

JAMAICA-GERMANY (INCOME AND CAPITAL) TAX TREATY

Date of Conclusion: 8 October 1974

Entry into Force: 13 September 1976.

Effective Date: 1 January 1973 (see Article 29).

AGREEMENT BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND JAMAICA FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND CAPITAL

Article 1 **Personal scope**

1. This Agreement shall apply to persons who are residents of one or both of the Contracting States.
2. This Agreement shall not apply to companies entitled to any special tax benefit under the Jamaica International Business Companies (Exemption from Income Tax) Law, 1965 (as in effect on 23rd August, 1956) as supplemented by the Jamaica International Business Companies (Exemption from Income Tax) Regulations, 1964 (as in effect on 14th March, 1964) or any substantially similar law subsequently enacted by Jamaica.

Article 2 **Taxes covered**

1. This Agreement shall apply to taxes on income and on capital imposed on behalf of each Contracting State or of its Laender, political subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation.
3. The existing taxes to which this Agreement shall apply are, in particular:
 - (a) in the Federal Republic of Germany:
the Einkommensteuer (income tax) including
the Ergänzungsabgabe (surcharge) thereon,
the Körperschaftsteuer (corporation tax) including the
Ergänzungsabgabe (surcharge) thereon,
the Vermögensteuer (capital tax), and
the Gewerbesteuer (trade tax)
(hereinafter referred to as "German tax");

- (b) in Jamaica:
 - (i) the income tax, including surtax;
 - (ii) the company profits tax, the additional company profits tax and the investment company profits tax; and
 - (iii) the transfer tax
 (hereinafter referred to as "Jamaican tax").

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

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

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 seabed and subsoil and their natural resources, as domestic area for tax purposes;
 - (b) the term "Jamaica" means the island of Jamaica, the Morant Cays, the Pedro Cays and their Dependencies; and when used in a geographical sense the term "Jamaica" includes the territorial waters thereof including any area outside such territorial waters which in accordance with international law and the laws of Jamaica is an area within which the rights of Jamaica with respect to the seabed and subsoil and their natural resources may be exercised.
 - (c) the terms "a Contracting State" and "the other Contracting State" mean the Federal Republic of Germany or Jamaica, as the context requires;
 - (d) the term "person" includes an individual, a company and any body of persons treated as an entity for tax purposes;
 - (e) the term "company" means any body corporate or any entity, which is treated as a body corporate for tax purposes;
 - (f) the terms "resident of a Contracting State" and "resident of the other Contracting State" mean a person who is a resident of the Federal Republic of Germany or a person who is a resident of Jamaica, as the context requires;
 - (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 "national" means:
 - (aa) in respect of the Federal Republic of Germany any German in the meaning of Article 116, paragraph 1, 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 Jamaica any individual who is a citizen of Jamaica and any legal person, association or other entity deriving its status as such from the law of Jamaica;

- (i) the term "competent authority" means in the case of the Federal Republic of Germany the Federal Minister of Finance, and in the case of Jamaica the Minister responsible for Finance or his authorised representative;
- (j) the term "international traffic" includes traffic between places in one country in the course of a voyage which extends over more than one country.

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

3. Where under this Agreement any income is exempt from tax or is taxed at a reduced rate in a Contracting State and that income is subject to tax in the other Contracting State by reference to the amount thereof which is remitted to or received in that other State, the exemption or reduction of tax to be allowed under this Agreement in the first-mentioned State shall apply only to the amount so remitted or received.

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 interests);
- (b) If the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
- (c) If he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
- (d) If he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph (1) a legal 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 include especially:
 - (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) a workshop;
 - (f) a store or other sales outlet;
 - (g) a mine, quarry or other place of extraction of natural resources;
 - (h) a building site or construction or assembly project which exists for more than six months.
3. The term "permanent establishment" shall not be deemed to include:
 - (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
 - (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.
4. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State – other than an agent of an independent status to whom paragraph (5) applies – shall be deemed to be a permanent establishment in the first-mentioned State if
 - (a) he has, and habitually exercises in that 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 State through a broker, general commission agent, or any other agent of independent status, where such persons are acting in the ordinary course of their business.
6. An insurance enterprise of one of the Contracting States shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in that other Contracting State or insures risks situated therein through an employee or agent but not including such agent as is mentioned in paragraph (5).
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 make either company a permanent establishment of the other.

