**Federal Republic of Germany**

**CONVENTION FOR AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES OF INCOME AND CAPITAL WITH FEDERAL REPUBLIC OF GERMANY**

Whereas the annexed Agreement for the avoidance of double taxation of income between the Government of India and the Government of the Federal Republic of Germany has been ratified and the instruments of ratification exchanged as required by Article XX of the said Agreement;

Now, therefore, in exercise of the powers conferred by section 49A of the Indian Income-tax Act, 1922 (11 of 1922), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India.

**Notification: No. GSR 1090, dated 13th September, 1960.**

**TEXT OF AGREEMENT DATED 18TH MARCH, 1959 REFERRED TO ABOVE**

Whereas the Government of India and the Government of the Federal Republic of Germany desire to conclude an agreement for the avoidance of double taxation of income

Now, therefore, it is hereby agreed as follows:

**ARTICLE 1**

1.     The taxes which are the subject of the present Agreement are:

**a.     in the Federal Republic of Germany:**

                              i.        the income-tax (Eimkommensteuer),

                             ii.        the corporation tax (Koerperschaftsteuer),

                            iii.        the capital tax (Venmoegensteuer), and

                            iv.        the trade tax (Gewerbesteuer); (hereinafter referred to as " German tax ");

**b.    in India-**

                              i.          the income-tax including any surcharge thereon,

                             ii.          the surtax, and

                            iii.          the wealth-tax, (hereinafter referred to as " Indian tax ").

2.     The present Agreement shall also apply to any other taxes of a substantially similar character imposed in India or the Federal Republic of Germany subsequent to the date of signature of the present Agreement.

**ARTICLE IA**

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

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 (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 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;

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

3.     Where by reason of the provisions of paragraph (1) a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

**ARTICLE II**

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

a.     the term " Federal Republic " means the Federal Republic of Germany, and when used in a geographical sense, the area in which the tax law of the Federal Republic of Germany is in force;

b.    the term " India " means the Republic of India, and when used in a geographical sense, the area in which the tax law of the Republic of India is in force;

c.     the terms " a Contracting State " and " the other Contracting State " mean the Federal Republic of India, as the context requires;

d.    the term " person " includes naturally persons, companies and all other entities which are treated as taxable units under the tax laws in force in the respective territories;

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

f.     the term " tax " means German tax or Indian tax, as the context requires

g.    the terms " Federal Republic enterprise " and " Indian enterprise " mean, respectively, an industrial or commercial enterprise or undertaking carried on by a resident of the Federal Republic, and an industrial or commercial enterprise or undertaking carried on by a resident of India; and the terms " enterprise of one of the territories " and " enterprise of the other territory " mean a Federal Republic enterprise or an Indian enterprise, as the context requires;

h.

aa.  the term " permanent establishment " means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

bb.  the term " permanent establishment " includes especially--

                              i.        a place of management;

                             ii.        a branch;

                            iii.        an office;

                            iv.        a factory;

                             v.        a workshop;

                            vi.        a sales outlet;

                           vii.        a warehouse; and

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

cc.  a building site or construction or installation project constitutes a permanent establishment only if it lasts more than six months.

dd.  notwithstanding the preceding provisions of this Article, the term " permanent establishment " shall be deemed not to include--

                              i.        the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;

                             ii.        the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;

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

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

                             v.        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;

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

ee.  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 sub-paragraph

ff.    applies, shall be deemed to be a permanent establishment of that enterprise in the first-mentioned Contracting State--

                              i.          if he has, and habitually exercises in that Contracting 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; or

                             ii.          if he habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise belonging to the enterprise from which he regularly delivers goods or merchandise for or on behalf of the enterprise; or

                            iii.          if he habitually secures orders in the first-mentioned Contracting State exclusively, or almost exclusively, for the enterprise itself, or for the enterprise and other enterprises which are controlled by it or have a controlling interest in it.

gg.  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.

hh.  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;

i.      the term " pension " means periodic payments made in consideration of services rendered or by way of compensation for injuries received;

j.      the term " annuity " means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time;

k.     the term " competent authority " means in the case of India the Central Government in the Ministry of Finance, Department of Revenue, and in the case of the Federal Republic of Germany, the Federal Minister of Finance.

l.        the term " fiscal year " means--

                                          i.    in relation to Indian tax, the previous year as defined in the Income-tax Act, 1961;

                                         ii.    in relation to German tax, the calendar year.

