



## Germany

[The following treaty with Germany reflects the 2007 Protocol changes to the 1989 treaty. Changes are effective January 1, 2007 for withholding at source and January 1, 2008 for all other provisions unless otherwise indicated.]

### Personal Scope

#### **ARTICLE 1: Personal Scope**

(1) This Convention shall apply to persons who are residents of one or both of the Contracting States [the United States or Germany], except as otherwise provided in this Convention.

### Residency Definition

#### **ARTICLE 4: Residence**

(1) For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that State [the United States or Germany], 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, and also includes that State [the United States or Germany] and any political subdivision or local authority thereof. The term, however, does not include any person who is liable to tax in that State [the United States or Germany] in respect only of income from sources in that State [the United States or Germany] or of profits attributable to a permanent establishment in that State [the United States or Germany] or capital situated therein;

#### **2007 PROTOCOL: ARTICLE XVI(2)**

(a) The Federal Republic of Germany shall treat a United States citizen or an alien lawfully admitted for permanent residence (a "green card" holder) as a resident of the United States only if such person has a substantial presence, permanent home, or habitual abode in the United States.

## Residency Tie-Breaker Rule

### **ARTICLE 4: Residence**

(2) Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States [the United States and Germany], then his status shall be determined as follows:

- (a) he shall be deemed to be a resident of the State [the United States or Germany] in which he has a permanent home available to him; if he has a permanent home available to him in both States [the United States and Germany], he shall be deemed to be a resident of the State [the United States or Germany] with which his personal and economic relations are closer (center of vital interests);
- (b) if the state in which he has his center of vital interests cannot be determined, or if he has not a permanent home available to him in either State [the United States or Germany], he shall be deemed to be a resident of the State [the United States or Germany] in which he has an habitual abode;
- (c) if he has an habitual abode in both States [the United States and Germany] or in neither of them, he shall be deemed to be a resident of the State [the United States or Germany] of which he is a national; and
- (d) if he is a national of both States [the United States and Germany] or of neither of them, the competent authorities of the Contracting States [the United States and Germany] shall settle the question by mutual agreement.

## Saving Clause and Exceptions

### **ARTICLE 1: General Scope**

(4)(a) Except to the extent provided in paragraph 5, this Convention shall not affect the taxation by the United States of its residents (as determined under Article 4 (Residence) and its citizens.

(b) Notwithstanding the other provisions of this Convention, a former citizen or long-term resident of the United States may, for the period of ten years following the loss of such status, be taxed in accordance with the laws of the United States.

### **2007 PROTOCOL: ARTICLE XVI(1)**

The term "long-term resident" shall mean any individual who is a lawful permanent resident of the United States in eight or more taxable years during the preceding 15 taxable years. In determining whether the threshold in the preceding sentence is met, an individual shall not be treated as a lawful permanent resident of the United States for any taxable year in which such individual is treated as a resident of a country other than the United States under the provisions of a tax treaty of the United States and the individual does not waive the benefits of such treaty provided by the United States to a resident of the other country. Consequently, if during each of the 15 taxable years preceding the loss of his status as a lawful permanent resident an individual was a resident of the Federal Republic of Germany (as determined under Article 4

(Residence)) and claimed the benefits provided by the United States to a resident of the Federal Republic of Germany, the individual shall not be considered a long-term resident.

(5) The provisions of paragraph 4 shall not affect the benefits conferred by the United States:

(a) under paragraph 2 of Article 9 (Associated Enterprises), paragraph 6 of Article 13 (Gains), paragraphs 3, 4 and 5 of Article 18 (Pensions, Annuities, Alimony, Child Support, and Social Security), paragraph 1 and 5 of Article 18A (Pension Plans), 3 of Article 19 (Government Service), and under Articles 23 (Relief from Double Taxation), 24 (Nondiscrimination), and 25 (Mutual Agreement Procedure); and

(b) under paragraph 2 of Article 18A (Pension Plans), subparagraph (b) of paragraph 1 of Article 19 (Government Service), and under Articles 20 (Visiting Professors and Teachers; Students and Trainees) and 30 (Members of Diplomatic Missions and Consular Posts), upon individuals who are neither citizens of, nor have immigrant status in, the United States.

