Agreement

between

Ukraine

and

the Federal Republic of Germany

for the Elimination of Double Taxation

with respect to Taxes on Income

and the Prevention of Tax Evasion and Avoidance

Ukraine
and
the Federal Republic of Germany,

Desiring to further develop their economic relationship, to enhance their cooperation in tax matters and to ensure the effective and appropriate collection of tax,

Intending to conclude an Agreement for the elimination of double taxation with respect to taxes on income without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third States),

Have agreed as follows:

Article 1
Persons Covered

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

(2) For the purposes of this Agreement, income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either Contracting State shall be considered to be income of a resident of a Contracting State but only to the extent that the income is treated, for purposes of taxation by that State, as the income of a resident of that State.

Article 2
Taxes Covered

(1) This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its 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, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

(3) The existing taxes to which the Agreement shall apply are in particular:

a) in the Federal Republic of Germany:

(i) the income tax (Einkommensteuer);

(ii) the corporation tax (Körperschaftsteuer), and

(iii) the trade tax (Gewerbesteuer);

including the supplements levied thereon (hereinafter referred to as "German tax");

b) in Ukraine:

(i) the individual income tax, and

(ii) the tax on profits of enterprises;

(hereinafter referred to as "Ukrainian tax").

(4) The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their tax laws.

Article 3
General Definitions

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

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

b) the term "Federal Republic of Germany", when used in a geographical sense, includes the territory of the Federal Republic of Germany as well as the area of the sea-bed, its sub-soil and the superjacent water column adjacent to the territorial sea, wherein the Federal Republic of Germany exercises sovereign rights or jurisdiction in conformity with international law and the provisions of its domestic law for the purpose of exploring, extracting, conserving and managing living and non-living natural resources or for the production of energy from renewable sources;

c) the term "Ukraine", when used in a geographical sense, means the territory of Ukraine, its continental shelf and its exclusive (maritime) economic zone, including any area adjacent to the territorial sea of Ukraine which in accordance with international law has been or may hereafter be designated as an area within

which sovereign rights or jurisdiction of Ukraine with respect to the sea bed and sub-soil and their natural resources may be exercised;

d) the term "person" includes an individual, a company and any other body of persons;

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

f) the term "enterprise" applies to the carrying on of any business;

g) 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;

h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise that 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;

i) the term "competent authority" means:

(i) in the Federal Republic of Germany, the Federal Ministry of Finance or the authority to which it has delegated its powers, and

(ii) in Ukraine, the Ministry of Finance of Ukraine or the authority to which it has delegated its powers;

j) the term "national" means:

(i) in relation to the Federal Republic of Germany, any German within the meaning of the Basic Law for the Federal Republic of Germany and any legal person, partnership or association deriving its status as such from the laws in force in the Federal Republic of Germany;

(ii) in relation to Ukraine, any individual possessing the citizenship of Ukraine and any legal person, partnership or association deriving its status as such from the laws in force in Ukraine;

k) the term "business" includes the performance of professional services and of other activities of an independent character;

l) the term "collective investment vehicle" means a vehicle that may be widely-held, that holds a diversified portfolio of securities or invests directly or indirectly in

immovable property for the main purpose of deriving rent, that is subject to investor-protection regulation in the Contracting State in which it is established and that is:

(i) in the case of the Federal Republic of Germany, an investment fund within the meaning of the Investment Tax Act (Investmentsteuergesetz), other than a vehicle that has been established as a partnership;

(ii) in the case of Ukraine, an investment fund within the meaning of the Law on Collective Investment Institutions (Про інститути спільного інвестування), other than a vehicle that has been established as a partnership;

(iii) any other investment vehicle established in either Contracting State as may be agreed by the competent authorities of the Contracting States;

m) the term "pension fund" of a State means an entity or arrangement established in that State that is treated as a separate person under the tax law of that State and:

(i) that is established and operated exclusively to administer or provide retirement benefits and ancillary or incidental benefits to individuals and that is regulated as such by that State or one of its political subdivisions or local authorities; or

(ii) that is established and operated exclusively to invest funds for the benefit of entities or arrangements referred to in subparagraph (i).

(2) As regards the application of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a different meaning pursuant to the provisions of paragraph 3 of Article 23, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4
Resident

(1) For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

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

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

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

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

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

(3) Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated. If the State in which the place of effective management is situated cannot be determined, or the place of effective management is in neither State, then the competent authorities of the Contracting States shall endeavour to determine by mutual agreement in accordance with Article 23 the Contracting State of which the person shall be deemed to be a resident for purposes of the Agreement, having regard to its places of management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be considered to be a resident of either Contracting State for purposes of enjoying benefits under this Agreement.

