

No. 29534

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**FEDERAL REPUBLIC OF GERMANY  
and  
UNITED STATES OF AMERICA**

**Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital and to certain other taxes (with protocol and exchange of notes and with related note dated 3 November 1989). Signed at Bonn on 29 August 1989**

*Authentic texts: German and English.*

*Registered by Germany on 28 January 1993.*

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**RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE  
et  
ÉTATS-UNIS D'AMÉRIQUE**

**Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu, d'impôts sur la fortune et de certains autres impôts (avec protocole et échange de notes et avec note connexe en date du 3 novembre 1989). Signée à Bonn le 29 août 1989**

*Textes authentiques : allemand et anglais.*

*Enregistré par l'Allemagne le 28 janvier 1993.*

CONVENTION<sup>1</sup> BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE UNITED STATES OF AMERICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL AND TO CERTAIN OTHER TAXES

The Federal Republic of Germany  
and  
the United States of America,

Desiring to conclude a new Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital and to certain other taxes,

Have agreed as follows:

**Article 1**  
**Personal Scope**

This Convention shall apply to persons who are residents of one or both of the Contracting States, except as otherwise provided in this Convention.

**Article 2**  
**Taxes Covered**

1. The existing taxes to which this Convention shall apply are:
  - a) In the United States:
    - aa) the federal income taxes imposed by the Internal Revenue Code (but excluding the accumulated earnings tax, the personal holding company tax, and social security taxes); and
    - bb) the excise tax imposed on insurance premiums paid to foreign insurers  
(hereinafter referred to as "United States tax").

<sup>1</sup> Came into force on 21 August 1991 by the exchange of the instruments of ratification, which took place at Washington, in accordance with article 32 (2).

This Convention shall, however, apply to the excise tax imposed on insurance premiums paid to foreign insurers only to the extent that the risks covered by such premiums are not reinsured with a person not entitled to the benefits of this or any other convention that provides exemption from such tax.

- b) In the Federal Republic of Germany:
  - aa) the income tax (Einkommensteuer);
  - bb) the corporation tax (Körperschaftsteuer);
  - cc) the trade tax (Gewerbesteuer); and
  - dd) the capital tax (Vermögensteuer)(hereinafter referred to as "German tax").

2. This Convention shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of this Convention 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 taxation laws.

### Article 3

#### General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:

- a) the terms "a Contracting State" and "the other Contracting State" mean the United States or the Federal Republic of Germany as the context requires;
- b) the term "United States", when used in a geographical sense, means the United States of America, but does not include Puerto Rico, the Virgin Islands, Guam, or any other possession or territory of the United States of America;
- c) the term "Federal Republic of Germany", when used in a geographical sense, means the area in which the tax law of the Federal Republic of Germany is in force;
- d) the term "person" includes but is not limited to an individual and a company;
- e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enter-

prise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

- g) the term “international traffic” means any transport by a ship or aircraft, except when the ship or aircraft is operated solely between places in one of the Contracting States;
- h) the term “national” means:
  - aa) in respect of the United States, United States citizens and any legal person, partnership, or association deriving its status as such from the law in force in the United States; and
  - bb) in respect of the Federal Republic of Germany, any German within the meaning of paragraph 1 of Article 116 of the Basic Law of the Federal Republic of Germany and any legal person, partnership, or association deriving its status as such from the law in force in the Federal Republic of Germany; and
- i) the term “competent authority” means:
  - aa) in the United States, the Secretary of the Treasury or his delegate; and
  - bb) in the Federal Republic of Germany, the Federal Minister of Finance or his delegate.

2. As regards the application of this Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 25 (Mutual Agreement Procedure), have the meaning that it has under the laws of that State concerning the taxes to which this Convention applies.

#### **Article 4** **Residence**

1. For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature, provided, however, that

- a) this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein; and
- b) in the case of income derived or paid by a partnership, estate, or trust, this term applies only to the extent that the income derived by such partnership, estate, or trust is subject to tax in that State as the income of a resident, either in its hands or in the hands of its partners or beneficiaries.

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 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 of the State with which his personal and economic relations are closer (center of vital interests);
- b) if the State in which he has his center 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 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 of the State of which he is a national; and
- d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then the competent authorities of the Contracting States shall seek to determine through consultation the Contracting State of which the person shall be deemed to be a resident for the purposes of this Convention, and, if they are unable so to determine, such person shall not be considered to be a resident of either Contracting State for purposes of enjoying benefits under this Convention.

## **Article 5**

### **Permanent Establishment**

1. For the purposes of this Convention, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.