## **Taxes Covered**

### **ARTICLE 2: Taxes Covered**

(1) The existing taxes to which this Convention shall apply are:

(a) In the United States:

(aa) the federal income taxes imposed by the Internal Revenue Code (but excluding the accumulated earnings tax, the personal holding company tax, and social security taxes);

(2) This Convention shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States [the United States and Germany] shall notify each other of any significant changes that have been made in their taxation laws.

## **Nondiscrimination Clause**

### **ARTICLE 24: Nondiscrimination**

(1) Nationals of a Contracting State [Germany] shall not be subjected in the other Contracting State [the United States] to any taxation or any requirement connected therewith that is other or more burdensome than the taxation and connected requirements to which nationals of that other State [the United States] in the same circumstances are or may be subjected. Notwithstanding the provisions of Article 1, this provision shall also apply to persons who are not residents of one or both of the Contracting States [the United States or Germany].

(6) The provisions of this Article shall, notwithstanding the provisions of Article 2 (Taxes Covered), apply to taxes of every kind and description imposed by a

Contracting State [the United States] or a political subdivision or local authority thereof.

#### **2007 PROTOCOL: ARTICLE XVI(20)**

Paragraph 1 of Article 24 does not obligate the United States to subject an individual who is a German national not resident in the United States to the same taxing regime as that applied to a citizen of the United States not resident in the United States.

## **Income from Employment**

### **ARTICLE 15: Dependent Personal Services**

(1) Subject to the provisions of Articles 16 (Directors' Fees), 17 (Artistes and Athletes), 18 (Pensions, Annuities, Alimony, and Child Support), 19 (Government Service; Social Security), and 20 (Visiting Professors and Teachers; Students and Trainees), salaries, wages, and other similar remuneration derived by a resident of a Contracting State [Germany] in respect of an employment shall be taxable only in that State, unless the employment is exercised in the other Contracting State [the United States]. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State [the United States].

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

- (a) the recipient is present in the other State [the United States] for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State [the United States]; and
- (c) the remuneration is not borne by a permanent establishment that the employer has in the other State [the United States].

## **Crewmen**

### **ARTICLE 15: Dependent Personal Services**

(3) Notwithstanding the foregoing provisions or this Article, remuneration derived by a resident of a Contracting State [Germany] in respect of an employment as a member of the regular complement of a ship or aircraft operated in international traffic may be taxed only in that State [Germany].

## Income from Self-Employment

[The treaty with Germany does not include an article specific to self-employment income. The Business Profits Article covers Self-employment Income.]

### **ARTICLE 7: Business Profits**

(1) The business profits of an enterprise of a Contracting State [Germany] shall be taxable only in that State [Germany] unless the enterprise carries on business in the other Contracting State [the United States] through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the business profits of the enterprise may be taxed in the other State [the United States] 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 [Germany] carries on business in the other Contracting State [the United States] through a permanent establishment situated therein, there shall in each Contracting State [the United States and Germany] be attributed to that permanent establishment the business profits that it might be expected to make if it were a distinct and independent enterprise engaged in the same or similar activities under the same or similar conditions.

### **PROTOCOL: ARTICLE XVI(6)**

For the implementation of paragraphs 1 and 2 of Article 7 and paragraph 3 of Article 13 [Gains] any income, gain, or expense attributable to a permanent establishment is taxable or deductible in the Contracting State [the United States] where such permanent establishment is situated even if the payments are deferred until such permanent establishment ceases to exist. Nothing in the preceding sentence shall prevent the application to such deferred payments of rules regarding the accrual of income and expenses according to the domestic law of a Contracting State [the United States].

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

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

(5) For the purposes of this Convention, the business profits to be attributed to the permanent establishment shall include only the profits derived from the assets or activities of the permanent establishment.

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

(7) For the purposes of this Convention the term "business profits" includes income derived from the rental of tangible personal property and the rental or

licensing of cinematographic films or works on film, tape, or other means of reproduction for use in radio or television broadcasting and income from the performance of professional services and of other activities of an independent character.

