

# **AGREEMENT BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE REPUBLIC OF TURKEY FOR THE AVOIDANCE OF DOUBLE TAXATION AND OF TAX EVASION WITH RESPECT TO TAXES ON INCOME**

The Federal Republic of Germany

and

the Republic of Turkey -

Desiring to promote their mutual economic relations by removing fiscal obstacles and to strengthen their cooperation in tax matters -

Have agreed as follows:

## **Article 1**

### **Persons Covered**

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

## **Article 2**

### **Taxes Covered**

(1) This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or its Länder 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 this Agreement shall apply are in particular:

a) in the Republic of Turkey:

- i) the income tax (Gelir Vergisi) and
- ii) the corporation tax (Kurumlar Vergisi),

(hereinafter referred to as "Turkish tax");

b) 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").

(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 respective taxation laws.

### **Article 3**

#### **General Definitions**

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

a) the term "Turkey" means the Turkish territory including territorial sea and air space above it, as well as the maritime areas over which the Republic of Turkey has jurisdiction or sovereign rights for the purpose of exploration, exploitation and conservation of natural resources, pursuant to international law;

b) the term "Germany" means 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, in so far as the Federal Republic of Germany may exercise sovereign rights and jurisdiction in conformity with international law and its national legislation for the purposes of exploring, exploiting, conserving and managing the living and non-living natural resources.

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

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 "legal head office" means the statutory seat (Kanuni merkez, Sitz) within the meaning of the German Fiscal Code, or within the meaning of the Turkish Code of Commerce, respectively;

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 of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

i) the term "national" means:

i) in respect of 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 and association deriving its status as such from the laws in force in Germany;

ii) in respect of the Republic of Turkey any individual possessing the nationality of Turkey and any legal person, partnership and association deriving its status as such from the laws in force in Turkey;

j) the term "competent authority" means:

i) in the case of the Republic of Turkey, the Minister of Finance or his authorised representative; and

ii) in the case of the Federal Republic of Germany, the Federal Ministry of Finance or the agency to which it has delegated its powers.

(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, 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, legal head office, place of management or any other criterion of a similar nature, and also includes that State, a Land 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, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle its status and to determine the application of the Agreement. Insofar as no such agreement has been reached, such person shall be deemed not to be a resident of either Contracting State for the purposes of enjoying benefits under the provisions of the 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) The term "permanent establishment" also encompasses:

- a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than six months;
- b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within a Contracting State for a period or periods aggregating more than six months within any twelve-month period.

(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 of a preparatory or auxiliary character;
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

(5) Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person has and habitually exercises in that State an authority to conclude contracts in the name of 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 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.

## **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 (including the breeding and cultivation of fish) 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 and to income from immovable property used for the performance of independent personal services.

## **Article 7**

### **Business Profits**

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

(2) Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

(3) In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

(4) 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.

(5) 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**

### **Shipping and Air Transport**

(1) Profits of an enterprise of a Contracting State derived from the other Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in the firstmentioned State.

(2) 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.

## **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 also be taxed in the Contracting State of which the company paying the dividends is a resident and 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 (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;

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

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, mining shares, founders' shares or other rights, not being debtclaims, participating in profits, as well as income from other corporate rights or 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, and income derived from an investment fund and investment trust.

(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 or performs in that other State independent personal services from a fixed base situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, 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 or a fixed base 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, such interest may also be taxed in the Contracting State in which it arises and 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 10 per cent of the gross amount of the interest.

(3) Notwithstanding the provisions of paragraph 2, interest arising in:

a) the Federal Republic of Germany and paid to the Government of the Republic of Turkey or to the Central Bank of the Republic of Turkey (Türkiye Cumhuriyet Merkez Bankasi) shall be exempt from German tax;

b) Turkey and paid to the Government of Germany or to the Deutsche Bundesbank shall be exempt from Turkish tax;

c) Turkey 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 Kreditanstalt für Wiederaufbau or the DEG - Deutsche Investitions- und Entwicklungsgesellschaft mbH shall be exempt from Turkish tax;

d) Germany and paid to the Turkish Eximbank (Türkiye İhracat Kredi Bankasi A.S) 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.