Article 6
Immovable property

1. Income from immovable property may be taxed in the Contracting State in which such property is situated.
2. The term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated. The term shall not in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph (1) shall apply to income derived from the direct use, letting or use in any other form of immovable property.
4. The provisions of paragraphs (1) and (3) shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

Article 7
Business profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on trade or business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on trade or 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 trade or 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 at arm's length with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment situated in one of the Contracting States, there shall be allowed as deductions all expenses which would be deductible under the law of that Contracting State if the permanent establishment were an independent enterprise in so far as such expenses are reasonably allocable to the permanent establishment including executive and general administration expenses so deductible and allocable, whether incurred in that Contracting 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. If the information available to the competent authority concerned is inadequate to determine the profits to be attributed to the permanent establishment, such profits may be determined by the exercise of a discretion or the making of an estimate by that competent authority, provided that such discretion shall be exercised or such estimate shall be made in accordance with the principles stated in this Article.

7. For the purposes of the preceding paragraph 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.

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

Article 8 **Ships and aircraft**

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

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

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

Article 9 **Associated enterprises**

Where

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

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

Article 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of that State, but the tax so charged shall not exceed:
 - (a) 10% of the gross amount of the dividends if the recipient is a company (excluding partnerships) which owns directly at least 25% of the shares of the company paying the dividends;
 - (b) in all other cases, 15% of the gross amount of the dividends.
3. Notwithstanding the provisions of paragraph (2) Jamaican tax on dividends paid to a company being a resident of the Federal Republic of Germany to a company being a resident of Jamaica, at least 25% of the voting shares of which is owned directly by the former company, shall not exceed 22.5% of the gross amount of such dividends as long as the combined rate of Jamaican company profits tax and the additional company profits tax does not exceed 45%.
4. Notwithstanding the provisions of paragraph (2) German tax on dividends paid to a company being a resident of Jamaica by a company being a resident of the Federal Republic of Germany, at least 25% of the voting shares of which is owned directly or indirectly by the former company itself, or by it together with other persons controlling it or being under common control with it, shall not exceed 27% 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 15 percentage points or more.
5. The term "dividends" as used in this Article means income from shares, mining shares, founders' shares or other rights, not being debtclaims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident, and income derived by a sleeping partner from his participation as such and distributions on certificates of an investment trust.
6. The provisions of paragraphs (1) 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.
7. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company to persons who are not residents of that other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11 Interest

1. Interest arising in a Contracting State and 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% of the gross amount of the interest if the interest is received by a bank, recognized as a banking institution under the laws of that State;
 - (b) 12.5% 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 Jamaican Government shall be exempt from German tax;
 - (b) interest arising in Jamaica and paid to the German Government, the Deutsche Bundesbank, the Kreditanstalt für Wiederaufbau or the Deutsche Gesellschaft für wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) shall be exempt from Jamaican 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 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 in which the income arises.
 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 in which the interest arises 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 payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12

Royalties

1. Royalties arising in a Contracting State which are derived by a resident of the other Contracting State may be taxed in that other Contracting State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the law of that Contracting State, but the tax so charged shall not exceed 10% 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 or tapes for television or broadcasting, any patent, trade mark, design or model plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraph (1) and (2) shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise 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.
5. Royalties shall be deemed to be derived from 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 be derived from the Contracting State in which the permanent establishment is situated.
6. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess 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.
7. The foregoing provisions of paragraphs (1), (2), (4), (5) and (6) shall likewise apply to payments received as a consideration for the provision of management or technical services. If a resident of a Contracting State so elects for any year of assessment, the tax chargeable in the other Contracting State on such payments shall be calculated as if he had a permanent establishment in that other State to which such payments were attributable.

Article 13

Capital gains

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

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State. However, gains from the alienation of movable property of the kind referred to in paragraph (3) of Article 22 shall be taxable only in the Contracting State in which such movable property is taxable according to the said Article.

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

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

Article 14 **Independent services**

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar nature shall be taxable only in that State, unless those services or activities are performed in the other Contracting State over a period or periods aggregating in the whole 30 days in any 12-month period and the payment for such services and activities is borne by a permanent establishment in the other Contracting State or a person resident therein. In such a case, the income may be taxed in the other State.

2. The term "professional services" includes, especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15 **Dependent personal services**

1. Subject to the provisions of Articles 16 to 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 year of assessment 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 or a fixed base which the employer has in the other State.

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

Article 16 **Directors' fees**

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

Article 17 **Artists and athletes**

1. Notwithstanding the provisions of Articles 14 and 15, income derived by public entertainers, such as theatre, motion picture, radio or television artists and musicians, and by athletes, from their personal activities as such 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 Article 7, 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 taxed 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 sub-division 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 a local authority thereof, out of funds exclusively supplied by that State, those Laender, 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**

1. Any pension (other than a pension of the kind referred to in paragraph (1) of Article 18) and any annuity paid to a resident of a Contracting State shall be taxable only in that State.