## **Artists and Athletes**

### **ARTICLE 17: Artistes and Athletes**

(1) Notwithstanding the provisions of Articles 7 (Business Profits) and 15 (Dependent Personal Services), income derived by a resident of a Contracting State [Germany] as an entertainer (such as a theater, motion picture, radio or television artiste, or a musician), or as an athlete, from his personal activities as such exercised in the other Contracting State [the United States] may be taxed in that other State [the United States], except where the amount of the gross receipts derived by such entertainer or athlete, including expenses reimbursed to him or borne on his behalf, from such activities does not exceed \$20,000 (twenty thousand United States dollars) or its equivalent in Euros for the calendar year concerned.

(2) Where income in respect of activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete but to another person, that income of that other person may, notwithstanding the provisions of Articles 7 (Business Profits) be taxed in the Contracting State [the United States] in which the activities of the entertainer or athlete are exercised, unless it is established that neither the entertainer or athlete nor persons related thereto participate directly or indirectly in the profits of that other person in any manner, including the accrual or receipt of deferred remuneration, bonuses, fees, dividends, partnership income, or other income or distributions.

(3) The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting State [the United States] by entertainers or athletes if the visit to that State [the United States] is substantially supported, directly or indirectly, by public funds of the other Contracting State [Germany] or a political subdivision or a local authority thereof. In such a case the income shall be taxable only in the Contracting State [Germany] of which the entertainer or athlete is a resident.

### **2007 PROTOCOL: ARTICLE XVI(3)**

A resident of a Contracting State [Germany] that performs in the other Contracting State [the United States] concerts, theatrical or artistic performances, or similar shows and revues and that may not be taxed in that other State [the United States] under the provision of Article 17 (Artistes and Athletes) shall not be deemed to have a permanent establishment in that State [the United States] if its presence does not exceed in the aggregate 183 days in the calendar year concerned.

### **2007 PROTOCOL: ARTICLE XVI(14)**

If an artiste or athlete is not subject to tax in the Federal Republic of Germany under the provisions of paragraph 1 of Article 17, tax may be withheld at source

in the Federal Republic of Germany, and shall be refunded to the taxpayer only upon application at the end of the calendar year concerned. Paragraph 6 of Article 29 (Refund of Withholding Tax) shall remain unaffected.

## **Directors' Fees**

### **ARTICLE 16: Directors' Fees**

Directors' fees and other similar payments derived by a resident of a Contracting State [Germany] for services rendered in the other Contracting State [the United States] in his capacity as a member of the board of directors of a company that is a resident of the other Contracting State [the United States] may be taxed in that other Contracting State [the United States].

## **Students and Trainees**

### **ARTICLE 20: Visiting Professors and Teachers; Students and Trainees**

(2) Payments other than compensation for personal services that a student or business apprentice (including Volontäre and Praktikanten in the Federal Republic of Germany) who is or was immediately before visiting a Contracting State [the United States] a resident of the other Contracting State [Germany] and who is present in the first-mentioned State [the United States] for the purpose of his full-time education or training receives for the purpose of his maintenance, education, or training shall not be taxed in that State [the United States], provided that such payments arise from sources, or are remitted from, outside that State [the United States].

### **2007 PROTOCOL: ARTICLE XVI(17)**

Payments that are made out of public funds of a Contracting State [Germany] or by a scholarship organization endowed with such funds shall be considered to arise in full from sources outside the other Contracting State [the United States]. The preceding sentence shall also apply when such payments are made under programs funded jointly by organizations of both Contracting States [the United States and Germany] if more than 50 percent of these funds are provided out of public funds of the first-mentioned State [Germany] or by a scholarship organization endowed with such funds. The competent authorities shall consult with each other to identify those scholarship programs whose payments shall be treated as arising from sources outside a Contracting State [the United States] under the foregoing rules.