(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 or performs in that other State independent personal services from a fixed base situated therein, and the debtclaim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

(6) Interest shall be deemed to arise in a Contracting State when the payer is 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 or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base 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, such 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 10 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 and recordings for radio and television, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience or for the use of, or the right to use, industrial, commercial or scientific equipment. The term "royalties" shall also include payments of any kind for the use or the right to use a person's name, picture or any other similar personality rights.

(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 or performs in that other State independent personal services from a fixed base situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

(5) Royalties shall be deemed to arise in a Contracting State when the payer is 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 or fixed base, in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base 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 derived by a resident of a Contracting State from the alienation of shares and similar rights deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.

(3) 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 independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

(4) Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that 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. However, the capital gains mentioned in the foregoing sentence and derived from the other Contracting State, shall be taxable in the other Contracting State if the time period does not exceed one year between acquisition and alienation.

## **Article 14**

### **Independent Personal Services**

(1) Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State. However, such income may also be taxed in the other Contracting State if such services or activities are performed in that other State and if:

a) he has a fixed base regularly available to him in that other State for the purpose of performing those services or activities; or

b) he is present in that other State for the purpose of performing those services or activities for a period or periods amounting in the aggregate to 183 days or more in any continuous period of 12 months.

In such circumstances, only so much of the income as is attributable to that fixed base or is derived from the services or activities performed during his presence in that other State, as the case may be, may be taxed in that 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, 18, 19 and 20, 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 or a fixed base 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 by an enterprise of a Contracting State in international traffic, may be taxed in that State.

## **Article 16**

### **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 17**

### **Artistes and Sportsmen**

(1) Notwithstanding the provisions of Articles 7, 14 and 15, 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 sportsman, from his 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 sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that

income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

(3) Paragraphs 1 and 2 shall not apply to income accruing from the exercise of activities by artistes or sportsmen in a Contracting State where the visit to that State is financed entirely or mainly from public funds of the other State, a Land, a political subdivision or a local authority thereof or by an organisation which in that other State is recognised as a charitable organisation. In such a case the income may be taxed only in the Contracting State of which the individual is a resident.

## **Article 18**

### **Pensions**

(1) Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment or annuities shall be taxable only in that State.

(2) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration or annuities including payments from the statutory social insurance may also be taxed in the Contracting State in which they arise and according to the laws of that State, but these payments amounting to 10.000 Euro (including pension allowance) per year shall be exempted in that State. If such payments exceed the aforementioned amount, only the exceeding part shall be subject to tax and the tax so charged shall not exceed 10 per cent of the gross amount according to the first sentence.

(3) The term "annuities" means certain amounts payable periodically at stated times, for life or for a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

## **Article 19**

### **Government Service**

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

b) However, such salaries, wages and other remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and if 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) Any pension paid by, or out of funds created by, a Contracting State, a Land, a political subdivision or a local authority thereof to an individual in respect of services rendered to that State, Land, political subdivision or local authority shall be taxable only in that State.

b) However, such pension 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 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration, and to pensions in respect of services rendered in connection with a business carried on by a Contracting State, a Land, a political subdivision or a local authority thereof.

## **Article 20**

### **Teachers and Students**

(1) Payments which a student or business apprentice who is a national of a Contracting State and who is present in the other Contracting 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 other State, provided that such payments arise from sources outside that other State.

(2) Likewise, remuneration received by a teacher or by an instructor who is a national of a Contracting State and who visits the other Contracting State at the invitation of that other State or of a university, college, school, museum or other cultural institution of that State or under an official programme of cultural exchange for a period not exceeding two years solely for the purpose of teaching, giving lectures or carrying out research at such institution and who is, or was immediately before that visit, a resident of the first mentioned Contracting State shall be exempt from tax in the other State on his remuneration for such activity, provided that such remuneration is derived by him from outside that other State.