2. The term “annuity” means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money’s worth.

Article 20

Teachers, students and trainees

1. An individual who is a resident of a Contracting State at the time he becomes temporarily present in the other Contracting State, at the invitation of that other Contracting State or of a university or other educational institution in that other State, for the primary purpose of teaching or engaging in research, or both, at a university or other educational institution shall be exempt from tax by that other Contracting State on his income from personal services for teaching or research at such university or educational institution, for a period not exceeding two years from the date of his arrival in 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 Volontar or a Praktikant) shall, from the date of his first arrival in that other State in connection with that visit, be exempt from tax in that other State:

- (a) on all remittances from abroad for purposes of his maintenance, education or training; and
- (b) for a period not exceeding in the aggregate three years, on any remuneration not exceeding 6000 DM or the equivalent in Jamaican currency for the calendar year for personal services rendered in that other Contracting 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, from the date of his first arrival in that other State in connection with that visit, be exempt from tax in that other State:

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

Article 21

Income not expressly mentioned

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

Article 22

Capital

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

2. Capital represented by movable property forming part of the business property of a permanent establishment of an enterprise, or by movable property pertaining to a fixed base used for the performance of professional services, may be taxed in the Contracting State in which the permanent establishment or fixed base is situated.
3. Ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Article 23

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 sub-paragraph (b) apply, there shall be excluded from the basis upon which German tax is imposed, any item of income derived from sources within Jamaica and any item of capital situated within Jamaica, which, according to this Agreement, may be taxed in Jamaica. The Federal Republic of Germany, however, retains the right to take into account in the determination of its rate of tax the items of income and capital so excluded. In the case of income from dividends the foregoing provisions shall apply only to such dividends as are paid to a company being a resident of the Federal Republic of Germany by a company being a resident of Jamaica if at least 25% of the voting shares of the Jamaican company is owned directly or indirectly by the German company. There shall also be excluded from the basis upon which German tax is imposed any shareholding, the dividends of which, if paid, would be excluded from the basis upon which tax is imposed according to the immediately foregoing sentence.
 - (b) Subject to the provisions of German tax law regarding credit for foreign tax, there shall be allowed as a credit against German income and corporation tax, including the surcharge thereon, payable in respect of the following items of income derived from sources within Jamaica the Jamaican tax paid under the laws of Jamaica and in accordance with this Agreement on:
 - (aa) dividends not dealt with in sub-paragraph (a) to which sub-paragraph (b), paragraph (2), of Article 10 applies;
 - (bb) interest to which paragraph (2) of Article 11 applies;
 - (cc) royalties to which paragraph (2) of Article 12 applies;
 - (dd) gains to which paragraph (3) of Article 13 applies;
 - (ee) remuneration to which Article 16 applies;
 - (ff) income 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 case (aa), (bb), and (cc) of sub-paragraph (b) above Jamaican tax on dividends, on interest, or on royalties in the meaning of paragraph (3) of Article 12 is wholly relieved or reduced below the rates of tax provided for in Articles 10, 11 or

12, by special incentive measures under Jamaican law designed to promote economic development in Jamaica, there shall be allowed as a credit against German income tax and corporation tax, including the surcharge thereon, on such dividends, interest or royalties an amount corresponding to the rate of tax provided for in the respective Articles. The credit allowed under the foregoing sentence shall, however, not exceed the amount of Jamaican tax which would have been payable but for such reduction.

2. Subject to the provisions of the law of Jamaica regarding the allowance as a credit against tax of tax payable in a territory outside Jamaica (which shall not affect the general principle hereof):

- (a) German tax payable under the laws of the Federal Republic of Germany and in accordance with this Agreement, whether directly or by deduction, on profits or income from sources within the Federal Republic of Germany (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any Jamaican tax computed by reference to the same profits or income by reference to which the German tax is computed.
- (b) Where a company which is a resident of the Federal Republic of Germany pays a dividend to a company resident in Jamaica and which controls directly or indirectly at least 25% of the voting shares in the first-mentioned company, the credit shall take into account (in addition to any German tax for which credit may be allowed under sub-paragraph (a) of this paragraph) the German tax payable by that first-mentioned company in respect of the profits out of which such dividend is paid.
- (c) For the purposes of this paragraph the term "German tax" shall not include the Gewerbesteuer (trade tax) computed on a basis other than profits or the Vermögensteuer (capital tax).
- (d) For the purposes of this paragraph, profits or remuneration for personal (including professional) services performed in a Contracting State shall be deemed to be income from sources within that State.