(3) Payments other than compensation for personal services that a person who is or was immediately before visiting a Contracting State [the United States] a resident of the other Contracting State [Germany] receives as a grant, allowance, or award from a non-profit religious, charitable, scientific, literary, or educational private organization or a comparable public institution shall not be taxed in the first-mentioned State [the United States].

(4) A student or business apprentice within the meaning of paragraph 2, or a recipient of a grant, allowance, or award within the meaning of paragraph 3,

who is present in a Contracting State [the United States] for a period not exceeding four years shall not be taxed in that State [the United States] on any income from dependent personal services that is not in excess of \$9,000 (nine thousand United States dollars) or its equivalent in Euros per taxable year, provided that such services are performed for the purpose of supplementing funds available otherwise for maintenance, education, or training.

[The retroactive loss language was not removed from the Student/Trainee benefit.]

## **Students and Trainees Employed by Residents of Germany**

### **ARTICLE 20: Visiting Professors and Teachers; Students and Trainees**

(5) A resident of one of the Contracting States [Germany] who is an employee of an enterprise of such State [Germany] or of an organization or institution described in paragraph 3, and who is temporarily present in the other Contracting State [the United States] for a period not exceeding one year solely to acquire technical, professional, or business experience from any person other than such enterprise, organization, or institution, shall be exempt from tax by that other State [the United States] on compensation remitted from outside that other State [the United States] for services wherever performed paid by such enterprise, organization, or institution if such compensation does not exceed \$10,000 (ten thousand United States dollars) or its equivalent in Euros.

## **Professors, Teachers and Researchers**

### **Article 20: Visiting Professors and Teachers; Students and Trainees**

(1) Remuneration that a professor or teacher who is a resident of a Contracting State [Germany] and who is temporarily present in the other Contracting State [the United States] for the primary purpose of carrying out advanced study or research or for teaching at an accredited university or other recognized educational institution, or an institution engaged in research for the public benefit, receives for such work shall be taxable only in the first-mentioned Contracting State [Germany] for a period not exceeding two years from the date of his arrival. This Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons. The benefits provided in this paragraph shall not be granted to an individual who, during the immediately preceding period, enjoyed the benefits of paragraph 2, 3, or 4.

[The 2007 protocol deletes the prior protocol in its entirety. Article 18 of the prior protocol allowed the United States to tax an individual for the entire period of the visit if the prescribed period of the article was exceeded, unless in a particular case the competent authorities of the United States and Germany agreed otherwise. The Treasury Explanation of the new protocol states that there is no retroactive loss of benefits if a teacher or researcher overstays the two-year benefit period.]



The Treasury Explanation of the new protocol fails to mention whether elimination of Article 18 of the prior protocol was intended to remove the retroactive loss of the provision for students and trainees as well.]

## **Social Security Payments**

### **ARTICLE 18: Pensions, Annuities, Alimony, Child Support, and Social Security**

#### **With effect through 2014**

Benefits paid under the social security legislation of a Contracting State [the United States] may also be taxed by the Contracting State [the United States]. The tax may not however exceed 15 percent of the gross amount of such payments.

#### **With effect after 2014**

(5) Social security benefits paid under the social security legislation of a Contracting State [the United States] and other public pensions (not dealt with in Article 19 (Government Service)) paid by a Contracting State [the United States] to a resident of the other Contracting State [Germany] shall be taxable only in that other Contracting State [Germany]. In applying the preceding sentence, that other Contracting State [Germany] shall treat such benefit or pension as though it were a social security benefit paid under the social security legislation of that other Contracting State [Germany].

## **Private Pensions and Annuities**

### **ARTICLE 18: Pensions, Annuities, Alimony, Child Support, and Social Security**

(2) Subject to the provisions of Article 19 (Government Service), annuities derived and beneficially owned by a resident of a Contracting State [Germany] shall be taxable only in that State [Germany]. The term “annuities” as used in this paragraph means a stated sum paid periodically at stated times during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered).

#### **With effect through 2014**

(1) Pensions and other similar remuneration paid in consideration of past employment may also be taxed in the Contracting State [the United States] in which the employment had been exercised for a substantial period of time. The tax may not however exceed 15 percent of the gross amount of such payments.

