

**AGREEMENT
BETWEEN
THE PEOPLE'S REPUBLIC OF CHINA
AND
THE FEDERAL REPUBLIC OF GERMANY
FOR THE AVOIDANCE OF DOUBLE TAXATION WITH
RESPECT
TO TAXES ON INCOME AND CAPITAL**

The People's Republic of China and the Federal Republic of Germany;

Desiring to further their economic relations and to avoid double taxation of income as well as to eliminate tax evasion;

Have, following amicable negotiations by the representatives of each Government, 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, 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, as well as taxes on capital appreciation.
3. The existing taxes to which the Agreement shall apply are:
 - (a) in the People's Republic of China:

- (i) the individual income tax;
- (ii) the income tax concerning joint ventures with Chinese and foreign investment;
- (iii) the income tax concerning foreign enterprises; and
- (iv) the local income tax

(hereinafter referred to as “Chinese tax”) ;

(b) in the Federal Republic of Germany:

- (i) the individual income tax (die Einkommensteuer) ;
- (ii) the corporate income tax (die Körperschaftsteuer) ;
- (iii) the capital tax (die Vermgensteuer) ; and
- (iv) 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. Within reasonable periods of time, the competent authorities of the Contracting States shall notify each other of 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 terms “a Contracting State” and “the other Contracting State” mean, as the context requires, the People’s Republic of China or the Federal Republic of Germany, and when used in a geographical sense, the territory in which the tax laws of the relevant Contracting State are in force, including the territorial sea and areas beyond the territorial sea within which the relevant Contracting State may, in accordance with international law, exercise the right of exploration for and exploitation of the natural resources of the seabed and its subsoil;

- (b) the term “person” includes an individual, a company and any other body of persons;
- (c) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (d) 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;
- (e) the term “national” means an individual who under the laws of a Contracting State possesses the nationality of that Contracting State, as well as a legal person, partnership and association deriving its status as such from the laws in force in a Contracting State;
- (f) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise which has its place of head office in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (g) the term “competent authority” means in the case of the People’s Republic of China the Ministry of Finance or its 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 head office or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States; he shall be deemed to be a resident of the State with

which his personal and economic relations are closer (centre of vital interests) ;

- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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

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 extraction of natural resources.

3. The term “permanent establishment” shall also include:

- (a) a building site or assembly project or any supervising activities connected therewith, if the construction, assembly or supervising activities last for more than 6 months;
- (b) the furnishing of services, including consultancy services, by an enterprise of a Contracting State through its employees or other personnel, when the activities in the other Contracting State (for the same or a connected project) continue for a period or periods aggregating more than 6 months within any 12-month period.

4. Notwithstanding paragraphs 1 to 3 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 from 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 habitually 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.

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 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 is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agricultural 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 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, leasing, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from 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 it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

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

6. For the purposes of paragraphs 1 to 5, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with 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 from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of head office of the enterprise is situated.

2. If the place of head office of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

3. 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 10 per cent of the gross amount of the dividends.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term “dividends” as used in this Article means income from shares, mining shares, founders’ shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner, 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 from 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 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, interest

(a) derived from the Federal Republic of Germany is exempt from German tax, if paid:

(i) to the Government of the People's Republic of China;

(ii) to the People's Bank of China, the Agricultural Bank of China, the People's Construction Bank of China, the Investment Bank of China or the Industrial and Commercial Bank of China;

(iii) on a loan directly guaranteed or financed by the Bank of China or the Chinese International Trust and Investment Company; or

- (iv) to public credit institution of the Government of the People's Republic of China, if the competent authorities of both States have mutually agreed thereto;
- (b) derived from the People's Republic of China is exempt from Chinese tax, if paid:
- (i) to the Government of the Federal Republic of Germany;
 - (ii) to the Deutsche Bundesbank, the Kredietanstalt für Wiederaufbau or the Deutsche Finanzierungsgesellschaft für Beteiligungen in Entwicklungsländern (the German Federal Bank, the Credit Institute for Reconstruction, or the German Finance Company for Investment in Developing Countries) ;
 - (iii) on a loan, directly guaranteed or financed by Hermes; or
 - (iv) to a public credit institution of the Federal Government, if the competent authorities of both States have agreed thereto.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. 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 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 10 per cent of the gross amount of the royalties.