2.       In the application of the provisions of this Agreement in one of the Contracting States any term not otherwise defined in this Agreement shall, unless the context otherwise requires, have the meaning which it has under the laws in force in that Contracting State relating to the taxes which are the subject of this Agreement.

**ARTICLE III**

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 the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business 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, and according to the domestic law of the Contracting State in which the permanent establishment is situated.

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 contained in this Article.

5.     No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6.     For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7.     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 IV**

Where a resident of a Contracting State carries on business with a resident of the other Contracting State and it appears to the taxation authorities of the first-mentioned Contracting State that owing to the close connection between such persons the course of business is so arranged that the business done produces to the resident of the first-mentioned Contracting State either no profits or less than ordinary profits which might be expected to arise in that business, tax shall be leviable in the former 2 Contracting State on such profits as may reasonably be deemed to have arisen therefrom.

**ARTICLE V**

1.       Income derived from the operation of aircraft by an enterprise of one of the Contracting State shall not be taxed in the other Contracting State unless the aircraft is operated wholly or mainly between places within that other Contracting State.

2.       Paragraph (1) shall likewise apply in respect of participations in pools of any kind by enterprises engaged in air transport.

**ARTICLE VI**

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

2.     Notwithstanding the provisions of paragraph (1), such profits may be taxed in the other Contracting State from which they are derived provided that the tax so charged shall not exceed:

a.     during the first five fiscal years after the entry into force of the Protocol signed on June 28, 1984, 50 per cent, and

b.    during the subsequent five fiscal years, 25 per cent, of the tax otherwise imposed by the internal law of that State. Subsequently, only the provisions of paragraph (1) shall be applicable.

3.     The provisions of paragraphs (1) and (2) shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

4.     Paragraphs (1) and (2) shall not apply to profits arising as a result of coastal traffic. The term " coastal traffic " means traffic which originates and terminates in the territorial waters of the same Contracting State.

**ARTICLE VII**

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.     in the case of the Federal Republic, 15 per cent of the gross amount of the dividends.

b.    in the case of India, where the dividends relate in whole or in part to a new contribution, 15 per cent of the gross amount of the dividends attributable to the new contribution.

In this Article, the term " new contribution " means any share capital, other than bonus shares, issued after the date of entry into force of the Protocol signed on June 28, 1984 by a company which is a resident of India, and beneficially owned by a resident of the Federal Republic.

3.     The term " dividends " as used in this Article means income from shares, mining shares, founders' shares, or other rights, not being debt claims, participating in profits, as well as income from other corporate rights 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 by a sleeping partner from his participation as such and distributions on certificates of an 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, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case, the provisions of Article III shall apply.

5.     Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, but 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 in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

**ARTICLE VIll**

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 the tax so charged on interest payable in respect of a loan given or debt created after the date of entry into force of the Protocol signed on 28th June, 1984 shall not exceed:

a.     10 per cent of the gross amount, if such interest is paid on any loan of whatever kind granted by a bank; and

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

3.     Notwithstanding the provisions of paragraph (2):

a.     interest arising in the Federal Republic and paid to the Indian Government or the Reserve Bank of India shall be exempt from German tax;

b.    interest arising in India and paid to the Government of the Federal Republic of Germany, the Deutsche Budesbank, the Kreditanstalt fur Wiederaufbau or the Deutsche Gesellschaft fur wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) shall be exempt from Indian 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 whether or not carrying a right to participate in the debtor's profits, and in particular income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures.

5.     Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a Land, a political sub-division, a local authority 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 State in which the permanent establishment is situated.

6.     The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the interest, being a resident of a Contracting State carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case, the provisions of Article III shall apply.

**ARTICLE VIIIA**

1.     Royalties and fees for technical services 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 and fees for technical services may also be taxed in the Contracting State in which they arise, and according to the laws of that State. But insofar as the fees for technical services are concerned, the tax so charged shall not exceed 20 per cent of the gross amount of such fees.

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 films or tapes used for radio or television 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 term " fees for technical services " as used in this Article means payments of any kind to any person, other than payments to an employee of the person making the payments, in consideration for services of a managerial, technical or consultancy nature, including the provision of services of technical or other personnel.

