

No. 23640

**ISRAEL
and
FEDERAL REPUBLIC OF GERMANY**

Agreement for the avoidance of double taxation with respect to taxes on estates and inheritances (with amending protocol of 20 January 1984). Signed at Jerusalem on 29 May 1980

*Authentic texts: Hebrew, German and English.
Registered by Israel on 29 November 1985.*

**ISRAËL
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE**

Convention tendant à éviter la double imposition en matière d'impôts sur les successions (avec protocole d'amendement du 20 janvier 1984). Signée à Jérusalem le 29 mai 1980

*Textes authentiques : hébreu, allemand et anglais.
Enregistrée par Israël le 29 novembre 1985.*

AGREEMENT¹ BETWEEN THE STATE OF ISRAEL AND THE FEDERAL REPUBLIC OF GERMANY FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON ESTATES AND INHERITANCES

The State of Israel and the Federal Republic of Germany,
Guided by the desire to avoid double taxation with respect to taxes on estates and inheritances, have agreed as follows:

CHAPTER I. SCOPE OF THE AGREEMENT

Article 1. ESTATES COVERED

This Agreement shall apply to estates of deceased persons whose residence at their death was in one or both of the Contracting States.

Article 2. TAXES COVERED

(1) This Agreement shall apply to taxes on estates and inheritances imposed on behalf of each Contracting State, a Land or a political sub-division or local authority thereof, irrespective of the manner in which they are levied.

(2) There shall be regarded as taxes on estates and inheritances all taxes imposed on the occasion of death in the form of tax on the corpus of the estate, of tax on inheritances, of transfer duties, or of taxes on donations, and other transfers, *mortis causa*.

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

- (a) In the case of the Federal Republic of Germany — the *Erbschaftsteuer* (inheritance tax) with the exception of tax on donations, gifts and other similar transfers, *inter vivos*;
- (b) In the case of the State of Israel — the estate duty.

(4) Tax imposed on behalf of a Contracting State, a Land or a political sub-division or local authority thereof, on a donation, gift, or other similar transfer, *inter vivos*, made by a person referred to in Article 1, whose residence at the time of such donation, gift or transfer was in a Contracting State, shall be deemed after the death of that person as a tax to which this Agreement, with the exception of paragraphs (2) and (3) of Article 11, shall apply, provided that such donation, gift or transfer

- (a) Was made within 5 years before the death of such person, and
- (b) Is liable to taxes referred to in paragraph (3) including, in respect of Israel, cases where such tax is relieved or reduced under provisions of Israeli law for the encouragement of the Israeli economy.

Where such a tax has been paid in a Contracting State and, at the death of the deceased person, the property on which that tax was paid is taxable only in the other Contracting State, such tax shall be refunded to the estate.

(5) This Agreement shall also apply to any taxes on estates and inheritances which are subsequently imposed in addition to, or in place of, the existing taxes. The

¹ Came into force on 2 October 1985, i.e., one month after the exchange of the instruments of ratification, which took place at Bonn on 2 September 1985, in accordance with article 18.

competent authorities of the Contracting States shall, if necessary, notify to each other any major changes which have been made in their respective taxation laws.

CHAPTER II. DEFINITIONS

Article 3. GENERAL DEFINITIONS

(1) For the purposes of this Agreement:

(a) The terms “a Contracting State” and “the other Contracting State” mean the Federal Republic of Germany or the State of Israel as the context requires.

(b) The term “national” means:

1. In respect of the Federal Republic of Germany: all Germans within the meaning of Article 116, paragraph 1, of the Basic Law for the Federal Republic of Germany;
2. In respect of Israel: all Israeli citizens.

(c) The term “competent authority” means, in the case of the Federal Republic of Germany, the Federal Minister of Finance, and, in the case of Israel, the Minister of Finance, or his authorized representative.

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

Article 4. FISCAL DOMICILE

(1) For the purposes of this Agreement, the question whether a person at his death was resident in a Contracting State shall be determined according to the law of that State.