Article 5
Permanent Establishment

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

(2) The term "permanent establishment" includes especially:

a) a place of management;

b) a branch;

c) an office;

d) a factory;

e) a workshop, and

f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

(3) A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

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

a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity;

f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e),

provided that such activity or, in the case of subparagraph f), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.

The preceding sentence shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State and

a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of this Article, or

b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

(5) Notwithstanding the provisions of paragraphs 1 and 2 but subject to the provisions of paragraph 6, where a person is acting in a Contracting State on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts

a) in the name of the enterprise, or

b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or

c) for the provision of services by that enterprise,

that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business (other than a fixed place of business to which the second sentence of paragraph 4 would apply), would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

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

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

(8) For the purposes of this Article, a person or enterprise is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person or enterprise shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person or enterprise possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise or in the two enterprises.

Article 6
Income from Immovable Property

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

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

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

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

Article 7
Business Profits

(1) 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 that are attributable to the permanent establishment in accordance with the provisions of paragraph 2 may be taxed in that other State.

(2) For the purposes of this Article and Article 21, the profits that are attributable in each Contracting State to the permanent establishment referred to in paragraph 1 are the profits it might be expected to make, in particular in its dealings with other parts of the enterprise, if it were a separate and independent enterprise engaged in the same or similar activities under the same or similar conditions, taking into account the functions performed, assets used and risks assumed by the enterprise through the permanent establishment and through the other parts of the enterprise.

(3) Where, in accordance with paragraph 2, a Contracting State adjusts the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting States and taxes accordingly profits of the enterprise that have been charged to tax in the other State, the other State shall, to the extent necessary to eliminate double taxation on these profits, make an appropriate adjustment if it agrees with the adjustment made by the first-mentioned State; if

the other Contracting State does not so agree, the Contracting States shall endeavour to eliminate any double taxation resulting therefrom by mutual agreement.

(4) 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.

(5) A Contracting State shall make no adjustment to the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting States after 10 years from the end of the taxable year in which the profits would have been attributable to the permanent establishment. The provisions of this paragraph shall not apply in the case of fraud, gross negligence or wilful default of tax compliance obligations.

Article 8
Shipping and Air Transport

(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) For the purposes of this Article, profits from the operation of ships or aircraft shall include income from

a) the occasional rental of ships or aircraft on a bare-boat basis, and

b) the use or rental of containers (including trailers and ancillary equipment used for transporting the containers),

if such income is attributable to the profits from the operation of ships or aircraft.

(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.

(4) The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9
Associated Enterprises

(1) Where:

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

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

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

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

(3) A Contracting State shall not include in the profits of an enterprise, and tax accordingly, profits that would have accrued to the enterprise but by reason of the conditions referred to in paragraph 1 have not so accrued, after 10 years from the end of the taxable year in which the profits would have accrued to the enterprise. The provisions of this paragraph shall not apply in the case of fraud, gross negligence or wilful default of tax compliance obligations.

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

a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 20 per cent of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the

dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividend);

b) 15 per cent of the gross amount of the dividends where those dividends are paid out of income or gains derived directly or indirectly from immovable property within the meaning of Article 6 by an investment vehicle which distributes most of this income or gains annually and whose income or gains from such immovable property is exempted from tax;

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

In the case of dividends paid to a collective investment vehicle or a pension fund only subparagraph c) shall apply. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

(3) The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, founders' shares, and other income which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident. The term includes income from distributions on certificates of a collective investment vehicle.

(4) The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

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

Article 11
Interest

(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, interest arising in a Contracting State may also be taxed in that State according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the interest.

(3) Notwithstanding the provisions of paragraph 2,

a) interest arising in Ukraine and paid in consideration of a loan guaranteed by the Federal Republic of Germany in respect of export or foreign direct investment or paid to the Government of the Federal Republic of Germany, the Deutsche Bundesbank, the Kreditanstalt für Wiederaufbau or the DEG – Deutsche Investitions- und Entwicklungsgesellschaft mbH shall be exempt from Ukrainian tax;

b) interest arising in the Federal Republic of Germany and paid in consideration of a loan guaranteed by Ukraine in respect of export or foreign direct investment or paid to the Government of Ukraine, the National Bank of Ukraine or the State Export Import Bank of Ukraine (Ukreximbank) shall be exempt from German tax.

(4) The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article. The term "interest" does not include the income defined in Article 10.

(5) The provisions of paragraphs 1 to 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

(6) Interest shall be deemed to arise in a Contracting State when the payer is 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 State in which the permanent establishment is situated.