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

6.     Royalties and fees for technical services shall be deemed to arise in a Contracting State where the payer is that State itself, a land, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to make the payments was incurred and the payments are home by that permanent establishment, then the royalties or fees for technical services 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 some other person, the amount of the royalties or fees for technical services paid exceeds for whatever reason the amount which would have been paid 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 IX**

Income from immovable property may be taxed in the Contracting State in which the property is situated. For this purpose any rent or royalty or other income derived from the operation of a mine, quarry, or any other extraction of natural resources shall be regarded as income from immovable property.

**ARTICLE X**

1.     Capital gains arising from the sale, exchange or tansfer of a capital asset whether movable or immovable, may be taxed in the Contracting State in which the capital asset is situated at the time of such sale, exchange or transfer. For this purpose, the situs of the shares of a company shall be deemed to be in the Contracting State where the company is incorporated.

2.     However, gains from the alienation of ships or aircraft operating in international traffic and movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

**ARTICLE XI**

1.     Remuneration, including pensions and annuities, paid out of public funds of India in respect of present or past services shall not be taxed in the Federal Republic unless the payment is made to the citizen of the Federal Republic.

2.     Remuneration, including pensions and annuities, paid out of public funds of the Federal Republic or its Leander or political sub-divisions thereof in respect of present or past services shall not be taxed in India unless the payment is made to a citizen of India.

3.     The provisions of paragraphs (1) and (2) of this Article shall not apply to payments in respect of services in connection with any trade or business carried on by either of the Contracting Parties or political sub-divisions thereof for purposes of profit.

4.     The provisions of paragraphs (1) and (2) of this Article shall also apply to remuneration, including pensions and annuities, paid by the Federal Bank, the Federal Railways and the Postal Administration of the Federal Republic and the corresponding organisations of India.

**ARTICLE XII**

1.     Profits or remuneration from professional services (including services as a director) or from services as an employee derived by an individual who is a resident of one of the territories may be taxed in the other territory only if such services are rendered in that other territory.

2.     An individual who is a resident of India shall not be taxed in the Federal Republic on profits or remuneration referred to in paragraph (1), if--

a.     he is temporarily present in the Federal Republic for period or a periods not exceeding in the aggregate 183 days during a taxable year,

b.    the services are rendered for or on behalf of a resident of India,

c.     the profits or remuneration are subject to Indian tax, and

d.    the profits or remuneration are not deducted in computing the profits of an enterprise chargeable to German tax.

3.     An individual who is a resident of the German shall not be taxed in India on the profits or remuneration referred to in paragraph (1), if--

a.     he is temporarily present in India for a period or periods not exceeding in the aggregate 183 days during a relevant " previous year ",

b.    the services are rendered for or on behalf of a resident of the Federal Republic,

c.     the profits or remuneration are subject to German tax, and

d.    the profits or remuneration are not deducted in computing the profits of an enterprise chargeable to Indian tax.

4.     Where an individual permanently or predominantly renders services on ships or aircraft operated by an enterprise of one of the Contracting States such services shall be deemed to be rendered in that Contracting State.

**ARTICLE XIII**

Any pension or annuity (other than pension or annuities to which Article XI applies) derived by a resident of one of the Contracting States from sources in the other Contracting State may be taxed in that other Contracting State.

**ARTICLE XIV**

A professor or teacher from one of the Contracting States, who receives remuneration for teaching during a period of temporary residence not exceeding two years, at a university, college, school or other educational institution in the other Contracting State shall not be taxed in that other Contracting State in respect of that remuneration.

**ARTICLE XV**

1.     An individual from one of the Contracting States who is temporarily present in the other territory solely-

a.     as a student at a recognized university, college or school in such other territory,

b.    as a business apprentice (including in the Federal Republic a Volontar or a Praktikant), or

c.     as the recipient of a grant, allowance or award for the primary purpose of study or research from a religious, charitable, scientific or educational organisation, shall not be taxed in the other Contracting State in respect of remittances from abroad for the purposes of his maintenance, education or training, in respect of a scholarship, and in respect of any amount representing remuneration for an employment in that other Contracting State.