Article 24 **Non-discrimination**

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

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

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

3. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any

requirement 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.

Article 25

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 26

Exchange of information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons, authorities or courts other than those concerned with the assessment or collection of the taxes which are the subject of this Agreement or the determination of appeals or the prosecution of offences in relation thereto.
2. In no case shall the provisions of paragraph (1) be construed so as to impose on one of the Contracting States the obligation:
 - (a) to carry out administrative measures at variance with the laws of the administrative practice of that or of the other Contracting State;
 - (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
 - (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

Article 27**Diplomatic and consular privileges**

1. Nothing in this Agreement shall affect diplomatic or consular privileges under the general rules of international law or under the provisions of special agreements.
2. 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 or capital are not subject to tax in the receiving State, the right to tax shall be reserved to the sending State.
3. For the purposes of this Agreement, persons who are members of a diplomatic or consular mission of a Contracting State in the other Contracting State or in a third State, as well as persons connected with such persons, and who are nationals of the sending State, shall be deemed to be residents of the sending State if they are subjected therein to the same obligations in respect of taxes on income and capital as are residents of that State.

Article 28**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 Jamaica within three months from the date of entry into force of this Agreement.

Article 29**Entry into force**

This Agreement shall enter into force one month after the exchange by the plenipotentiaries of the Contracting States at Kingston of instruments certifying that the constitutional requirements for such entry into force have been fulfilled, and shall thereupon have effect:

- (a) in the Federal Republic of Germany in respect of taxes which are levied for any assessment period beginning on or after January 1, 1973;
- (b) in Jamaica in respect of taxes which are levied for any year of assessment beginning on or after January 1, 1973;
- (c) in both Contracting States in respect of taxes withheld at source on dividends, interest and royalties paid after December 31, 1972.

Article 30**Termination**

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

- (a) in the Federal Republic of Germany in respect of taxes which are levied for any assessment period following that in which the notice of termination is given;
- (b) in Jamaica in respect of taxes which are levied for any year of assessment following that in which the notice of termination is given;

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

Protocol

The Federal Republic of Germany and Jamaica

Have agreed at the Signing at Kingston on 8th October 1974 of the Agreement between the two States for the Avoidance of Double Taxation with respect to Taxes on Income and Capital upon the following provisions which shall form an integral part of the said Agreement.

1. With reference to Article 5

it is understood, that the term "building site" includes a dredging site or any site of a similar nature.

2. With reference to Article 23

- (a) Notwithstanding the provisions of sub-paragraph (a), paragraph (1), of Article 23 of the Agreement, the provisions of sub-paragraph (b), paragraph (1), of that Article shall apply likewise to the profits of, and to the capital represented by property forming part of the business property of, a permanent establishment; to dividends paid by, and to the shareholding in, a company; or to gains referred to in paragraphs (1) and (2) of Article 13 of the Agreement; provided that the resident of the Federal Republic of Germany concerned does not prove that the receipts of the permanent establishment or company are derived exclusively or almost exclusively
- (aa) from producing or selling goods and merchandise, giving technical advice or rendering engineering services, or doing banking or insurance business, within Jamaica, or
 - (bb) from dividends paid by one or more companies, being residents of Jamaica, more than 25% of the capital of which is owned by the first-mentioned company, which themselves derive their receipts exclusively or almost exclusively from producing or selling goods or merchandise, giving technical advice or rendering engineering services, or doing banking or insurance business, within Jamaica.
- (b) At the time of signing the Agreement the special incentive measures referred to in subparagraph (c), paragraph (1), of Article 23 are the following:

Section 28B of the Income Tax Law, 1954 (now repealed, but subject to the saving contained in Section 19(4) of the Hotels (Incentives) Act, 1968);

Section 10(4) of the Motion Picture Industry (Encouragement) Law, as amended;

Section 8(5) of the Pioneer Industries (Encouragement) Law, as amended;

Section 6(3) of the Saint Andrew Mines (Encouragement) Law;

Section 8(5) of the Textile Industry (Encouragement) Law, as amended;

Part II and Part VI of the Industrial Incentives Law, 1956, as amended;

Section 10 of the Export Industry Encouragement Law, 1956, as amended;

Section 11 of the Export Industry Encouragement Law, 1956, as amended by the Export Industry Encouragement (Amendment) Act, 1968;

Section 10(1)(a) of the Petroleum Refining Industry (Encouragement) Law, 1961;

Section 9 and 10 of the Hotels (Incentives) Act, 1968;

Sections 7 and 8 of the Resort Cottages (Incentives) Act, 1971;

Sections 7 and 8 of the Agricultural Incentives Act, 1972.