(7) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, 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 beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the

payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12
Royalties

(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, royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the 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, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

(4) The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

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

Article 13
Capital Gains

(1) Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

(2) Gains 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, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

(3) Gains from the alienation of ships or aircraft operated in international traffic or of movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

(4) Gains derived by a resident of a Contracting State from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the other Contracting State if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property, as defined in Article 6, situated in that other State.

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

(6) Where an individual was a resident of a Contracting State for a period of five years or more and has become a resident of the other Contracting State, the provisions of paragraph 5 shall not affect the right of the first-mentioned State to treat the individual as having alienated shares at the time of the change of residence. If the individual is taxed accordingly in the first-mentioned State, the other State shall, in the event of an alienation of shares after the change of residence, calculate the capital gain on the basis of the value which the first-mentioned State used for purposes of taxation at the time of the change of residence.

Article 14
Income from Employment

(1) Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and

b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

c) the remuneration is not borne by a permanent establishment which the employer has in the other State.

(3) Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise which operates the ship or aircraft is situated.

(4) Contributions that are made by or on behalf of an individual who exercises an employment in a Contracting State to a pension scheme established in and recognised for tax purposes in the other Contracting State shall in the first-mentioned State, when determining the individual's taxable income, be taken into account in the same way and to the same extent as contributions made to a pension scheme that is recognised for tax purposes in the first-mentioned State, provided that the individual was not a resident of the first-mentioned State immediately before taking up the employment, and contributions on behalf of the individual have already been made to the pension scheme.

Article 15
Directors' Fees

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

Article 16
Entertainers and Sportspersons

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

(2) Where income in respect of personal activities exercised by an entertainer or a sportsperson acting as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

(3) Income accruing to a person from the granting of live broadcasting rights or any other exploitation of the activities exercised by an entertainer or sportsperson may be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

(4) Paragraphs 1 and 2 shall not apply to income from activities exercised by an entertainer or sportsperson in a Contracting State in cases where the stay in that State is financed entirely or mainly from public funds of the other Contracting State or a political subdivision or local authority thereof, or by an organisation which in that other State is recognised as a charitable organisation. In such case the income may be taxed only in the Contracting State of which the entertainer or sportsperson is a resident.

Article 17
Pensions, Annuities and Similar Payments

(1) Subject to paragraph 2 of Article 18, pensions and other similar remuneration as well as annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the first-mentioned State.

(2) Notwithstanding the provisions of paragraph 1, benefits paid under the social security legislation of a Contracting State shall be taxable only in that State.

(3) Notwithstanding the provisions of paragraph 1, recurrent or non-recurrent payments made by a Contracting State or a political subdivision or a local authority thereof to a resident of the other Contracting State as compensation for political persecution (including restitution payments), for injustice or damage sustained as a result of war or for damage resulting from military service, alternative civilian service or federal volunteer service, a crime, a vaccination or similar causes shall be taxable only in the first-mentioned State.

(4) The term "annuities" means income in the form of regular, recurrent payments that are made for the duration of the recipient's lifetime or for a specific period of time, on the basis of an obligation stipulating that such payments are to be made as a result of the recipient's own contributions or contributions from a third party for the benefit of the recipient.

Article 18
Government Service

(1)

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

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

(i) is a national of that State; or

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

(2)

a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

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

(3) The provisions of Articles 14, 15, 16, and 17 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

(4) The provisions of paragraphs 1 and 2 shall also apply to salaries, wages, pensions, and other similar remuneration paid to an individual in respect of services rendered to the Goethe-Institut and the German Academic Exchange Service (Deutscher Akademischer Austauschdienst), or to other similar institutions for which this is mutually agreed by the competent authorities. Where this remuneration is not taxed in the State of establishment of the institution, Article 14 shall apply.

(5) The provisions of subparagraph a) of paragraph 1 shall likewise apply in respect of remuneration paid to individuals which are seconded to the other Contracting State on the basis of an Economic or Technical Cooperation Agreement or a similar Agreement insofar as this remuneration is paid directly or indirectly out of public funds of a Contracting State or a political subdivision or a local authority thereof.

Article 19
Visiting Professors, Teachers and Students

(1) An individual who, at the invitation of a Contracting State or of a university, college, school, museum or other cultural or educational institution of that Contracting State or under an official programme of cultural exchange, visits that Contracting State for a period not exceeding two years for the sole purpose of teaching, lecturing or conducting research at such an institution and who is, or was immediately before that visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned State with regard to that individual's remuneration for such activity, provided that such remuneration is derived by that individual from outside that State.