2.     An individual from one of the Contracting States who is temporarily present in the other Contracting States for a period not exceeding one year, as an employee of or under contract with, an enterprise of the former Contracting State or an organisation referred to in paragraph (1) sub-paragraph (c) above, solely to acquire technical, professional or business experience from a person other than such enterprise or organisation, shall not be taxed in that other Contracting State on remuneration for such period, unless the amount thereof exceeds 15,000 DM or its equivalent in Indian currency.

3.     An individual from one of the Contracting States temporarily present in the other territory under arrangements with the Government of that other Contracting State solely for the purpose of training, research or study shall not be taxed in that other Contracting State on remuneration received in respect of such training, research or study, unless the amount thereof exceeds 25,000 DM or its equivalent in Indian Currency.

**ARTICLE XVA**

1.     Capital represented by immovable property referred to in Article IX, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2.     Capital represented by 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, may be taxed in that other State.

3.     Capital represented by ships and aircraft operated in international traffic and by movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4.     Capital represented by shares in a company shall be taxable in the Contracting State in which such company is resident.

5.     All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

**ARTICLE XVI**

1.     The laws in force in either of the Contracting States will continue to govern the assessment and taxation of income in the respective Contracting States except where express provision to the contrary is made in this Agreement.

2.     Where a resident of India derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in the Federal Republic, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in the Federal Republic, whether directly or by deduction; and as a deduction from the tax on the capital of that resident an amount equal to the capital tax paid in the Federal Republic. Such deduction in either case shall not, however, exceed that part of the income-tax or capital tax (as computed before the deduction is given) which is attributable, as the case may be, to the income or the capital which may be taxed in the Federal Republic. Further, where such resident is a company by which surtax is payable in India, the deduction in respect of income-tax paid in the Federal Republic shall be allowed in the first instance from income-tax payable by the company in India and as to the balance, if any, from surtax payable by it in India.

3.     Subject to the provisions of paragraph (1) above, tax shall be determined in the case of a resident of the Federal Republic 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 arising in India and any item of capital situated within India, which, according to this Agreement, may be taxed in India. The Federal Republic, 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 (not including partnerships) being a resident of the Federal Republic by a company being a resident of India at least 10 per cent of the capital of which is owned directly by the first-mentioned company. For the purposes of taxes on capital there shall also be excluded from the basis upon which German tax is imposed any shareholding, the dividends of which are excluded or, if paid, would be excluded according to the immediately foregoing sentence, from the basis upon which German tax is imposed.

b.    Subject to the provisions of German tax law regarding credit for foreign tax (as it may be amended from time to time without changing the general principle hereof), there shall be allowed as a credit against German income and corporation tax payable in respect of the following items of income arising in India the Indian tax paid under the laws of India and in accordance with this agreement on--

aa.  profits derived from the operation of ships in international traffic;

bb.  dividends not dealt with in sub-paragraph (a);

cc.  interest;

dd.  royalties and fees for technical services.

c.     For the purposes of items (bb) to (dd) of sub-paragraph (b), the term " Indian tax " shall be deemed to include any amount which would have been payable as Indian tax under the laws of India and in accordance with this Agreement for any year but for an exemption from, or reduction of, tax granted for that year under:

aa.  sections 10(4), 10(4A), 10(15)(iv) and 80K of the Income-tax Act, 1961;

bb.  any other provision of similar character to be agreed between the competent authorities of both Contracting States.

If this amount is less than 50 per cent of the German tax chargeable on such income, the term " Indian tax " shall be deemed to be at least this 50 per cent of the German tax.

d.    The provisions of sub-paragraph (a) shall not apply to the profits of, and to the capital represented by, movable and immovable property forming part of the business property of a permanent establishment and to the gains from the alienation of such property; to dividends paid by, and to the shareholding in a company unless the resident of the Federal Republic concerned proves that the receipts of the permanent establishment or company are derived exclusively or almost exclusively:--

aa.  from producing or selling goods or merchandise giving technical advice or rendering engineering services, or doing banking or insurance business, within India, or

bb.  from dividends paid by one or more companies, being residents of India, more than 25 per cent 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 India.

In such a case, Indian tax payable under the laws of India and in accordance with this Agreement on the above-mentioned items of income and capital shall, subject to the provisions of German tax law regarding credit for foreign tax (as it may be amended from time to time without changing the general principle hereof), be allowed as a credit against German income or corporation tax payable on such items of income or against German capital tax payable on such items of capital.

