

No. 25120

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**FEDERAL REPUBLIC OF GERMANY  
and  
CHINA**

**Convention for the avoidance of double taxation with respect to taxes on income and on capital (with protocol).  
Signed at Bonn on 10 June 1985**

*Authentic texts: German and Chinese.*

*Registered by the Federal Republic of Germany on 24 July 1987.*

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**RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE  
et  
CHINE**

**Convention tendant à éviter la double imposition en matière d'impôts sur le revenu et sur la fortune (avec protocole). Signée à Bonn le 10 juin 1985**

*Textes authentiques : allemand et chinois.*

*Enregistrée par la République fédérale d'Allemagne le 24 juillet 1987.*

## [TRANSLATION — TRADUCTION]

CONVENTION<sup>1</sup> BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE PEOPLE'S REPUBLIC OF CHINA FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

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

Desiring to promote their economic relations and to avoid double taxation of income and capital and tax evasion,

Have, after friendly consultations between the representatives of the two Governments, agreed as follows:

*Article 1. PERSONAL SCOPE*

This Convention shall apply to persons who are residents of one or both of the Contracting States.

*Article 2. TAXES COVERED*

1. This Convention shall apply, irrespective of the manner in which they are levied, to taxes on income and on capital imposed in a Contracting State.

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 Convention shall apply are:

(a) In the People's Republic of China:

- The personal income tax;
- The corporation tax on Chinese-foreign joint enterprises;
- The corporation tax on foreign enterprises and the communal corporation tax; (hereinafter referred to as "Chinese tax");

(b) In the Federal Republic of Germany:

- The income tax (*Einkommensteuer*);
- The corporation tax (*Körperschaftsteuer*);
- The tax on capital (*Vermögensteuer*); and
- The business tax (*Gewerbesteuer*);

(hereinafter referred to as "German tax").

4. The Convention shall apply also to any identical or largely similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes. At the end of each year, the competent authorities of the Contracting States shall

<sup>1</sup> Came into force on 14 May 1986, i.e., 30 days after the date on which both Parties had notified each other (on 12 March and 15 April 1986) of the fulfilment of their legal requirements, in accordance with article 30.

notify each other of any important changes which have been made in their respective taxation laws.

### *Article 3. GENERAL DEFINITIONS*

1. For the purposes of this Convention, unless the context otherwise requires:

(a) The terms “a Contracting State” and “the other Contracting State” mean the People’s Republic of China or the Federal Republic of Germany, depending on the context and, when used in the geographical sense, the territory in which the fiscal law of the Contracting State concerned is applicable, including the territorial sea as well as the areas situated beyond it in which the Contracting State concerned exercises sovereignty in accordance with international law, with respect to the exploration and exploitation of the natural resources of the sea-bed and the subsoil thereof;

(b) The term “person” includes individuals, companies 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 a person who is a national of a Contracting State under the law of that State, a body corporate, partnership or other association of persons established in accordance with the law in force in that State;

(f) The term “international traffic” means any transport by a ship or aircraft operated by an enterprise which has its place of general management 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 authorized representative and, in the case of the Federal Republic of Germany, the Federal Ministry of Finance.

2. As regards the application of the Convention 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 Convention applies.

### *Article 4. RESIDENT*

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

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, the following provisions shall apply:

(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 general management is situated.

#### *Article 5. PERMANENT ESTABLISHMENT*

1. For the purposes of this Convention, 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” also includes:

- (a) A building site or construction or connected supervisory activity, but only where such site, project or activity continues for a period of more than six months;
- (b) Services, including consultancy services, rendered by employees or other personnel of an enterprise of a Contracting State, but only where such activities continue within the other Contracting State (for the same or a connected project) for a total period of more than six months within any 12-month period.