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

Article 20
Other Income

(1) Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

(2) The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

Article 21
Elimination of Double Taxation in the State of Residence

(1) Where a resident of the Federal Republic of Germany derives income which, in accordance with the provisions of this Agreement, may be taxed in Ukraine, the following shall apply:

a) Unless otherwise provided in subparagraph c), the income shall be exempt from the basis of assessment for German tax. In the case of dividends, this shall apply only if they are paid to a company resident in the Federal Republic of Germany by a company resident in Ukraine at least 20 per cent of the capital of which is owned

directly by the company resident in the Federal Republic of Germany. The exemption from the assessment basis provided under the first sentence of this subparagraph shall not apply to dividends paid by a tax-exempt company, to dividends that the distributing company may deduct in Ukraine for tax purposes or to dividends that are attributed under the laws of the Federal Republic of Germany to a person that is not a company resident in the Federal Republic of Germany.

b) The Federal Republic of Germany reserves the right to take into account when determining its tax rate the items of income which under the provisions of this Agreement are exempt from German tax.

c) Subject to the provisions of German tax law regarding credit for foreign tax, Ukrainian tax assessed and paid on the following items of income under Ukrainian tax law and in accordance with the provisions of this Agreement and reduced by any right to claim relief that has arisen shall be credited against German tax on income for such items of income:

(i) dividends as defined in Article 10 to which subparagraph a) does not apply;

(ii) interest;

(iii) royalties;

(iv) capital gains to which paragraph 4 of Article 13 applies;

(v) income to which Article 15 applies;

(vi) income to which Article 16 applies;

(vii) income to which Article 17 applies.

For the purposes of application of the present subparagraph, an item of income of a resident of the Federal Republic of Germany that, under this Agreement, may be taxed in Ukraine shall be deemed to be income from sources within Ukraine.

d) The provisions of subparagraph a) shall apply to items of income as defined in Articles 7 and 10 and to gains from the alienation of property as defined in paragraph 2 of Article 13 only to the extent that the items of income or gains are generated by the production, processing or assembly of goods and merchandise, the exploration and extraction of natural resources, banking and insurance transactions, trade or the rendering of services or to the extent that the items of income or gains are economically attributable to these activities. This shall apply only if a business establishment has been set up that is adequately equipped to carry out its business purpose. If subparagraph a) does not apply, double taxation shall be eliminated by granting a tax credit in accordance with subparagraph c).

e) Notwithstanding subparagraph a), double taxation shall be eliminated by granting a tax credit in accordance with subparagraph c) to the extent that

(i) the Contracting States apply different provisions of this Agreement to an item of income or elements thereof, and, as a consequence of applying different provisions, the item of income concerned would be subject to double taxation, non-taxation or lower taxation and, in the case of double taxation, this conflict cannot be resolved by a procedure pursuant to paragraphs 2 or 3 of Article 23;

(ii) Ukraine may, under the provisions of this Agreement, tax items of income or elements thereof, but does not actually do so (this does not apply to dividends);

(iii) after consulting with Ukraine, the Federal Republic of Germany has notified Ukraine through diplomatic channels of items of income, or elements thereof, to which it intends to apply the tax credit provisions under subparagraph c). Double taxation shall then be eliminated for the notified items of income or elements thereof, by granting a tax credit as of the first day of the calendar year following the calendar year in which the notification was made.

(2) In Ukraine, double taxation shall be eliminated as follows:

a) Where a resident of Ukraine derives income which, in accordance with the provisions of this Agreement, may be taxed in the Federal Republic of Germany, Ukraine shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in the Federal Republic of Germany.

Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in the Federal Republic of Germany.

b) Where in accordance with any provision of this Agreement income derived by a resident of Ukraine is exempt from tax in Ukraine, Ukraine may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

Article 22
Non-discrimination

(1) Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the

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

(2) Stateless persons who are residents of a Contracting State shall not be subjected in either Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of the State concerned in the same circumstances, in particular with respect to residence, are or may be subjected.

(3) The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less 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 which it grants to its own residents.

(4) Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

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

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

Article 23
Mutual Agreement Procedure

(1) Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 22, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

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

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

(4) The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

(5) Where,

a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Agreement, and

b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within three years from the date when all the information required by the competent authorities in order to address the case has been provided to both competent authorities,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests in writing. These unresolved issues shall not, however, be submitted to arbitration if a final decision on these issues has already been rendered by a court or administrative tribunal of either State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.

Article 24
Exchange of Information

(1) The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration

or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

(2) Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. For these purposes information may be disclosed in administrative or criminal investigations, in public court proceedings or in judicial decisions, if this is provided for in the respective laws of the Contracting States. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes, when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying Contracting State authorises such use.