#### **With effect through 2014**

(1) Subject to the provisions of Article 19 (Government Service; Social Security), pensions and other similar remuneration derived and beneficially owned by a

resident of a Contracting State [Germany] in consideration of past employment shall be taxable only in that State [Germany].

## **Pension Plan Contributions and Income**

### **ARTICLE 18A: Pension Plans**

(1) Where an individual who is a resident of a Contracting State [the United States] is a member or beneficiary of, or participant in, a pension plan established in the other Contracting State [Germany], income earned by the pension plan may be taxed as income of that individual only when, and, to the extent that, it is paid to, or for the benefit of, that individual from the pension plan (and not transferred to another pension plan in that other Contracting State).

(2) Where an individual who is a beneficiary of, or participant in, a pension plan established in a Contracting State [Germany] exercises an employment or self-employment in the other Contracting State [the United States]:

(a) contributions paid by or on behalf of that individual to the pension plan during the period or attributable to the period that he exercises an employment or self-employment in the other State [the United States] shall be deductible (or excludable) in computing his taxable income in that other State [the United States]; and

(b) any benefits accrued under the pension plan, or contributions made to the pension plan by or on behalf of the individual's employer, during that period shall not be treated as part of the employee's taxable income; any such contributions shall be allowed as a deduction in computing the business profits of his employer in that other State [the United States].

The relief available under this paragraph shall not exceed the relief that would be allowed by the other State [the United States] to residents of that State [the United States] for contributions to, or benefits accrued under, a pension plan or plans established in that State [the United States]. The competent authorities of the Contracting States [the United States and Germany] shall determine the relief available under this paragraph pursuant to the preceding sentence.

(3) The provisions of paragraph 2 shall not apply unless:

(a) contributions by or on behalf of the individual, or by or on behalf of the individual's employer were made before the individual began to exercise an employment or self-employment in the other State [the United States]; and

(b) the pension plan is accepted by the competent authority of that State [the United States] as generally corresponding to a pension plan recognized as such for tax purposes by that State [the United States].

(4) The term "pension plan" means an arrangement established in a Contracting State which is operated principally to administer or provide pension or retirement benefits or to earn income for the benefit of one or more such arrangements.

## **2007 PROTOCOL: ARTICLE XVI(16)**

(a) For purposes of paragraph 4 of Article 18A, the term "pension plan" shall include the following and any identical or substantially similar plans established pursuant to legislation enacted after the date of signature of this Protocol:

(aa) In the case of the United States, qualified plans under section 401(a) of the Internal Revenue Code, individual retirement plans (including individual retirement plans that are part of a simplified employee pension plan that satisfies section 408(k), individual retirement accounts, individual retirement annuities, and section 408(p) accounts, and Roth IRAs under Section 408A), section 403(a) qualified annuity plans, section 403(b) plans, and section 457(b) governmental plans.

(bb) In the case of the Federal Republic of Germany, arrangements under section 1 of the German law on employment-related pensions (*Betriebsrentengesetz*).

(b) For purposes of subparagraph b) of paragraph 3 and subparagraph d) of paragraph 5 of Article 18A, it is understood that:

(aa) The Federal Republic of Germany recognizes qualified plans specifically listed in clause aa) of subparagraph a), other than Roth IRAs, as arrangements that correspond to pension plans referred to under section 1 of the German law on employment-related pensions (*Betriebsrentengesetz*). The Federal Republic of Germany shall provide the corresponding relief under section 3 No. 63 of the Income Tax Act; and

(bb) The United States recognizes arrangements under section 1 of the German law on employment-related pensions (*Betriebsrentengesetz*) as arrangements that correspond to pension plans referred to in clause aa) of subparagraph a) above.