(2) Where by reason of the provisions of paragraph 1 a person was resident in both Contracting States, then this case shall be determined in accordance with the following rules:

(a) He shall be deemed to have been resident in the Contracting State in which he had a permanent home available to him. If he had a permanent home available to him in both Contracting States, the residence shall be deemed to be in the Contracting State with which his personal and economic relations were closest (centre of vital interests). In the case of a person who entered Israel as an “Oleh” (that is, under a visa issued pursuant to paragraph 2 of the Law of Return, 5710-1950), or who after entering Israel applied for and received an “Oleh’s Certificate” under paragraph 3 of the said Law, his centre of vital interests shall be deemed to be in Israel.

(b) If the Contracting State in which he had his centre of vital interests cannot be determined, or if he had not a permanent home available to him in either Contracting State, the residence shall be deemed to be in the Contracting State in which he had an habitual abode.

(c) If he had an habitual abode in both Contracting States or in neither of them, the residence shall be deemed to be in the Contracting State of which he was a national.

(d) If he was a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

CHAPTER III. TAXATION RULES

Article 5. IMMOVABLE PROPERTY

(1) Immovable property may be taxed only in the Contracting State in which such property is situated.

(2) The term “immovable property” shall be defined in accordance with 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, 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 paragraphs 1 and 2 shall also apply to immovable property of an enterprise and to immovable property used for the performance of professional services or other independent activities of a similar character.

(4) Shares and similar rights in a company (*Kapitalgesellschaft*), other than shares and rights dealt in on a Stock Exchange, the assets of which consist exclusively of real property situated in a Contracting State, including assets accessory thereto or assets material for the normal administration, repair and upkeep thereof shall be deemed to be immovable property situated in that Contracting State, provided that such shares and similar rights are liable to tax in that State as referred to in subparagraph (4) (b) of Article 2. However, the foregoing provision shall not apply to shares or similar rights in such company (*Kapitalgesellschaft*) incorporated in the Contracting State in which the deceased person was resident at his death.

(5) Immovable property and property assimilated to immovable property according to paragraph (4) owned by a deceased person resident in the State of Israel who had become an “Oleh” in either of the ways described in sub-paragraph (2) (a) of Article 4 within one year prior to his death may be taxed only in Israel if the deceased person had initiated action with a view to the disposition thereof.

Article 6. BUSINESS PROPERTY OF A PERMANENT ESTABLISHMENT AND ASSETS PERTAINING TO A FIXED BASE USED FOR THE PERFORMANCE OF PROFESSIONAL SERVICES

(1) Except for assets referred to in Articles 5 and 7, assets forming part of the business property of a permanent establishment of an enterprise may be taxed only in the Contracting State in which the permanent establishment is situated.

(2) The term “permanent establishment” means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

(3) The term “permanent establishment” shall include especially:

- (a) A place of management;
- (b) A branch;
- (c) An office;
- (d) A factory;
- (e) A workshop;
- (f) A mine, quarry or other place of extraction of natural resources;
- (g) A building site or construction or assembly project which exists for more than twelve months.

- (4) The term “permanent establishment” shall not be deemed 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 for collecting information, for the enterprise;
 - (e) The maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character for the enterprise.

(5) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State — other than an agent of an independent status to whom paragraph 6 applies — shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

(6) An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

(7) Except for assets referred to in Article 5, assets pertaining to a fixed base used for the performance of professional services or other independent activities of a similar character may be taxed only in the Contracting State in which the fixed base is situated.

Article 7. SHIPS AND AIRCRAFT

Ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft may be taxed only in the Contracting State in which the place of effective management of the enterprise is situated.

Article 8. SHARES IN A COMPANY

Shares and similar rights in a company (*Kapitalgesellschaft*) not dealt with in paragraph (4) of Article 5 and in paragraphs (1) and (7) of Article 6 may be taxed only in the Contracting State in which the deceased person was resident at his death. Such shares may, however, also be taxed in the other Contracting State if the company was incorporated in that other State.