## **Article 21**

### **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, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

## **Article 22**

### **Elimination of Double Taxation**

(1) Double taxation for the residents of Turkey shall be eliminated as follows:

a) Subject to the provisions of the laws of Turkey regarding the allowance as a credit against Turkish tax of tax payable in a territory outside Turkey (as they may be amended from time to time without changing the general principles hereof), German tax payable under the laws of Germany and in accordance with this Agreement in respect of income (including profits and chargeable gains) derived by a resident of Turkey from sources within Germany shall be allowed as a deduction from the Turkish tax on such income. Such deduction, however, shall not exceed the amount of Turkish tax, as computed before the deduction is made, attributable to such income.

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

(2) Double taxation for the residents of Germany shall be eliminated as follows:

a) Unless foreign tax credit is to be allowed under sub-paragraph b), there shall be exempted from the assessment basis of the German tax any item of income arising in Turkey which, according to this Agreement, may be taxed in Turkey.

In the case of items of income from dividends the preceding provision shall apply only to such dividends as are paid to a company (not including partnerships) being a resident of Germany by a company being a resident of Turkey at least 25 per cent of the capital of which is owned directly by the German company and which were not deducted when determining the profits of the company distributing these dividends.

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

aa) dividends not dealt with in sub-paragraph a);

bb) interest;

cc) royalties;

dd) items of income that may be taxed in Turkey according to paragraphs 2 and 5 of Article 13;

ee) items of income that may be taxed in Turkey according to Protocol item 6 with reference to Article 15;

ff) directors' fees;

gg) items of income that may be taxed according to Article 17.

c) The provisions of sub-paragraph b) shall apply instead of the provisions of subparagraph a) to items of income as defined in Articles 7 and 10 and to the assets from which such income is derived if the resident of Germany does not prove that the gross income of the permanent establishment in the business year in which the profit has been realised or of the company resident in Turkey in the business year for which the dividends were paid was derived exclusively or almost exclusively from activities within the meaning of nos. 1 to 6 of paragraph 1 of section 8 of the German Law on External Tax Relations (Aussensteuergesetz); the same shall apply to immovable property used by a permanent establishment and to income from this immovable property of the permanent establishment (paragraph 4 of Article 6) and to profits from the alienation of such immovable property (paragraph 1 of Article 13) and of the movable property forming part of the business property of the permanent establishment (paragraph 3 of Article 13).

d) 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, which are under the provisions of this Agreement exempted from German tax.

e) Notwithstanding the provisions of sub-paragraph a) double taxation shall be avoided by allowing a tax credit as laid down in sub-paragraph b)

aa) if in the Contracting States items of income are placed under differing provisions of this Agreement or attributed to different persons (except pursuant to Article 9) and this conflict cannot be settled by a procedure in accordance with paragraph 3 of Article 24 and if as a result of this difference in placement or attribution the relevant income would remain untaxed or be taxed lower than without this conflict or

bb) if after due consultation with the competent authority of the Republic of Turkey, the Federal Republic of Germany notifies the Republic of Turkey through diplomatic channels of other items of income to which it intends to apply the provisions of sub-paragraph b). Double Taxation is then avoided for the notified income by allowing a tax credit from the first day of the calendar year, next following that in which the notification was made.

## **Article 23**

### **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 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 only 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.

## **Article 24**

### **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 23, 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.

## **Article 25**

### **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 a Contracting State, or its Länder or of its 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. They may disclose the information in public court proceedings or in judicial decisions.

(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 for the supply of information 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 26**

### **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 a Contracting State or its Länder or of its political subdivisions or local authorities insofar as the taxation thereunder 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 27**

### **Procedural Rules for Taxation at Source**

(1) If in one of the Contracting States the taxes on dividends, interest, royalties or other items of income derived by a person who is a resident of the other Contracting State are levied by withholding at source, the right of the first-mentioned State to apply the withholding of tax at the rate provided under its domestic law shall not be affected by the provisions of this Agreement. The tax withheld at source shall be refunded on application by the taxpayer if and to the extent that it is reduced by this Agreement or ceases to apply.

(2) Refund applications must be submitted by the end of the fourth year following the calendar year in which the withholding tax was applied to the dividends, interest, royalties or other items of income.

(3) Notwithstanding paragraph 1, each Contracting State shall provide for procedures to the effect that payments of income subject under this Agreement 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.