(5)(a) Where a citizen of the United States who is a resident of the Federal Republic of Germany exercises an employment in the Federal Republic of Germany the income from which is taxable in the Federal Republic of Germany and is borne by an employer who is a resident of the Federal Republic of Germany or by a permanent establishment situated in the Federal Republic of Germany, and the individual is a beneficiary of, or participant in, a pension plan established in the Federal Republic of Germany,

(aa) contributions paid by or on behalf of that individual to the pension plan during the period or attributable to the period that he exercises the employment in the Federal Republic of Germany, and that are attributable to the employment, shall be deductible (or excludable) in computing his taxable income in the United States; and

(bb) any benefits accrued under the pension plan, or contributions made to the pension plan by or on behalf of the individual's employer, during that period or attributable to that period, and that are attributable to the employment, shall not be treated as part of the employee's taxable income in computing his taxable income in the United States. This

paragraph shall apply only to the extent that the contributions or benefits qualify for tax relief in the Federal Republic of Germany.

(b) The relief available under this paragraph shall not exceed the relief that would be allowed by the United States to its residents for contributions to, or benefits accrued under, a generally corresponding pension plan established in the United States.

(c) For purposes of determining an individual's eligibility to participate in and receive tax benefits with respect to a pension plan established in the United States, contributions made to, or benefits accrued under, a pension plan established in the Federal Republic of Germany shall be treated as contributions or benefits under a generally corresponding pension plan established in the United States to the extent relief is available to the individual under this paragraph.

(d) This paragraph shall not apply unless the competent authority of the United States has agreed that the pension plan generally corresponds to a pension plan established in the United States."

## **Alimony and Child Support Payments**

### **ARTICLE 18: Pensions, Annuities, Alimony, Child Support and Social Security**

(3) Alimony paid by a resident of a Contracting State [the United States] and deductible therein to a resident of the other Contracting State [Germany] shall be taxable only in that other State [Germany]. The term "alimony" as used in this Article means periodic payments (made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support) that are taxable to the recipient under the laws of the State [Germany] of which he is a resident.

(4) Nondeductible alimony, and periodic payments for the support of a minor child (made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support), paid by a resident of a Contracting State [the United States] to a resident of the other Contracting State [Germany] shall be taxable only in the first-mentioned State [the United States].

### **2007 PROTOCOL ARTICLE XVI(15)**

In determining the taxable income of an individual who is a resident of the Federal Republic of Germany there shall be allowed as a deduction in respect of alimony or similar allowances paid to an individual who is a resident of the United States the amount that would be allowed as a deduction if that last-mentioned individual were subject to unlimited tax liability in the Federal Republic of Germany.

## **Payments for Governmental Service**

### **ARTICLE 19: Government Service**

(1) Notwithstanding the provisions of Articles 15 (Dependent Personal Services), 16 (Directors' Fees), and 17 (Artistes and Athletes):

(a) salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State [Germany] or a political subdivision, local authority or an instrumentality thereof to an individual in respect of services rendered to that Contracting State [Germany] or a political subdivision, local authority or an instrumentality thereof shall, subject to the provisions of subparagraph b), be taxable only in that State [Germany];

(b) such remuneration, however, shall be taxable only in the other Contracting State [the United States] if the services are rendered in that State [the United States] and the individual is a resident of that State [the United States] who:

(aa) is a national of that State [the United States]; or

(bb) did not become a resident of that State [the United States] solely for the purpose of rendering the services.

(2) (a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State [Germany] or a political subdivision, local authority or an instrumentality thereof to an individual in respect of services rendered to that State [Germany] or subdivision, authority or instrumentality shall be taxable only in that State [Germany].

(b) However, such pensions and other remuneration shall be taxable only in the other Contracting State [the United States] if the individual is a

(aa) resident of, and a national of, that State [the United States]; or

(bb) the pension is not subject to tax in the Contracting State [the United States] for which the services were performed because the services were performed entirely in the other Contracting State [the United States].

(4) The provisions of Articles 15 (Dependent Personal Services) , 16 (Directors' Fees), 17 (Artistes and Athletes), and 18 (Pensions, Annuities, Alimony, Child Support, and Social Security) 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 [Germany] or by a political subdivision, local authority or an instrumentality thereof.

