 18

Public Funds

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 and 17 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 profit.

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 local authority thereof, out of funds exclusively supplied by that State, those Lander, 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 19

Pensions and Annuities

Subject to the provisions of paragraph 1 of Article 18, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

Article 20

Teachers, Students and Trainees

1. Subject to the provisions of Article 18, a professor or teacher who is a resident of a Contracting State and who, at the invitation of the Government of the other Contracting State or of a university or other approved educational institution of that other Contracting State, visits that other State for a period not exceeding two years for the

purpose of carrying out advanced study or for teaching or for research undertaken in the public interest at such a university or other approved educational institution shall be exempt from tax in that other Contracting State on his income received from such activity, provided that such remuneration is derived by him from outside that other State.

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 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 five years, on any remuneration not exceeding 6,000 DM or the equivalent in Trinidad and Tobago currency for the calendar year for personal services rendered in that other State with a view to supplementing the resources available to him for such purposes.

3. 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, for a period not exceeding two years from the date of his first arrival in that other State in connection with that visit, be exempt from tax in that other State on -

- (a) the amount of such grant, allowance or award;
- (b) all remittances from abroad for the purposes of his maintenance, education or training; and
- (c) any remuneration not exceeding 6000 DM or the equivalent in Trinidad and Tobago currency for the calendar year for personal services rendered in that other State, provided that such services form part of his study, research or training.

Article 21

Income from sources outside of both Contracting States

Items of income of a resident of a Contracting State from sources outside of both Contracting States shall be taxable only in the first-mentioned State.

Article 22

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 derived from Trinidad and Tobago, which, according to this Agreement, may be taxed in Trinidad and Tobago. In the determination of its rate of tax applicable to any item of income not so excluded, the Federal Republic of Germany, however, will take into account the items of income so excluded. In the case of income from dividends, the foregoing provisions of this subparagraph shall apply only to such dividends within the meaning of sentence 1 of paragraph 4 of Article 10 as are paid to a company limited by shares (Kapitalgesellschaft) being a resident of the Federal Republic of Germany by a company limited by shares (Kapitalgesellschaft) being a resident of Trinidad and Tobago if at least 25 per cent of the capital of the Trinidad and Tobago company is held directly by the German company. If according to the foregoing provisions income derived from Trinidad and Tobago is to be excluded from the basis upon which German tax is imposed, then the property situated in Trinidad and Tobago giving rise to such income, if any, shall be excluded from the basis upon which German capital tax (Vermögensteuer) 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 tax and corporation tax, including the surcharge thereon, payable in respect of the following items of income derived from Trinidad and Tobago, the Trinidad and Tobago tax paid under the law of Trinidad and Tobago and in accordance with this Agreement on -

- (aa) dividends to which subparagraph (a) does not apply;
- (bb) interest to which paragraph 2 of Article 11 applies;
- (cc) royalties to which paragraph 2 of Article 12 applies;
- (dd) payments to which paragraph 4 of Article 14 applies;
- (ee) remuneration to which Article 16 applies;
- (ff) remuneration to which Article 17 applies.

The credit shall not, however, exceed that part of the German tax, as computed before the credit is given, which is appropriate to such items of income.

- (c) If in the cases (aa), (bb) and (cc) of subparagraph (b) above Trinidad and Tobago tax on dividends, on interest to which paragraph 2 of Article 11 applies, or on royalties to which paragraph 2 of Article 12 applies, is wholly relieved or reduced below the rates of tax provided for in Article 10, 11 or 12 by special incentive measures under Trinidad and Tobago law designed to promote economic development in Trinidad and Tobago, there shall be allowed as a credit against German income tax and corporation tax, including the surcharge thereon, on such dividends, interests or royalties an amount corresponding to the rate of tax provided for in the respective Article. The credit allowed under the foregoing sentence shall, however, not exceed the amount of Trinidad and Tobago tax which would have been payable but for such reduction.

2. Tax shall be determined in the case of a resident of Trinidad and Tobago as follows:-

- (a) Subject to the provisions of the law of Trinidad and Tobago regarding credit for foreign tax there shall be allowed as a credit against Trinidad and Tobago tax payable in respect of any item of income derived from the Federal Republic of Germany, the German tax paid under the laws of the Federal Republic of Germany and in accordance with this Agreement. The credit shall not, however, exceed that part of the Trinidad and Tobago tax as computed before the credit is given, which is appropriate to such item of income;
- (b) Where such income is a dividend paid by a company which is a resident of the Federal Republic of Germany to a company which is a resident of Trinidad and Tobago and which owns directly or indirectly not less than 10 per cent of the voting capital stock in the first-

mentioned company, the credit shall take into account (in addition to any German tax on dividends) the German corporation tax payable in respect of its profits by the company paying the dividends. The credit shall not, however, exceed that part of the Trinidad and Tobago tax as computed before the credit is given, which is appropriate to such items of income.