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 broadcasting or television, 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 the Government of that State itself, a local authority or a resident of that Contracting 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 obligation to pay the royalties was incurred, and those royalties are borne by that 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 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 a fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships, aircraft or boats, shall be taxable only in the Contracting State in which the place of head office of the enterprise is situated.

4. Gains derived by a resident of a Contracting State from the alienation of any property other than that referred to in paragraphs 1 to 3 and which is situated in the other Contracting State, may be taxed in that other State.

ARTICLE 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by 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. However, such income may also be taxed in the other Contracting State:

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities but only so much of the income as is attributable to that fixed base; or

- (b) if his stay in the other Contracting State is for a period or periods, in the aggregate, more than 183 days in the calendar year concerned, only so much of the income as is derived from the activities in that other State.

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, 19, 20 and 21, 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 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; 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, may be taxed in the Contracting State in which the place of head office of the enterprise is situated.

ARTICLE 16

DIRECTORS' FEES

Directors' fees and other 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 ATHLETES

1. Notwithstanding the provisions of Articles 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 an athlete, 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 an athlete in his capacity as such accrues not to the entertainer or athlete 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 athlete are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by an entertainer or athlete who is resident in a Contracting State from activities exercised in the other Contracting State within the framework of a cultural exchange program agreed upon by the Governments of both Contracting States shall not be taxed in that other State.

ARTICLE 18
PENSIONS

Subject to the provisions of paragraph 2 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) Remuneration, other than a pension, paid by a Contracting State or a local authority or organ thereof to an individual in respect of services rendered to that State, authority or organ shall be taxable only in that State.
- (b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that other State who:
 - (i) is a national of that other State; or
 - (ii) did not become a resident of that other State solely for the purpose of rendering the services.

2. (a) Any pension paid by a Contracting State or a local authority or organ thereof to an individual in respect of services rendered to that State or authority or organ shall be taxable only in that State.
 - (b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other State.
3. The provisions of Articles 15, 16, 17 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a local authority or organ thereof.

ARTICLE 20

PROFESSORS AND RESEARCHERS

1. A professor or researcher who is, or was immediately before visiting the other a Contracting State, a resident of a Contracting State and who is present in the first-mentioned Contracting State for a period not exceeding three years for the purpose of advanced study to research or for the purpose of teaching at a university, college, school or any other educational or research institution shall be exempt from tax in the other Contracting State in respect of remuneration derived from such activities.
2. The provisions of paragraph 1 shall not apply to income from research, if this research is not in the public interest but primarily for the private benefit of a certain person or persons.

ARTICLE 21

STUDENTS AND TRAINEES

A student, business apprentice or trainee who is a resident of a Contracting State or was, immediately before visiting the other Contracting State, a resident of the first-mentioned State and who is present in the other State solely for the purpose of his education or training, shall be exempt from tax in that other State on:

- (a) all payments made by persons outside the other State for the purpose of his maintenance, or training; and
- (b) all scholarships, allowances or maintenance payments paid by governmental, charitable, scientific, cultural or educational organizations for the purpose of his maintenance, education or training; and
- (c) income from personal services performed in the other Contracting State during in the aggregate not more than 5 years and in an amount not

exceeding 6, 000 DM or its equivalent in Chinese currency RMB per calendar year, for the purpose of supplementing his income for his maintenance, education or training.

ARTICLE 22

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 from immovable property as defined in paragraph 2 of Article 6, 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 from 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.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State which are not covered under the preceding Articles of this Agreement may be taxed in the other Contracting State, if they are arising in that other State.

ARTICLE 23

CAPITAL

1. Capital represented by immovable property referred to in Article 6, 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 or aircraft operated in international traffic, and by movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of head office of the enterprise is situated.