4. Notwithstanding the preceding provisions of this article, the term “permanent establishment” shall be deemed not to include:

- (a) The use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

- (d) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) The maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, other activities of a preparatory or auxiliary character;
- (f) The maintenance of a fixed place of business solely for the purpose of carrying on several of the activities referred to in subparagraphs (a) to (e), provided that the resulting activity of the fixed place of business as a whole is of a preparatory or auxiliary character.

5. Where a person, other than an agent of an independent status to whom paragraph 6 applies, acts for an enterprise and has the authority in a Contracting State to conclude contracts on behalf of the enterprise and habitually exercises it therein, the enterprise, irrespective of paragraphs 1 and 2, shall be deemed to have a permanent establishment in that State for all business carried on for the enterprise by the said person, unless the business is limited to that mentioned in paragraph 4 which, if carried on through a fixed place of business, would not make such a place of business a permanent establishment under the provisions of that paragraph.

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, 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 which a resident person of a Contracting State derives from immovable property situated in the other Contracting State may be taxed in the other State.

2. The term "immovable property" shall have the meaning as defined by 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 deemed to be immovable property.

3. The provisions of paragraph 1 shall also apply to income derived from the direct use, letting 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 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 an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

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

4. In so far 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 is in accordance with the principles set forth in this article.

5. No profit shall be attributed to a permanent establishment on the sole ground that it purchases goods or merchandise for the enterprise.

6. In the application 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 separately in other articles of this Convention, 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 general management of the enterprise is situated.

2. If the place of general management 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 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 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 shall be taxable 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 law of that State but, if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed 10 per cent. The provisions of this paragraph shall not affect taxation of the company levied on the profits from 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 assimilated to income from shares by the fiscal law of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or renders personal services in that other State through a fixed base situated therein, and the holding whereby 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 shall apply *mutatis mutandis*.

5. Where a company which is a resident of the Contracting State derives profits or income from the other Contracting State, that other State shall not impose any tax on the dividends paid by the company, except in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.

### Article 11. INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the law of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent.

3. Irrespective of paragraph 2, interest which:

(a) Originates in the Federal Republic of Germany shall be exempt from the German tax if it is paid:

(aa) To the Government of the People's Republic of China;

(bb) To the People's Bank of China, the Agricultural Bank of China, the People's Construction Bank of China, the Investment Bank of China and the Industrial and Commercial Bank of China;

(cc) On a loan directly guaranteed or financed by the Bank of China or the Chinese International Trust and Investment Corporation, or

(dd) To a State credit institution of the Government of the People's Republic of China, if the competent authorities of the two States so agree;

(b) Originates in the People's Republic of China is exempt from the Chinese tax if it is paid:

(aa) To the Government of the Federal Republic of Germany;

(bb) To the German Federal Bank, the Credit Institute for Reconstruction (Kreditanstalt für Wiederaufbau) or the German Financing Company for Investment in Developing Countries (Deutsche Finanzierungsgesellschaft für Beteiligungen in Entwicklungsländern);

(cc) For a loan directly guaranteed or financed by Hermes Collateral (Hermes Deckung), or

(dd) To a State credit institution of the Federal Government, if the competent authorities of the two States so agree.

4. The term "interest" as used in this article means income from debt-claims of every kind, whether or not secured by mortgage on real property and whether or not carrying a right to participate in the debtor's profits and, in particular, income from Government securities and from bonds or debentures, including premiums and lottery bonds attaching to such securities or loans. Surcharges on tax arrears shall not be deemed to be dividends within the meaning 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 renders personal services in that other State through a fixed base situated therein, and the debt-claim whereby the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of article 7 or article 14 shall apply *mutatis mutandis*.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision thereof or a resident of that State. Where, however, the person paying the interest, whether or not he is a resident of a Contracting State, 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 the interest is borne by the 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 law of each Contracting State, due regard being had to the other provisions of this Convention.