(4) The competent authorities may by mutual agreement implement the provisions of this Article and if necessary establish other procedures for the implementation of tax reductions or exemptions provided for under this Agreement.

## **Article 28**

### **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 29**

### **Protocol**

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

## **Article 30**

### **Entry Into Force**

(1) This Agreement shall be ratified; the instruments of ratification shall be exchanged as soon as possible.

(2) The Agreement shall enter into force on the day of the exchange of the instruments of ratification and shall have effect:

a) in the case of the Federal Republic of Germany,

i) for taxes withheld at source, in respect of amounts paid on or after the first day of January 2011;

ii) for other taxes, in respect of taxes levied for periods beginning on or after the first day of January 2011;

iii) in respect of the exchange of information under Article 25 and in respect of the assistance in the collection of taxes under Article 26 from the first day of January 2011;

b) in the case of the Republic of Turkey,

i) for taxes with respect to every taxable period beginning on or after the first day of January 2011;

ii) in respect of the exchange of information under Article 25 and in respect of the assistance in the collection of taxes under Article 26 from the first day of January 2011.

## **Article 31**

### **Termination**

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

a) in the case of the Federal Republic of Germany,

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

ii) for other taxes, in respect of taxes levied for periods beginning on or after the first day of January of the calendar year next following that in which notice of termination is given;

b) in the case of the Republic of Turkey, for taxes with respect to every taxable period beginning on or after the first day of January of the year following that in which the notice is given.

The date of receipt of such notice by the other Contracting State shall be definitive for the determination of the deadline.

In witness whereof, the undersigned duly authorized hereto, have signed the present Agreement.

Done at Berlin on 19 September 2011 in two originals, each in the German, Turkish and English languages, all three texts being authentic. In the case of divergent interpretation of the German and the Turkish texts, the English text shall prevail.

### **FOR THE FEDERAL REPUBLIC OF GERMANY:**

*Wolfgang Schäuble*

*Minister of Finance*

### **FOR THE REPUBLIC OF TURKEY:**

*Mehmet Şimşek*

*Minister of Finance*

## PROTOCOL

to the  
Agreement  
Between  
the Federal Republic of Germany  
and  
the Republic of Turkey  
for the Avoidance of Double Taxation and of Tax Evasion  
with respect to Taxes on Income.  
signed on September 19, 2011

The Federal Republic of Germany and The Republic of Turkey have in addition to the Agreement of September 19, 2011 for the Avoidance of Double Taxation and of Tax Evasion with respect to Taxes on Income agreed on the following provisions, which shall form an integral part of the said Agreement:

1. With reference to paragraph 3 of Article 4:

It is understood that in order to determine the residence-status of a person other than an individual, the competent authorities of the Contracting States will adopt as preference criterion the place where the entity is actually managed and controlled or the place where the decision-making at highest level on important policies essential for the management of the entity takes places.

2. With reference to Articles 7 and 14:

a) 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 or 14 of the Agreement apply.

b) Article 7 shall also apply to income from participation in a partnership. It shall further apply to remuneration received by a partner from the partnership for activities in the service of the partnership and for the granting of loans or the provisions of assets.

3. With reference to Articles 10 and 11:

Notwithstanding the provisions of Article 10 and 11 of this Agreement, dividends and interest may be taxed in the Contracting States in which they arise, and according to the law of that State,

a) if they are derived from rights or debt claims carrying a right to participate in profits, including income derived by a silent partner ("stiller Gesellschafter") from his participation as such, or from a loan with an interest rate linked to borrower's profit ("partiarisches Darlehen") or from profit sharing bonds ("Gewinnobligationen") within the meaning of the tax law of the Federal Republic of Germany and

b) under the condition that they are deductible in the determination of profits of the debtor of such income.

4. With reference to paragraph 4 of Article 11:

Penalty charges for late payments mentioned in paragraph 4 of Article 11 shall be treated as interest, if the interest rate is lower than arm's length interest rate or penalty charges are higher than arm's length penalty charges for late payments.

