Agreement
between the Republic of Estonia and the Federal Republic of Germany for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital*

The Republic of Estonia and the Federal Republic of Germany,

desiring to promote their mutual economic relations by removing fiscal obstacles,

have agreed as follows:

Article 1. Personal Scope

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 and on capital imposed on behalf of a Contracting State, of a *Land* or a political subdivision or local authority thereof, irrespective of the manner in which they are levied.

(2) There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, and taxes on capital appreciation.

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

(a) in the Republic of Estonia:

the income tax (*tulumaks*),

the land tax (*maamaks*), and

the local income tax (*kohalik tulumaks*)

(hereinafter referred to as "Estonian tax");

(b) in the Federal Republic of Germany:

the income tax (*die Einkommensteuer*),

the corporation tax (*die Körperschaftsteuer*),

the capital tax (*die Vermögensteuer*), and

the trade tax (*die Gewerbesteuer*)

(hereinafter referred to as "German tax").

(4) The Agreement shall apply also to any identical or substantially similar taxes which 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 which 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 "Republic of Estonia" means the Republic of Estonia and, when used in the geographical sense, means the territory of the Republic of Estonia and any other area adjacent to the territorial waters of the Republic of Estonia within which, under the laws of the Republic of Estonia and in accordance with international law, the rights of the Republic of Estonia may be exercised with respect of the sea-bed and its sub-soil and their natural resources;

b) the term "Federal Republic of Germany" means the area in which the tax law of the Federal Republic of Germany is in force, as well as the area of the sea-bed, its sub-soil and the superjacent

* Abkommen zwischen der Republik Estland und der Bundesrepublik Deutschland zur Vermeidung der Doppelbesteuerung auf dem Gebiet der Steuern vom Einkommen und vom Vermögen.

water column adjacent to the territorial sea, insofar as the Federal Republic of Germany exercises there sovereign rights and jurisdiction in conformity with international law and its national legislation;

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

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

e) the term "company" means any body corporate or any entity which 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 enterprise 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 "national" means:

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

bb) in respect of the Federal Republic of Germany any German within the meaning of Article 116, paragraph (1), of the Basic Law of the Federal Republic of Germany and any legal person, partnership and association deriving its status as such from the law in force in the Federal Republic of Germany;

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 "competent authority" means in the case of the Republic of Estonia the Minister of Finance or his authorised representative, and in the case of the Federal Republic of Germany the Federal Ministry of Finance.

(2) As regards the application of the Agreement by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Agreement applies.

Article 4. Resident

(1) For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature. The term also includes the Government of that State itself, its political subdivisions and local authorities. 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.

(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 if 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 endeavour to settle

the question by mutual agreement and determine the mode of application of this Agreement to such person. In the absence of such agreement, for the purposes of this Agreement, such person shall not be considered to be a resident of either Contracting State for purposes of enjoying benefits under this Agreement.

Article 5. Permanent Establishment

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

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

a) a place of management;

b) a branch;

c) an office;

d) a factory;

e) a workshop, and

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

(3) A building site, a construction, assembly or installation project or a supervisory activity connected therewith constitutes a permanent establishment only if it lasts more than nine months.

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

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

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

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

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

e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity 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 form 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 on behalf of an enterprise and has, and habitual exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, 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. However, where the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise and where the conditions between the agent and the enterprise differ from those which would be made between independent persons, such agent shall not be considered an agent of an independent status within the meaning of this paragraph. In such case the provisions of paragraph 5 shall apply.

(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 form agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

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

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

(4) Where the ownership of shares or other corporate rights in a company entitles the owner of such shares or corporate rights to the enjoyment of immovable property held by the company, the income from the direct use, letting, or use in any other form of such right to enjoyment may be taxed in the Contracting State in which the immovable property is situated.

(5) The provisions of paragraphs 1, 3 and 4 shall also apply to the income from immovable property of an enterprise and to income form 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) Insofar as in a Contracting State and in exceptional cases the determination of the profits to be attributed to a permanent establishment in accordance with paragraph 2 is impossible or gives rise to unreasonable difficulties, nothing in paragraph 2 shall preclude the determination of the profits to be attributed to a permanent establishment by means of apportioning the total profits of the enterprise to its various parts; 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 purpose 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) Nothing in the preceding paragraphs of this Article shall prevent a Contracting State from applying its law relating to the taxation of any person who carries on the business of insurance. However, the tax so charged shall not exceed 5.4 per cent of the gross amount of premiums of the business of insurance.