(5) In this Article, the term "instrumentality" means any agent or entity created or organized by a Contracting State [the United States or Germany], one of its states or a political subdivision or local authority thereof in order to carry out functions of a governmental nature which is specified and agreed to in letters exchanged between the competent authorities of the Contracting States [the United States and Germany].

## **Payments for Injury or Damage**

### **ARTICLE 19: Government Service**

(3) Pensions, annuities, and other amounts paid by one of the Contracting States [Germany] or by a juridical person organized under the public laws of that State [Germany] as compensation for an injury or damage sustained as a

result of hostilities or political persecution shall be exempt from tax by the other State [the United States].

## Royalties

### **ARTICLE 12: Royalties**

(1) Royalties derived and beneficially owned by a resident of a Contracting State [Germany] shall be taxable only in that State [Germany].

(2) 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 a literary, artistic, or scientific work (but not including cinematographic films, or works on film, tape, or other means of reproduction for use in radio or television broadcasting); for the use of, or the right to use, any patent, trademark, design or model, plan, secret formula or process, or other like right or property; or for information concerning industrial, commercial, or scientific experience. The term “royalties” also includes gains derived from the alienation of any such right or property that are contingent on the productivity, use, or further alienation thereof.

(3) The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State [Germany], carries on business in the other Contracting State [the United States] through a permanent establishment situated therein, and the right or property in respect of which the royalties are paid forms part of the business property of such permanent establishment. In such a case, the provisions of Article 7 (Business Profits) shall apply.

(4) Where, by reason of a special relationship between the payor 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 that would have been agreed upon by the payor 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 a case, the excess part of the payments shall remain taxable according to the laws of each Contracting State [the United States], due regard being had to the other provisions of this Convention.

### **2007 PROTOCOL: ARTICLE XVI(11)**

Where an artiste resident in one Contracting State records a performance in the other Contracting State, has a copyrightable interest in the recording, and receives consideration for the right to use the recording based on the sale or public playing of such recording, then such consideration shall be governed by this Article.

## Other Income

### **ARTICLE 21: Other Income**

(1) Items of income of a resident of a Contracting States [Germany], wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that Contracting State [Germany].

(2) The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6 (Income from Immovable (Real) Property), if the recipient of such income, being a resident of a Contracting State [Germany], carries on business in the other Contracting State [the United States] through a permanent establishment situated therein, and the right or property in respect of which the income is paid is forms part of the business property of the permanent establishment.

[This article covers U.S. source income payments – prizes and awards and gaming winnings.]

## Entry Into Force

### **PROTOCOL ARTICLE XVII**

(2) This Protocol shall enter into force on the date on which the instruments of ratification are exchanged and shall have effect in both Contracting States:

(a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January of the year in which this Protocol enters into force;

(b) in respect of other taxes on income for any taxable year beginning on or after the first day of January next following the date this Protocol enters into force; and

(c) in respect of taxes on capital for the taxes levied on items of capital owned on or after the first day of January next following the date this Protocol enters into force.

(3) Notwithstanding the provisions of paragraph 2,

(a) the provisions of paragraphs 2 and 3 of Article 1 (General Scope) shall have effect after the entry into force of this Protocol and shall apply in respect of any tax claim irrespective of whether such tax claim pre-dates the entry into force of this Protocol or the effective date of any of its provisions; and

(b) the amendments made by Article X [Government Service] of this Protocol shall not have effect with respect to individuals who, at the time of the signing of the Convention, were employed by the United States, a political subdivision or local authority thereof.

(4) Article XIII of this Protocol shall have effect with respect to

(a) cases that are under consideration by the competent authorities as of the date on which this Protocol enters into force, and

(b) cases that come under such consideration after that time, and the commencement date for a case described in subparagraph a) of this paragraph shall be the date on which this Protocol enters into force.

(5) Notwithstanding paragraph 2, where any person entitled to benefits under the Convention as unmodified by this Protocol would have been entitled to greater benefits thereunder than under the Convention as modified by this Protocol, the Convention as unmodified shall, at the election of such person, continue to have effect in its entirety with respect to such person for a twelve-month period from the date on which the provisions of this Protocol would have effect under paragraph 2 of this Article.



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