(3) In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

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

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

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

(4) If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

(5) In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 25
Assistance in the Collection of Taxes

(1) The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

(2) The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as such taxation is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

(3) When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

(4) When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

(5) Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

(6) Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.
(7) Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be

a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or

b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection,

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

(8) In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:

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

b) to carry out measures which would be contrary to public policy (*ordre public*);

c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;

d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

Article 26
Entitlement to Benefits
and Application of this Agreement in Specific Cases

(1) This Agreement shall not be construed so as to prevent:

a) a Contracting State from applying the provisions of its domestic law that aim to prevent tax evasion or tax avoidance as long as those provisions are in accordance with the object and purpose of the Agreement;

b) a Contracting State from applying its controlled foreign company provisions and its similar provisions on the taxation of foreign permanent establishments and on the taxation of family foundations.

(2) If the preceding provisions result in double taxation, the competent authorities shall engage in consultations pursuant to paragraph 3 of Article 23 to determine how to eliminate double taxation.

(3) Where:

a) an enterprise of a Contracting State derives income from the other Contracting State and the first-mentioned State treats such income as attributable to a permanent establishment of the enterprise situated in a third jurisdiction; and

b) the profits attributable to that permanent establishment are exempt from tax in the first-mentioned Contracting State,

the benefits of this Agreement shall not apply to any item of income on which the tax in the third jurisdiction is less than 60 per cent of the tax that would be imposed in the first-mentioned State on that item of income if that permanent establishment were situated in the first-mentioned State. In such a case, any income to which the provisions of this paragraph apply shall remain taxable according to the domestic law of the other Contracting State, notwithstanding any other provisions of this Agreement.

(4) The provisions of paragraph 3 shall not apply if the income derived from the other State emanates from, or is incidental to, the active conduct of a business carried on through the permanent establishment (other than the business of making, managing or simply holding investments for the enterprise's own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance enterprise or registered securities dealer, respectively).

(5) If benefits under this Agreement are denied pursuant to the provisions of paragraph 3 with respect to an item of income derived by a resident of a Contracting State, the competent authority of the other Contracting State may, nevertheless, grant these benefits with respect to that item of income if, in response to a request by such resident, such competent authority determines that granting such benefits is justified in light of the reasons such resident did not satisfy the requirements of paragraph 3 (such as the existence of losses). The competent authority of the Contracting State to which a request has been made under the preceding sentence shall consult with the competent authority of the other Contracting State before either granting or denying the request.

(6) Notwithstanding the other provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement.

Article 27
Members of Diplomatic Missions and Consular Posts

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

Article 28
Protocol

The attached Protocol shall be an integral part of this Agreement.

Article 29
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 day of the exchange of the instruments of ratification and shall have effect in both Contracting States:

a) in respect of taxes withheld at source, for amounts paid on or after the first day of January in the calendar year following the year in which this Agreement enters into force;

b) in respect of other taxes, for taxes charged for periods beginning on or after the first day of January in the calendar year following the year in which this Agreement enters into force.

(3) Upon the entry into force of this Agreement, the Agreement between Ukraine and the Federal Republic of Germany for the Avoidance of Double Taxation with respect to Taxes on Income and Capital and the Protocol thereto, signed in Bonn on 3rd day of July 1995 shall cease to be in force. Its provisions shall continue to apply until this Agreement becomes effective as provided for in paragraph 2. The provisions of the Agreement of 1995 shall continue to apply to all cases occurring prior to the entry into force of this Agreement.

Article 30
Termination

(1) This Agreement shall remain in force until terminated by a Contracting State.

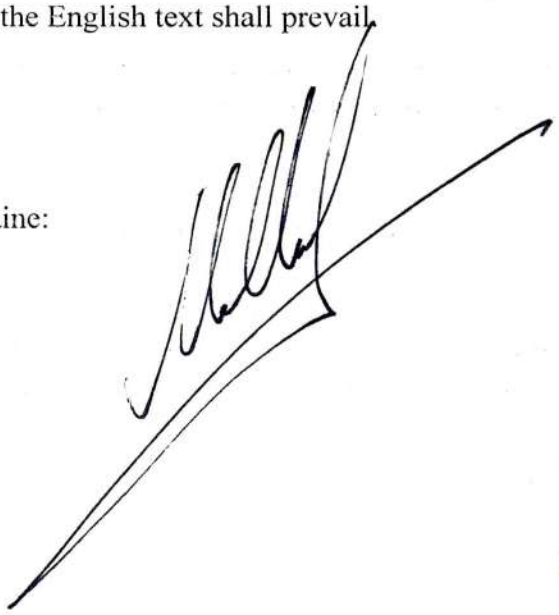
(2) Either Contracting State may terminate this Agreement, through diplomatic channels, by giving written notice of termination at least six months before the end of any calendar year, but such termination may occur no earlier than five years after the date on which this Agreement enters into force. In such event, this Agreement shall cease to have effect in both Contracting States:

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

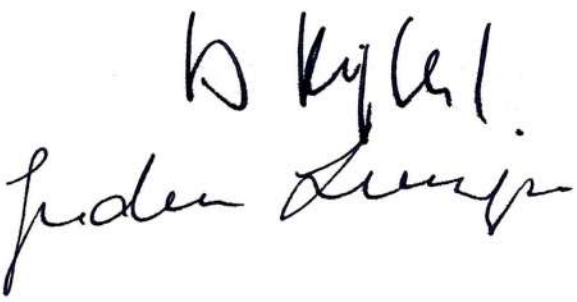
b) in respect of other taxes, for taxes charged for periods beginning on or after the first day of January in the calendar year following the year in which notice of termination is given.

Done at Paris on 19 May 2026 in duplicate, in the Ukrainian, German and English languages, each text being authentic. In case of divergent interpretations of the Ukrainian and German texts, the English text shall prevail.

For Ukraine:



For the Federal Republic of Germany:



Protocol
to the Agreement
between
Ukraine
and
the Federal Republic of Germany
for the Elimination of Double Taxation
with respect to Taxes on Income
and the Prevention of Tax Evasion and Avoidance

Ukraine and the Federal Republic of Germany (the "Contracting States") have in addition to the Agreement between Ukraine and the Federal Republic of Germany for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance signed on 19 May 2026 (the "Agreement") agreed on the following provisions, which shall form an integral part of the Agreement:

1. With reference to the application of the Agreement in general

It is agreed that, in the case of the Federal Republic of Germany, the term "Contracting State" includes the "Länder". The term "Länder" means the German states in accordance with the Basic Law for the Federal Republic of Germany.

2. With reference to paragraph 2 of Article 1

If, in accordance with paragraph 2 of Article 1, income is taxed in a Contracting State in the hands of an entity or arrangement that is treated as wholly or partly fiscally transparent under the laws of the other Contracting State and such income is also taxed in the hands of a resident of that other State as a participant in such entity or arrangement, and this results in double taxation, the competent authorities of the Contracting States shall consult each other pursuant to Article 23 to find an appropriate solution.

3. With reference to paragraph 2 of Article 1 and Article 10

It is agreed that, where dividends derived by or through a fiscally transparent entity or arrangement are treated, for the purposes of taxation by a Contracting State, as the income,

profits or gains of a resident of that State, Article 10 shall apply as if that resident had derived the dividends directly.

4. With reference to paragraph 1 of Article 4

It is understood that a collective investment vehicle or a pension fund which is established in a Contracting State and which receives income arising in the other Contracting State shall be a resident of the Contracting State in which it is established.

5. With reference to paragraph 1 of Article 5

It is agreed that a farm, forestry business or apartment rental office situated in a Contracting State and exploited by a resident of the other Contracting State may constitute a permanent establishment regardless of whether or not the profits attributable to such permanent establishment would constitute income from immovable property covered by Article 6.

6. With reference to Article 7:

a) Where an enterprise of a Contracting State sells goods or merchandise or carries on business in the other Contracting State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received therefor by the enterprise but only on the basis of a two-step analysis. The first step is to determine the profits under the fiction that the permanent establishment is a separate and independent enterprise from the rest of the enterprise of which it is part. The second step of that analysis is to apply the arm's length principle for the purpose of adjusting the profits.

b) In the case of contracts, in particular for the survey, supply, installation, or construction of industrial, commercial, or scientific equipment or premises, or of public works, where the enterprise has a permanent establishment in the other Contracting State, the profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but only on the basis of the two-step analysis mentioned in subparagraph a).

c) Payments received as a consideration for technical services, including studies or surveys of a scientific, geological or technical nature, or for engineering contracts including blue prints related thereto, or for consultancy or supervisory

services shall be deemed to be payments to which the provisions of Article 7 apply.

7. With reference to Articles 10 and 11

It is understood that a collective investment vehicle or a pension fund which is established in a Contracting State and which receives income arising in the other Contracting State shall be the beneficial owner of the income it receives.

8. With reference to subparagraph b) of paragraph 2 of Article 10

In the case of the Federal Republic of Germany, an investment vehicle shall be a company in accordance with the Act on German Real Estate Investment Trust Corporations (Gesetz über deutsche Immobilien-Aktiengesellschaften mit börsennotierten Anteilen).