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

Article 8. Shipping and Air Transport

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

Where

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

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

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

Article 10. Dividends

(1) Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

(2) However, such dividends may 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 recipient is the beneficial owner of the dividends 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) This term “dividends” as used in this Article means dividends or shares including income from shares, “jouissance” shares or “jouissance” rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, and other income which is subjected to the same taxation treatment as income form shares by the laws of the State of which the company making the distribution is a resident.

(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 form 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 recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

(3) Notwithstanding the provisions of paragraph 2,

(a) interest arising in the Republic of Estonia and paid in consideration of a loan guaranteed by Hermes-Decking or paid to the Government of the Federal Republic of Germany, the *Deutsche Bundesbank,* the *Kreditanstalt für Wiederaufbau* or the *Deutsche Investitions- und Entwicklungs-gesellschaft* shall be exempt from Estonian tax;

(b) interest arising in the Federal Republic of Germany and paid to the Government of the Republic of Estonia or to the Bank of Estonia shall be exempt from German tax;

(c) interest arising in the Federal Republic of Germany and paid in consideration of a loan guaranteed by or paid to the Estonian Export Credit State Fund or any organisation established in the Republic of Estonia after the date of signature of this Agreement and which is of a similar nature as any of the bodies referred to in sub-paragraph a) (the competent authorities of the Contracting States shall by mutual agreement determine whether such organisations are of a similar nature) shall be exempt form German tax,

(d) interest arising in a Contracting State shall be taxable only in the other Contracting State if:

aa) the recipient is a resident of that other State, and

bb) such recipient is an enterprise of that other State and is the beneficial owner of the interest, and

cc) the interest is paid with respect to indebtedness arising on the sale on credit, by that enterprise, of any merchandise or industrial, commercial or scientific equipment to an enterprise of the first-mentioned State, except where the sale or indebtedness is between related persons.

(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 the case of the Federal Republic of Germany whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income form 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 debt-claim 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 that State itself, a *Land,* a political subdivision, 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 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 recipient is the beneficial owner of the royalties, the tax so charged shall not exceed:

a) 5 per cent of the gross amount of royalties paid for the use of industrial, commercial or scientific equipment;

b) 10 per cent of the gross amount of the royalties in all other cases.

(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 films or tapes for television or radio broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

(4) The provisions of 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 that State itself, a *Land*, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a 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 Contracting 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 or shares in a company the assets of which consist mainly of such property may be taxed in that other State.

(2) Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State 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.

(3) Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic by that enterprise or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that State.

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

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 unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in that other State, but only so much of the income as is attributable to that fixed base. For this purpose, where an individual who is a resident of a Contracting State stays in the other Contracting State for a period or periods exceeding in the aggregate 183 days in the fiscal year concerned, he shall be deemed to have a fixed base regularly available to him in that other State and the income that is derived form his activities referred to above that are performed in that other State shall be attributable to that fixed base.

(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 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the 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 in international traffic by an enterprise of a Contracting State, may be taxed in that State.

Article 16. Directors' Fees

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

Article 17. 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 a sportsman are exercised.

(3) The provisions of paragraphs 1 and 2 shall not apply to income derived form activities exercised in a Contracting State by an entertainer or a sportsman if the visit to that State is wholly or mainly supported by public funds of the other Contracting State or a political subdivision or a local authority thereof. In such case, the income shall be taxable only in the Contracting State of which the entertainer or sportsman is a resident.

Article 18. Pensions

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

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*, subdivision or authority shall be taxable only in that State.

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

(i) is a national of that State; or

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

(2) a) Any 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*, subdivision or authority shall be taxable only in that State.

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

(3) The provisions of Article 15, 16 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.

(4) Notwithstanding the provisions of paragraphs 1 and 2, periodic or non-periodic payments form the Federal Republic of Germany as compensation for an injury or damage sustained as a result of hostilities or past political persecution shall be taxable only in the Federal Republic of Germany.

Article 20. Students and Trainees

Payments which a student, or an apprentice (including in the case of the Federal Republic of Germany a "*Volontär*" or a "*Praktikant*"), or trainee, who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

Article 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 form immovable property, 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 form 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. Capital

(1) Capital represented by immovable property 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 or by 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, may be taxed in that other State.

(3) Capital represented by ships and aircraft operated in international traffic by an enterprise of a Contracting State and by movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

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

Article 23. Relief from Double Taxation

(1) Tax shall be determined in the case of a resident of the Republic of Estonia as follows:

a) Where a resident of the Republic of Estonia derives income or owns capital which, in accordance with this Agreement, may be taxed in the Federal Republic of Germany, unless a more favourable treatment is provided in its domestic law, the Republic of Estonia shall allow:

aa) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid thereon in the Federal Republic of Germany;

bb) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid thereon in the Federal Republic of Germany.