Article 9. PROPERTY NOT EXPRESSLY MENTIONED

Property other than property referred to in Articles 5, 6, 7 and 8 may be taxed only in the Contracting State in which the deceased person was resident at his death.

Article 10. DEDUCTION OF DEBTS

(1) Debts especially secured on any property referred to in Article 5 shall be deducted from the value of that property. Debts, not being especially secured on any

property referred to in Article 5, which arose from the acquisition, conversion, repair or upkeep of any such property, shall be deducted from the value of that property.

(2) Subject to paragraph (1), debts pertaining to a permanent establishment of an enterprise or to a fixed base used for the performance of professional services or other independent activities of a similar character, debts pertaining to any business of shipping or air transport, and debts incurred for the acquisition or preservation of property referred to in Article 8, shall be deducted from the value of property referred to in Articles 6, 7 or 8, as the case may be.

(3) Other debts shall be deducted from the value of property to which Article 9 applies.

(4) If a debt exceeds the value of the property from which it is deductible in a Contracting State, according to paragraphs (1), (2) and (3), the excess shall be deducted from the value of any other property taxable in that State.

(5) Any excess still remaining after the deductions referred to in the preceding paragraphs shall be deducted from the value of the property liable to tax in the other Contracting State.

CHAPTER IV. METHODS FOR ELIMINATION OF DOUBLE TAXATION

Article 11

(1) Where under the foregoing provisions of this Agreement property may be taxed only in one Contracting State, the other Contracting State may nevertheless take into account such property in determining the rate of its tax on property which it remains entitled to tax.

(2) If in accordance with Article 8 shares and similar rights in a company (*Kapitalgesellschaft*) with share capital may be taxed in both Contracting States, there shall be allowed, as a credit against the tax payable in respect of such shares in the Contracting State in which the deceased person was resident at his death, the tax paid in the other Contracting State. Such credit shall, however, not exceed the portion of the tax levied in the first-mentioned Contracting State which such property (reduced by debts allowed for deduction therefrom, in accordance with Article 10) bears to the whole amount of the property taxable in that first-mentioned Contracting State.

(3) If in the case of paragraph (2) Israeli tax on shares and similar rights in an Israeli company (*Kapitalgesellschaft*) with share capital has been relieved or reduced under provisions of Israeli law for the encouragement of Israeli economy, an amount of 7.5 per cent of the value of such shares, as established for German tax purposes, shall be deemed to have been paid as Israeli tax. Such amount shall, however, not exceed the Israeli tax payable in the absence of such reliefs or reductions.

CHAPTER V. SPECIAL PROVISIONS

Article 12. SPECIAL RELIEF

German inheritance tax on immovable property situated in the Federal Republic of Germany restituted to a person who was resident in the State of Israel at his death in respect of a claim for damages sustained or for property lost as a result of hostilities or of political persecution as well as on immovable property situated in the

Federal Republic of Germany purchased by such a person out of funds received in connection with such a claim, shall, for a period of ten years from the entry into force of this Agreement, be determined in accordance with the provisions of German law applicable to deceased persons resident in the Federal Republic of Germany at their death.

*Article 13. PROPERTY BEQUEATHED OR DONATED
TO A STATE OR TO APPROVED INSTITUTIONS*

(1) Exemptions from and reductions of tax accorded by the law of either Contracting State to property bequeathed to that State, a Land, a political sub-division or local authority thereof, shall apply to property bequeathed to the other State, a Land, a political sub-division or a local authority thereof.

(2) Property bequeathed to a religious, cultural, educational, scientific, health, welfare or similar institution approved as such in a Contracting State and established under the law of that Contracting State shall be entitled in the other Contracting State to any exemptions or reductions of tax accorded by the law of that other State to property bequeathed to institutions of the same or essentially similar type in that other State.

(3) Notwithstanding the provisions of Article 2, the provisions of paragraphs (1) and (2) above shall likewise apply to taxes on donations, gifts and other transfers, *inter vivos*.