9. With reference to Articles 10 and 11

It is agreed that, notwithstanding the provisions of Articles 10 and 11, dividends and interest may be taxed in the Contracting State in which they arise and in accordance with the law of that State if they:

a) are derived from rights or debt-claims carrying a right to participate in profits (including income derived by a silent partner (stiller Gesellschafter) from participation as such, as well as income from loans with an interest rate linked to or sharing the borrower's profit (partiarische Darlehen) and profit-sharing bonds (Gewinnobligationen) as defined in the tax law of the Federal Republic of Germany) and

b) are deductible when determining the profits of the debtor of such dividends or interest.

10. With reference to Articles 10, 11, 12 and 20

It is agreed that where the recipient and the payer of a dividend, interest or royalties are residents of the Federal Republic of Germany and the dividend, interest or royalty payment is attributable to a permanent establishment that the recipient has in Ukraine, the Federal Republic of Germany may tax such dividend, interest or royalty payment under paragraph 9

of this Protocol or at the rates provided for in paragraphs 2 of Articles 10, 11 and 12. Ukraine shall grant a credit for such tax in accordance with the provisions of paragraph 2 of Article 21.

11. With reference to subparagraph e) of paragraph 1 of Article 21

It is agreed that items of income or elements thereof are "actually" taxed when they are included in the assessment basis used to calculate the tax. They are not actually taxed if they are either not taxable or exempt from taxation.

12. With reference to paragraph 5 of Article 22

It is agreed that paragraph 5 of Article 22 shall not be construed as obliging a Contracting State to permit cross-border consolidation of income or similar benefits between enterprises.

13. With reference to paragraph 5 of Article 23

With respect to the scope of unresolved issues that shall be eligible for arbitration, the Federal Republic of Germany reserves the right to exclude from arbitration:

a) any unresolved issue to which a legal provision or domestic law on the prevention of tax evasion or tax avoidance (whether or not designated as such) of a Contracting State as long as it is in accordance with the object and purpose of the Agreement, or a controlled foreign company provision and its corresponding provisions on the taxation of foreign permanent establishments and on the taxation of family foundations, or an anti-abuse rule under this Agreement has been applied;

b) any unresolved issue involving conduct for which the taxpayer, a person acting on his or her behalf, or a related person has been found guilty by a court for a tax offence or has been subject to the imposition of a serious penalty;

c) any unresolved issue that concerns items of income that are not taxed by a Contracting State because they are not included in the taxable base in that Contracting State or because they are subject to an exemption or zero tax rate provided under the domestic tax law of that Contracting State;

d) any unresolved issue in which double taxation on items of income was avoided by using the credit method instead of the exemption method, in application of a provision of domestic or tax treaty law;

e) any facts determined as part of a "mutual agreement on facts" (tatsächliche Verständigung) – as defined in the German Federal Ministry of Finance circular of 30 July 2008 (Federal Tax Gazette part 1 2008, page 831), as amended, or any subsequent regulation – between the tax administration of a Contracting State and the taxpayer; and

f) any unresolved issue where the competent authorities agree, before the date on which arbitration would otherwise have begun, that such issue is unsuitable for decision by arbitration.

14. With reference to Article 24

If personal data are exchanged under Article 24, the following additional provisions shall apply. For the purposes of the Agreement, personal data comprise all information relating to an identified or identifiable individual (hereinafter referred to as the "data subject"). The terms "receiving agency" and "supplying agency" mean the respective competent authorities as defined in subparagraph i) of paragraph 1 of Article 3.

a) The supplying agency shall not be obliged to supply personal data if the domestic law applicable to it prohibits supply or if it has reason to assume that legitimate interests of the data subject would be adversely affected by such supply.

b) The supplying agency shall be obliged to ensure the accuracy of the personal data to be supplied. If it turns out that the supplying agency has supplied inaccurate personal data, or personal data that should not have been supplied, it shall notify the receiving agency of this fact without delay.

c) Insofar as the domestic law applicable to the supplying agency stipulates particular time limits for erasure or for reviewing the need for continued storage of the supplied personal data, the supplying agency shall notify the receiving agency accordingly.

d) The supplying agency and the receiving agency shall be obliged to document the supply and receipt of the personal data.

e) The use of the personal data by the receiving agency is permissible only for the purposes set forth in the Agreement and in compliance with the terms specified by the supplying agency.

f) Use for other purposes as referred to in the fourth sentence of paragraph 2 of Article 24 is permissible without prior consent only if such use is necessary in the specific case to avert an imminent threat to a person's life, bodily integrity or personal freedom or to significant assets, and only if there is danger inherent in any delay. In such cases the supplying agency shall be requested without delay to provide retroactive approval of the change in purpose. If approval is denied, the further use of the personal data for this other purpose is prohibited. The receiving agency and all agencies belonging to the receiving agency's Contracting State that have received personal data from the receiving agency for this other purpose shall erase such personal data without delay. However, this shall not apply insofar and as long as such personal data are still needed for the purpose set forth in the Agreement for which the supplying agency originally supplied the data.