Article 23

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 or 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 partially 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 that first-mentioned State are or may be subjected.

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

Article 24

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.

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.

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 25

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions 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, collecting or prosecution in respect of taxes which are subject to this Agreement.

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 law or the administrative practice of that or of the other Contracting State;

- (b) to supply particulars which are not obtained under laws, or in the normal course of the administration of that or of the other Contracting States;
- (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 26

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 international agreements.

2. Insofar 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 is 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 as are residents of that State.

Article 27

Land Berlin

This Agreement shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Government of Trinidad and Tobago within three months from the date of entry into force of this Agreement.

Article 28

Entry into Force

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

2. This Agreement shall enter into force on the 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 1972 and for subsequent assessment periods;
- (b) in Trinidad and Tobago in respect of taxes which are levied for the year of income 1972 and for subsequent years of income;
- (c) in both Contracting States in respect of taxes withheld at source on dividends, interest and royalties paid and other payments made after December 31, 1971.

Article 29

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 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 the assessment period next following that in which the notice of termination is given and for subsequent assessment periods;
- (b) in Trinidad and Tobago in respect of taxes which are levied for the year of income next following that in which the notice of termination is given and for subsequent years of income;

- (c) on both Contracting States in respect of taxes withheld at source on dividends, interest and royalties paid, and other payments made after December 31 of the year in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE at Port of Spain this 4th day of April, 1973 in four originals, two each in the English and German languages, all texts being equally authentic.

GEORGE M. CHAMBERS
For the Government of Trinidad and Tobago

HANS HERMANN HASERKAMP
Federal Republic of Germany

PROTOCOL

TRINIDAD AND TOBAGO

AND

THE FEDERAL REPUBLIC OF GERMANY

HAVE AGREED at the Signing of Port of Spain on April 4, 1973 of the Agreement between the two States for the Avoidance of Double Taxation with respect to taxes on Income and for the Encouragement of International Trade and Investment upon the following provisions which shall form an integral part of the said Agreement.

- (1) With reference to Articles 6 to 21
 - (a) where, under any provision of Articles 6 to 21 of the Agreement, income derived from a Contracting State, except interest to which paragraph 3 of Article 11 applies, is relieved from tax in that State and, under the law in force in the other Contracting State, such income is subject to tax by reference to the amount thereof which is remitted to or received in that other State, then the relief to be allowed under this Agreement in the first-mentioned State shall apply only to so much of the income as is remitted to or received in the other State;

(b) the provisions of Articles 6 to 21 of the Agreement shall apply to any item of income derived from the Federal Republic of Germany by a company or partnership which is a resident of Trinidad and Tobago more than 25 per cent of the capital of which is held, directly or indirectly, by persons who are not residents of Trinidad and Tobago, only if the company or partnership proves that the income of such company or partnership is subject to Trinidad and Tobago tax and the tax appropriate thereon is equal to Trinidad and Tobago tax payable on such income under general Trinidad and Tobago tax law.

(2) With reference to Article 7

if an enterprise of a Contracting State, which has a permanent establishment in the other Contracting State, sells goods or merchandise of the same or similar kind as those sold by the permanent establishment, or renders services of the same or similar kind as those rendered by the permanent establishment, the profits of such activities may be attributed to the permanent establishment unless the enterprise proves that such sales or services are not attributable to the activity of the permanent establishment.

(3) With reference to Article 11

any provision of Trinidad and Tobago law having the effect or requiring interest paid to be treated on a distribution by the Trinidad and Tobago Corporation shall apply to interest paid to a resident of the Federal Republic of Germany only to the extent that the taxpayer is unable to demonstrate to the satisfaction of the taxing authorities of Trinidad and Tobago that the investment giving rise to the interest (and its denomination as indebtedness) did not have as its purpose the avoidance of Trinidad and Tobago tax.

(4) With reference to paragraph 4, Article 14

where owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of payments made 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 payment shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

(5) With reference to Article 22

notwithstanding the provisions of sub-paragraph (a) of paragraph 1, the provisions of sub-paragraph (b) of paragraph 1 shall likewise apply -

(a) to the profits of a permanent establishment, or to gains referred to in paragraph 2 of Article 13 of the Agreement, provided that the resident of the Federal Republic of Germany concerned is unable to prove that the receipts of the permanent establishment are derived exclusively or almost exclusively from producing or selling tangible property, mining, giving technical advice or rendering engineering services, or doing banking or insurance business, within Trinidad and Tobago;

(b) to dividends paid by, and to the shareholding in, a company if but for this Agreement, under German tax law there would not be allowed as a credit in addition to any Trinidad and Tobago tax on dividends the Trinidad and Tobago corporation tax payable in respect of its profits, if any, by such company.

Dated this 22nd day of November, 1976

K. BOSWELL-INNISS
For Secretary to the Cabinet