Article 14. MUTUAL AGREEMENT PROCEDURE

(1) Any person who 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 Agreement may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of either State.

(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 an appropriate 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 not in accordance with the Agreement.

(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 and for the exchange of information provided for in Article 15.

Article 15. EXCHANGE OF INFORMATION

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of the Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes which are the subject of the Agreement.

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

- (a) To carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;
- (b) To supply particulars which are 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 publique*).

Article 16. DIPLOMATIC AND CONSULAR OFFICIALS

Nothing in this Agreement shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

CHAPTER VI. FINAL PROVISIONS

Article 17. BERLIN CLAUSE

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

Article 18. ENTRY INTO FORCE

This Agreement shall enter into force one month after the exchange by the plenipotentiaries of the Contracting States at Bonn of instruments of ratification, and shall thereupon have effect, in relation to estates of persons who deceased on or after January 1st, 1968.

Article 19. TERMINATION

This Agreement shall continue in effect indefinitely, but either of the Contracting States may, on or before the 30th day of June in any calendar year not earlier than five years from the date of its entry into force, give to the other Contracting State written notice of termination, through diplomatic channels, and, in such event, the Agreement shall cease to have effect in relation to estates of persons who deceased after the end of the calendar year with respect to the end of which the Agreement has been cancelled.

DONE at Jerusalem in two originals, each in the Hebrew, German and English languages, all texts being authentic; in the case of a difference in interpretation the English text shall prevail.

For the State
of Israel:

[Signed — Signé]¹

For the Federal Republic
of Germany:

[Signed — Signé]²

¹ Signed by Yohanan Meroz — Signé par Yohanan Meroz.

² Signed by Klaus Schütz — Signé par Klaus Schütz.

PROTOCOL AMENDING THE AGREEMENT BETWEEN THE STATE OF ISRAEL AND THE FEDERAL REPUBLIC OF GERMANY FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON ESTATES AND INHERITANCES, SIGNED ON 29 MAY 1980

The State of Israel and the Federal Republic of Germany,

Guided by the desire to adapt the Agreement between the State of Israel and the Federal Republic of Germany for the Avoidance of Double Taxation with respect to Taxes on Estates and Inheritances, signed on 29 May 1980, to the relevant change in legislation,

Have agreed as follows:

Article I. 1. In Article 12, the words “for a period of ten years from the entry into force of this Agreement” shall be replaced by the words “until 31 December 1982”.

2. Article 19 shall be deleted and replaced by the following new Article:

“(1) This Agreement shall be effective until 31 March 1981. Subject to the provisions of Article 12, it shall cease to be applied to estates of persons deceased on or after 1 April 1981.

“(2) In case the State of Israel will reintroduce in the future a tax law on estate or inheritance, the Governments of both Contracting States will immediately take the necessary steps in order to conclude a new agreement for the avoidance of double taxation regarding this subject.”

Article II. This Protocol shall also apply to Land Berlin provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of the State of Israel within three months of the date of entry into force of this Protocol.

Article III. 1. This Protocol shall form an integral part of the Agreement signed on 29 May 1980. It shall be ratified and shall enter into force together with this Agreement.

2. The Contracting States are authorized to publish the text of the Agreement as amended by this Protocol.

DONE at Bonn on 20 January 1984 in duplicate in the Hebrew, German and English languages, all three texts being authentic; in case of divergent interpretations of the Hebrew and German texts, the English text shall prevail.

For the State of Israel:
Für den Staat Israel:

[*Signed — Signé*]¹

For the Federal Republic of Germany:
Für die Bundesrepublik Deutschland:

[*Signed — Signé*]²

[*Signed — Signé*]³

¹ Signed by Ephraim Eylon — Signé par Ephraim Eylon.

² Signed by Hans Lautenschlager — Signé par Hans Lautenschlager.

³ Signed by Günter Obert — Signé par Günter Obert