Such deduction in either case shall not, however, exceed that part of the income or capital tax in the Republic of Estonia 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 of Germany.

b) For the purpose of sub-paragraph a), where a company that is a resident of the Republic of Estonia receives a dividend from a company that is a resident of the Federal Republic of Germany in which it owns at least 10 per cent of its shares having full voting rights, the tax paid in the Federal Republic of Germany shall include not only the tax paid on the dividend, but also the tax paid on the underlying profits of the company out of which the dividend was paid.

(2) Tax shall be determined in the case of a resident of the Federal Republic of Germany as follows:

a) Unless foreign tax credit is to be allowed under sub-paragraph b), there shall be exempted from German tax any item of income arising in the Republic of Estonia and any item of capital situated within the Republic of Estonia which, according to this Agreement, may be taxed in the Republic of Estonia. The Federal Republic of Germany, however, retains the right to take into account in the determination of its rate of tax the items of income and capital so exempted.

In the case of dividends exemption shall apply only to such dividends as are paid to a company (not including partnerships) being a resident of the Federal Republic of Germany by a company

being a resident of the Republic of Estonia at least 25 per cent of the capital of which is owned by the German company.

There shall be exempted from taxes on capital any shareholding the dividends of which are exempted or, if paid, would be exempted, according to the immediately foregoing sentence.

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

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

bb) interest;

cc) royalties;

dd) directors' fees;

ee) income of artistes and sportsmen.

c) 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; provided that the resident of the Federal Republic of Germany concerned does not prove that the gross receipts of the permanent establishment or company are derived exclusively or almost exclusively form activities within the meaning of section 8, paragraph 1, sub-paragraphs 1 to 6 or from participation in the meaning of section 8, paragraph 2 of the *Außensteuergesetz* (German Foreign Tax Law).

In such case the tax paid under the laws of the Republic of Estonia 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, 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.

In the case of items of income dealt with in Article 10 and the items of capital underlying such income the exemption shall apply even if the dividends are derived form holdings in other companies being residents of the Republic of Estonia which carry on active operations and in which the company which last made a distribution has a holding of 25 per cent or more.

Article 24. 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) The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

(3) Except where the provisions 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. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be

deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

(4) 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.

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

Article 25. 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 24, 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 this 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 26. Exchange of Information

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of the State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. 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.

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

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

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

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

Article 27. Members of Diplomatic Missions and Consular Posts

(1) Nothing in this Agreement shall affect the fiscal privileges of members of a diplomatic mission, a consular post or an international organisation under the general rules of international law or under the provisions of special agreement.

(2) Notwithstanding the provisions of Article 4, an individual who is a member of a diplomatic mission or a consular post of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed for the purposes of the Agreement to be a resident of the sending State if:

a) in accordance with international law he is not liable to tax in the receiving State in respect of income form sources outside that State, and

b) he is liable in the sending State to the same obligations in relation to tax on his world income as are residents of that State.

Article 28. Entry into Force

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

(2) This Agreement shall enter into force thirty days form the date of the exchange of the instruments of ratification and shall have effect in both Contracting States:

a) in respect of taxes withheld at source, in respect of amounts paid after December 31, 1993;

b) in respect of taxes which are levied for any assessment period beginning on or after January 1, 1994.

Article 29. Termination

This Agreement shall continue in effect indefinitely 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. In such event, this Agreement shall cease to have effect in both Contracting States:

a) in the case of 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;

b) in the case of 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.

Done at Tallinn, this 29th day of November 1996 in two originals, each in the Estonian, German and English languages, all three texts being authentic. In the case of divergent interpretation of the Estonian and the German texts the English text shall prevail.

For the Republic of Estonia	**For the Federal Republic of Germany**
Mart OPMANN	**Bernd MÜTZELBURG**

Protocol

The Republic of Estonia and the Federal Republic of Germany

have agreed at the signing at Tallinn on 29 November 1996 of the Agreement between the two States for the avoidance of double taxation with respect to taxes on income and on capital upon the following provisions which shall form an integral part of the said Agreement.

1. With reference to Articles 6 to 21

It is understood, that if the taxation of income in a Contracting State is effected by way of withholding tax at source, and if this taxation is limited by the provisions of this Agreement, the application of this tax reduction or exemption shall be governed by the national law of that State in conjunction with the procedures agreed upon for this purpose between the competent authorities of the two Contracting States.