**ARTICLE XVII**

The competent authorities shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of the present Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of the present Agreement. No information as aforesaid shall be exchanged by the competent authority of one of the Contracting States which would disclose any trade, business, industrial or professional secret or any trade process to the authority of the other Contracting State.

**ARTICLE XVIII**

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. 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 for the purpose of reaching an Agreement in the sense of the preceding paragraphs.

**ARTICLE XIX**

1.     This Agreement shall apply to Land Berlin provided that the Government of the Federal Republic of Germany has not delivered a contrary declaration to the Government of India within three months from the date of entry into force of the Agreement.

2.     Upon the application of this Agreement to Land Berlin, references in the agreement to the Federal Republic shall be deemed also to be references to Land Berlin.

**ARTICLE XX**

1.     The present Agreement shall ratified.

2.     This instruments of ratification shall be exchanged at Bonn as soon as possible.

3.     This Agreement shall come into force after the expiration of a month following the date on which the instruments of ratification are exchanged and shall thereupon have effect--

a.     Inrespect of Indian tax in relation to the income for any " previous year " relevant to any year of assessment beginning on or after 1st April, 1958, and

b.    In respect of the German tax, for taxes which are levied for the calendar year 1957 and for subsequent calendar years.

**ARTICLE XXI**

This Agreement shall continue in effect indefinitely but either of the Contracting Parties may on or before the 30th day of June in any calendar year after 1960 give to the other Contracting Party notice of termination, and in such event this Agreement shall cease to be effective--

a.     in respect of Indian tax, in relation to income and capital assessable for the assessment years commencing on or after the first day of April in the calendar year next following that in which the notice of termination is given, and

b.    in respect of German tax, for taxes which are levied for the calendar years following the year in which the notice of termination is given.

In witness whereof the undersigned, duly authorised thereto have signed this Agreement and have affixed thereto their seals.

Done at New Delhi on 18th day of March, 1959, in duplicate, in the English, German and Hindi languages, all the three texts being authentic, except in the case of doubt when the English text shall prevail.

**EXCHANGE OF NOTES BETWEEN CONTRACTING STATES ON 28TH JUNE 1984**

With reference to the Protocol, signed today, amending the Agreement between the Government of the Federal Republic of Germany and the Government of India for the Avoidance of Double Taxation of Income, signed in New Delhi on 18 March, 1959, I have the honour on behalf of the Government of the Federal Republic of Germany to inform you that the two Contracting States have reached agreement on the following:

1.     Notwithstanding the provisions of Articles VII and VIII of the Agreement, dividends and interest arising in a Contracting State may be taxed in that State and according to the law of that State--

a.     if they are derived from rights or debt claims carrying a right to participate in profit (including income derived by a sleeping partner from his participation as such and in the case of the Federal Republic from a " partiarisches Darlehen " and from " Gewinnobliptionen) ", and

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

2.     Where a company being a resident of the Federal Republic distributes income derived from sources within India, sub-paragraph (a) of paragraph (3) of Article XVI of the Agreement shall not preclude the compensatory imposition of corporation tax on such distributions in accordance with the provisions of German tax law, designed to ensure the crediting of the underlying tax against the income-tax payable by the shareholder.

3.     Notwithstanding the provisions of paragraph (3) of Article III of the Agreement, no deduction shall be allowed in respect of amounts paid or charged (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of--

a.     royalties, fees or similar payments in return for the use of patents or other similar rights;

b.    commission for specific services performed or for management; and

c.     interest on moneys lent to the permanent establishment, except in the case of a banking institution.

4.     It is understood that the deductions in respect of the head office expenses as referred to in paragraph (3) of Article III of the Agreement shall in no case be less than what are allowable under the Indian Income-tax Act as on the date of entry into force of this Protocol.

5.     It is understood that the taxation of royalty income as consists of lump sum consideration for the transfer outside India of, or the imparting of information outside India in respect of, any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process or trade mark or similar property, shall not exceed 20 per cent of the gross amount of such payments.

6.     It is also understood that in relation to Article XVII of the Agreement, the term " information " shall include the documents. It is further understood that the German tax law provides for the transmission of information under certain conditions upon request and it would be possible to furnish information to the competent authority in India under these provisions irrespective of the said Article.

I shall be grateful if you will kindly confirm your agreement to the above; in such case, this Note and your reply there to shall be deemed to be part of the Protocol