#### Article 12. ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and under the law 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, or films or tapes used for radio or television broadcasting, any patent, trademark, 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 renders personal services in that other State through a fixed base therein, and the rights or property holdings in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of article 7 or article 14 shall apply *mutatis mutandis*.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision or a resident of that State. Where, however, the person paying the royalties, whether or not he is a resident of a Contracting State, has in a Contracting State a permanent establishment or fixed base in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such a permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, owing to 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 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 a case, the excess part of the payments shall

remain taxable under the law of the Contracting State, due regard being paid to the other provisions of this Convention.

#### *Article 13. CAPITAL GAINS*

1. Gains derived by a resident of a Contracting State from the alienation of immovable property, as defined in article 6 and situated in the other Contracting State, shall be taxable 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 the Contracting State in the other Contracting State for the purpose of rendering personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base shall be taxable in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or of movable property for operating such ships or aircraft shall be taxable only in the Contracting State in which the place of general management of the enterprise is situated.

4. Gains derived by a resident of a Contracting State from the alienation of property other than that referred to in paragraphs 1 to 3 situated in the other Contracting State shall be taxable in that other State.

#### *Article 14. PROFESSIONAL SERVICES*

1. Income derived by a resident of a Contracting State for professional services or other independent activities shall be taxable only in that State. Such income may, however, 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 to the extent that the income is attributable to that fixed base, or
- (b) If he is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in a calendar year, but only to the extent that the income is attributable to the activity carried out in that State.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities and the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

#### *Article 15. EMPLOYMENT*

1. Subject to the provisions of articles 16, 18, 19, 20 and 21, salaries, wages and 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 exercised there, 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 does not come from a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the foregoing provisions of this article, remuneration in respect of an employment exercised on board a ship or aircraft in international traffic may be taxed in the Contracting State in which the place of general management of the enterprise is situated.

#### *Article 16. DIRECTORS' FEES*

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

#### *Article 17. ENTERTAINERS AND ATHLETES*

1. Notwithstanding the provisions of articles 14 and 15, income derived by a person resident in a Contracting State from activity as an entertainer exercised in the other Contracting State, such as theatre, motion picture, radio or television entertainers, and musicians, and by athletes, from their personal activities as such, 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 a resident of one Contracting State from an activity exercised in the other Contracting State through cultural exchanges agreed between the Governments of both Contracting States may not be taxed in the other State.

#### *Article 18. PENSIONS*

Subject to the provisions of article 19, paragraph 2, 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 SERVICES*

1. (a) Remuneration, excluding pensions, paid by a Contracting State or a local authority or body thereof to an individual in respect of services rendered to that State or local authority or body thereof 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 State who:

(aa) Is a national of that State; or

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

2. (a) Any pension paid by a Contracting State or a local authority or body thereof to an individual in respect of services rendered to that State or subdivision or authority 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 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 thereof.

#### *Article 20. TEACHERS AND RESEARCHERS*

1. Remuneration which a teacher or researcher who is, or during the period immediately preceding was, a resident of a Contracting State and who visits the other Contracting State for a period not exceeding three years for the purpose of engaging in advanced studies or research activity or for the purpose of teaching at a university, college, school or other educational establishment or research institute receives for such work shall not be taxed in the said other State.

2. Paragraph 1 shall not apply to income from research where the research is conducted not in the public interest but predominantly for the private use of a specific person or specific persons.

#### *Article 21. STUDENTS AND OTHER PERSONS ENGAGED IN EDUCATION*

Payments which a student, apprentice or trainee who is, or during the period immediately preceding was, a resident of a Contracting State and who visits the other Contracting State solely for the purpose of study or education shall be exempt from taxation of the said other State with respect to the following payments:

- (a) All payments received for his maintenance, study or education from persons resident outside the other State and
- (b) All awards, grants and allowances received from governmental, charitable, scientific, cultural or educational organizations for his maintenance, education or training, and
- (c) For a period not exceeding in the aggregate five years, in respect of remuneration up to 6,000 DM or its equivalent in Chinese currency, per calendar year for employment exercised in the other Contracting State in order to supplement the resources available to him for his maintenance, education or training.