g) The receiving agency may transfer the personal data received to another State or an international organisation only with the prior consent of the agency that originally supplied the data. The agency that originally supplied the personal data may specify terms that the receiving agency must comply with in connection with such onward transfer of the data.

h) The receiving agency shall be obliged to rectify inaccurate personal data without delay. The Contracting States shall ensure that the data subject may obtain the immediate rectification of the personal data concerning him from the receiving agency if such data are inaccurate.

i) The receiving agency shall erase the personal data received without delay if

(i) they are no longer needed for the purpose for which they were supplied,

(ii) they should not have been supplied and the supplying agency has notified the receiving agency of this fact, or

(iii) they are inaccurate and the receiving agency does not rectify them without delay in accordance with the first sentence of subparagraph h).

The Contracting States shall ensure that the data subject may obtain the immediate erasure of the personal data concerning him from the receiving agency if any of the conditions specified in the preceding sentence apply. There shall be no obligation to erase data if the processing thereof is necessary to meet a legal obligation incumbent on the receiving agency, to perform a task in the public interest or to establish legal claims.

j) The receiving agency shall be obliged to effectively protect the personal data received from accidental loss, accidental or unlawful destruction or alteration, unauthorised disclosure, unauthorised access and other unauthorised processing.

k) In the event of a breach of the personal data received, the receiving agency shall take appropriate damage control measures without delay. It shall notify the supplying agency provided this does not prejudice public security or national security.

l) The receiving agency shall inform the data subject about the personal data obtained. The obligation to provide information covers the categories of personal data being processed, the purposes of such processing and the data subject's rights pursuant to the second sentence of subparagraph h), the second sentence of subparagraph i) and subparagraph m). In derogation from the preceding sentences of this subparagraph, the receiving agency has no obligation to provide information

(i) if the data subject already has the information,

(ii) if, in the specific case, it is impossible to provide the information or would require disproportionate effort, or

(iii) insofar and as long as, on balance, it is considered that the public interest in non-disclosure outweighs the interest of the data subject in being informed; this is in particular the case if providing the information would prejudice the purpose for which the data are being processed.

m) The Contracting States shall ensure that each data subject may obtain information from the receiving agency regarding the categories of supplied data that relate to the data subject and that are being processed, the purposes of such

processing, and the data subject's rights pursuant to the second sentence of subparagraph h) and the second sentence of subparagraph i). This information does not have to be provided insofar and as long as, on balance, it is considered that the public interest in non-disclosure outweighs the interest of the data subject in being provided with the information. This is in particular the case if providing the information would prejudice the purpose for which the data are being processed.

n) The Contracting States shall ensure that the receiving agency or the legal entity responsible for it is, in accordance with domestic law, liable to any party injured unlawfully as a result of the supply of data under the Agreement. The receiving agency and the legal entity responsible for it may not claim in exoneration vis-à-vis the injured party that the damage was caused by the supplying agency.

o) The Contracting States shall ensure that, subject to any domestic provisions stipulating that the possibility of administrative remedy must first be exhausted, each data subject may apply for a judicial review in at least the following cases:

(i) the right to rectification under the second sentence of subparagraph h) is infringed,

(ii) the right to erasure under the second sentence of subparagraph i) is denied,

(iii) the right to information under subparagraph m) is denied.

15. Procedural Rules for Withholding Tax at Source

a) If in a Contracting State the taxes on dividends, interest, royalties, or other items of income derived by a resident of the other Contracting State are levied by withholding at source, the provisions of the Agreement shall not affect the right of the first-mentioned State to withhold tax at the rate provided for under its domestic law.

b) The tax so withheld shall be refunded if the taxpayer so requests if and to the extent that it is reduced or eliminated by the Agreement. The period for requesting a refund of the tax withheld shall be three years from the end of the calendar year in which the dividends, interest, royalties, or other items of income were received.

c) Notwithstanding subparagraph a), each Contracting State shall establish procedures to the effect that payments of dividends, interest, royalties and any other items of income which under the Agreement are subject to no tax or only to reduced tax in the State of source may be made without deduction of tax or with deduction of tax only at the rate provided in the relevant Article.

d) The Contracting State in which the income arises may require the taxpayer to submit a certification of residence in the other Contracting State issued by the competent authority of that other State.

e) The competent authorities may by mutual agreement settle the mode of application of this paragraph.