5. With reference to paragraph 5 of Article 13:

Paragraph 5 of Article 13 shall not apply to gains derived from the alienation of shares of companies that are listed on an approved stock exchange of one of the Contracting States or to gains derived from the alienation of shares in the course of a corporate reorganisation.

6. With reference to paragraph 2 of Article 15:

It is understood that paragraph 2 of Article 15 shall not apply to remuneration derived by a resident of a Contracting State, in this paragraph called "the employee", and paid by or on behalf of an employer who is not a resident of the other State in respect of an employment exercised in the other Contracting State where:

- a) the employee renders services in the course of that employment to a person other than the employer who, directly or indirectly, supervises, directs or controls the manner in which those services are performed; and
- b) the employer does not bear the responsibility or risk for the results produced by the employee's work.

7. With reference to Article 24:

It is understood that with respect to paragraph 2 of Article 24 the taxpayer must in the case of Turkey claim the refund resulting from such mutual agreement within a period of one year after the tax administration has notified the taxpayer of the result of the mutual agreement.

8. With reference to Article 25:

If in accordance with domestic law personal data are exchanged under this Agreement, the following additional provisions shall apply subject to the legal provisions in effect for each Contracting State:

- a) The receiving agency may use such data only for the stated purpose and shall be subject to the conditions prescribed by the supplying agency in accordance with the provisions of Article 25.
- b) The receiving agency shall on request inform the supplying agency about the use of the supplied data and the results achieved thereby.
- c) Personal data may be supplied only to the responsible agencies. Any subsequent supply to other agencies may be effected only with the prior approval of the supplying agency.
- d) The supplying agency shall be obliged to ensure that the data to be supplied are accurate and that they are necessary for and proportionate to the purpose for which they are supplied. If it emerges that inaccurate data or data which should not have been supplied have been supplied, the receiving agency shall be informed of this without delay. That agency shall be obliged to correct or erase such data without delay.
- e) Upon application the person concerned shall be informed of the supplied data relating to him and of the use to which such data are to be put. There shall be no obligation to furnish this information if on balance it turns out that the public interest in withholding it outweighs the interest of the person concerned in receiving it. In all other respects, the right of the person concerned to be informed of the existing data relating to him shall be governed by the domestic law of the Contracting State in whose sovereign territory the application for the information is made.
- f) The receiving agency shall bear liability in accordance with its domestic laws in relation to any person suffering unlawful damage as a result of supply under the exchange of data pursuant to this

Agreement. If the receiving agency pays compensation for damage caused by the use of incorrectly supplied data, the supplying agency shall reimburse to the receiving agency the total amount of compensation paid.

g) Where the domestic law of the supplying agency contains special provisions for the deletion of the personal data supplied, that agency shall inform the receiving agency accordingly. Irrespective of such law, supplied personal data shall be erased once they are no longer required for the purpose for which they were supplied.

h) The supplying and the receiving agencies shall be obliged to keep official records of the supply and receipt of personal data.

i) The supplying and the receiving agencies shall be obliged to take effective measures to protect the personal data supplied against unauthorised access, unauthorised alteration and unauthorised disclosure.

9. With reference to Article 27:

It is understood that the Contracting State in which the items of income arise may ask for a certificate by the competent authority on the residence in the other Contracting State. The competent authorities of both Contracting States shall design a common form as a certification of residence following the entry into force of this Agreement.

10. Both Contracting States are of the opinion that this Agreement shall not be interpreted to mean that a Contracting State is prevented from applying its domestic legal provisions on the prevention of tax evasion or tax avoidance. If the application of these domestic legal provisions result in double taxation, the competent authorities shall consult each other pursuant to Article 24 paragraph 3 on how to avoid double taxation.

In witness whereof, the undersigned duly authorized hereto, have signed the present Protocol.

Done at Berlin on 19 September 2011 in two originals, each in the German, Turkish and English languages, all three texts being authentic. In the case of divergent interpretation of the German and the Turkish texts, the English text shall prevail.

**FOR THE FEDERAL REPUBLIC OF GERMANY:**

*Wolfgang Schäuble*

**FOR THE REPUBLIC OF TURKEY:**

*Mehmet Şimşek*