2. With reference to Articles 6 and 13

It is understood that all income and gains arising from the alienation of immovable property situated in a Contracting State may be taxed in that State in accordance with Article 13 of this Agreement.

3. With reference to Article 7

a) In the Contracting State in which the permanent establishment is situated, no profits shall be attributed to a building site, a construction, assembly or installation project except those which are the result of such activities themselves. Profits derived from the supply of goods connected with, or independent of, such activities and effected by the principal permanent establishment or any other permanent establishment of the enterprise or by a third party shall not be attributed to the building site, a construction, assembly or installation project.

b) Income derived from design, planning, engineering or research or from technical services which a resident of a Contracting State performs in that Contracting State and which are connected with a permanent establishment referred to in sub-paragraph a) in the other Contracting State shall not be attributed to that permanent establishment.

4. With reference to Article 10

For the purpose of taxation in the Federal Republic of Germany, the term "dividends" includes income derived by a sleeping partner ("*stiller Gesellschafter*") from his participation as such and distributions on certificates of an investment fund or investment trust.

5. With reference to Articles 10 and 11

Notwithstanding the provisions of these Articles, dividends and interest may be taxed in the Contracting State 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 sleeping partner from his participation as such from a "*partiarisches Darlehen*" and from "*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.

6. With reference to Article 12

Payments received as a consideration for technical services, or for consultancy or managerial services shall be deemed not to be payments received as a consideration for information concerning industrial, commercial or scientific experience, except to the extent that the amounts of such payments are based on production, sales, performance, profits or any other similar basis related to the use of the said information.

In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

7. With reference to Article 23

a) Where a company being a resident of the Federal Republic of Germany distributes income derived from sources within the Republic of Estonia paragraph 2 shall not preclude the compensatory imposition of corporation tax on such distributions in accordance with the provisions of German tax law.

b) The federal Republic of Germany shall avoid double taxation by a tax credit as provided for in paragraph 2b) of Article 23, and not by a tax exemption under paragraph 2a) of Article 23,

aa) if in the Contracting States income is placed under differing provisions of the Agreement or attributed to different persons — other than under Article 9 (Associated to Enterprises) — and this conflict cannot be settled by a procedure pursuant to Article 25 and

(i) if as a result of such placement or attribution the relevant income would be subject to double taxation; or

(ii) if as a result of such placement or attribution the relevant income would remain untaxed or be subject only to inappropriately reduced taxation in the Republic of Estonia and would (but for the application of this paragraph) remain exempt from tax in the Federal Republic of Germany; or

bb) if the Federal Republic of Germany has, after due consultation and subject to the limitations of its internal law, notified the Republic of Estonia through diplomatic channels of other items of income to which it intends to apply this paragraph in order to prevent the exemption of income form taxation in both Contracting States or other arrangements for the improper use of the Agreement.

In the case of a notification under sub-paragraph (bb) the Republic of Estonia may, subject to notification through diplomatic channels, characterise such income under the agreement consistently with the characterisation of that income by the Federal Republic of Germany. A notification made under this paragraph shall have effect only from the first day of the calendar year following the year in which it was transmitted and any legal prerequisites under the domestic law of the notifying State for giving it effect have been fulfilled.

8. With reference to Article 26

If in accordance with domestic law personal data are exchanged under this Agreement, the following additional provisions shall apply:

a) The data receiving Contracting State may use such data only for the stated purpose and shall be subject to the conditions prescribed by the data supplying Contracting State.

b) The data receiving Contracting State shall on request inform the data supplying Contracting State about the use of the supplied data and the results achieved.

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 data supplying Contracting State.

d) The data supplying Contracting State shall be obliged to ensure that the data to be supplied are accurate and that they are necessary for and commensurate with the purpose for which they are supplied. Any bans on data supply prescribed under applicable domestic law shall be observed. If it emerges that inaccurate data or data which should not have been supplied have been supplied, the data receiving Contracting State shall be informed of this without delay. That State shall be obliged to correct or delete such data.

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 appears 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 supplied data relating to him shall be governed by the domestic law of the Contracting State in whose sovereign territory the application for information is made.

f) The data receiving Contracting State 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. In relation to the damaged person, the data receiving Contracting State may not plead to its discharge that the damage had been caused by the data supplying Contracting State.

g) If deadlines for the deletion of data are prescribed by the domestic law of the data supplying Contracting State, that State shall indicate such deadlines on supplying the data. Irrespective of such deadlines, supplied personal data shall be deleted as soon as they are no longer required for the purpose for which they were supplied.

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

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