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

ARTICLE 24

METHODS FOR ELIMINATION OF DOUBLE TAXATION

1. For a resident of the People's Republic of China double taxation shall be eliminated as follows:

- (a) the German tax levied in accordance with the provisions of this Agreement on income derived from the Federal Republic of Germany shall be allowed as a credit against the Chinese tax to be paid by that resident in the People's Republic of China. The amount of German tax to be credited, however, shall not exceed the amount of Chinese tax computed with respect to such income in accordance with the tax regulations of the People's Republic of China;
- (b) where the income consists of dividends paid by a company which is a resident of the Federal Republic of Germany to a company which is a resident of the People's Republic of China and which owns at least 10 per cent of the capital of the first-mentioned company the tax paid by the first-mentioned company may be credited against the tax imposed by the People's Republic of China, to the extent it can be attributed to such

2. For a resident of the Federal Republic of Germany double taxation shall be eliminated as follows:

- (a) Unless the provisions of subparagraph (b) apply, there shall be excluded from the basis upon which German tax is imposed any item of income arising in the People's Republic of China and any item of capital situated within the People's Republic of China which, according to this Agreement, may be taxed in the People's Republic of China. 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 excluded.

In the case of dividends the foregoing provisions shall apply only to such dividends as are paid to a company (not including partnerships) being a resident of the Federal Republic of Germany by a company being a resident of the People's Republic of China at least 10 per cent of the capital of which is owned directly by the German company.

For the purposes of taxes on capital there shall also be excluded from the basis upon which German tax is imposed any shareholding, the dividends from which, if paid, would be excluded according to the immediately foregoing sentence from the basis upon which German tax is imposed.

- (b) Subject to the provisions of German tax law regarding credit for foreign tax, a credit shall be allowed against German individual income and corporate income tax payable in respect of the following items of income arising in the People's Republic of China, the Chinese tax paid under Chinese laws and in accordance with this Agreement on:
 - (i) dividends not dealt with in subparagraph (a) ;
 - (ii) interest;
 - (ii) royalties;
 - (iv) income to which paragraph 4 of Article 13 applies;
 - (v) remuneration to which Article 16 applies;
 - (vi) income to which Article 17 applies;
 - (vii) income to which paragraph 3 of Article 22 applies.
- (c) For the purpose of subparagraph (b) the Chinese tax to be credited shall be deemed to be:
 - (i) in the case of dividends referred to in sub-paragraph (b) under (i) : 10 per cent of the gross amount of dividends;
 - (ii) in the case of interest and royalties referred to in sub-paragraph (b) under (ii) and (iii) : 15 per cent of the gross amount of such payments.

ARTICLE 25

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 are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of a Contracting State.

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 exclusively 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 that 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 26

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 25, 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 the Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State,

with a view to the avoidance of taxation 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 27

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. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that 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 28
DIPLOMATIC AGENTS AND CONSULAR OFFICERS

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

ARTICLE 29
BERLIN CLAUSE

This Agreement shall also apply to Berlin (West) in accordance with the procedure agreed upon.

ARTICLE 30
ENTRY INTO FORCE

This Agreement shall enter into force on the thirtieth day following the date on which each of the two Governments has notified the other that the procedures required by its law for the bringing into force of this Agreement have been completed. The Agreement shall have effect:

- (a) on taxes withheld at the source on dividends paid on or after 1 January 1985;
- (b) on taxes withheld at source on interest or royalties paid on or after 1 July 1985;
- (c) on other taxes, for any tax year beginning on or after 1 January 1985.

ARTICLE 31
TERMINATION

This Agreement shall continue in effect indefinitely but either Contracting State 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 to the other Contracting State, through diplomatic channels, written notice of termination; in such case the Agreement shall cease to have effect:

- (a) on taxes withheld at source on dividends, interest and royalties paid on or after 1 January of the year following that in which the notice is given;

(b) on other taxes, for any tax year beginning on or after 1 January of the year following that in which the notice is given.

DONE in duplicate at Bonn this 10th day of June 1985, in the Chinese and German languages, both texts being equally authentic.

**For the People's Republic
of China**

**For the Federal Republic
of Germany**