#### *Article 22. OTHER INCOME*

1. Income of a person resident in a Contracting State which is not dealt with in the preceding articles 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 article 6, paragraph 2, 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 work 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 a 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, income of a person resident in a Contracting State which is not dealt with in the preceding articles and which arises in the other Contracting State may be taxed also in that other State.

#### *Article 23. PROPERTY*

1. Immovable property, as defined in article 6, belonging to a person resident in a Contracting State and situated in the other Contracting State may be taxed in that other State.

2. Movable property forming part of the business property of a permanent establishment having an enterprise of a Contracting State situated in the other Contracting State, or pertaining to a fixed base used for rendering personal services by a resident of a Contracting State in the other Contracting State, may be taxed in the other Contracting State.

3. Ships and aircraft operated in international traffic and movable property used for the operation of such ships and aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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

#### *Article 24: RELIEF FROM DOUBLE TAXATION*

1. In the case of a resident in the People's Republic of China, relief from double taxation shall be effected as follows:

(a) The German tax levied in accordance with this Convention on income from the Federal Republic of Germany shall be credited to the Chinese tax to be paid by that person in the People's Republic of China. The German tax to be credited shall not, however, exceed that portion of the Chinese tax levied on such income under the fiscal law of the People's Republic of China.

(b) Where this income consists of dividends paid by an enterprise resident in the Federal Republic of Germany to an enterprise resident in the People's Republic of China to which at least 10 per cent of the capital of the first-named enterprise belongs, the tax paid by the first-named enterprise shall be credited to the tax paid in the People's Republic of China in so far as it is attributable to such income.

2. In the case of a resident of the Federal Republic of Germany, relief from double taxation shall be effected as follows:

(a) Unless the provisions of subparagraph (b) apply, there shall be excluded from the basis upon which the German tax is imposed any item of income from sources in the People's Republic of China and any elements of capital situated in the People's Republic of China which, under this Convention, may be taxed in the People's Republic of China. The Federal Republic of Germany shall, however, take the items of income and elements of capital so excluded into account in the determination of its rate of tax.

The foregoing provisions shall apply to dividends only where they are paid to a company (but not to a partnership) resident in the Federal Republic of Germany

by a company which is resident in the People's Republic of China and owns directly at least 10 per cent of the capital of the German enterprise.

In the case of taxation on capital, there shall also be excluded from the basis upon which German tax is imposed any shareholdings whose dividends have been excluded from the said basis in accordance with the foregoing provisions.

(b) The Chinese tax paid under Chinese law and in accordance with this Convention shall, subject to the provisions of the Federal Republic of Germany relating to credit for foreign tax, be credited against the German income tax and corporation tax payable on the following items of income from the People's Republic of China:

- (aa) Dividends not included under subparagraph (a);
- (bb) Interest;
- (cc) Royalties;
- (dd) Items of income as defined in article 13, paragraph 4;
- (ee) Remuneration as defined in article 16;
- (ff) Items of income as defined in article 17;
- (gg) Items of income as defined in article 22, paragraph 3;

(c) For the purpose of subparagraph (b) the following shall count as Chinese tax to be credited:

- (aa) In the case of the dividends defined in subparagraph (b), item (aa):  
10 per cent of the gross amount of the dividends;
- (bb) In the case of the dividends and royalties referred to in subparagraph (b), items (bb) and (cc):  
15 per cent of the gross amount of these 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. Notwithstanding the provisions of article 1, this provision shall also apply to persons who are not residents of either of the Contracting States.

2. The taxation of 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 only to its own residents.

3. In cases where article 9, article 11 paragraph 7, or article 12 paragraph 6, do not apply, interest, royalties and other sums 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 on the same conditions as payments made to a resident of the first-mentioned State. Similarly, debts owed by 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 in the same way as debts owed to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, whose capital is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. Notwithstanding the provisions of article 2, this article shall apply to taxes of every kind.

#### *Article 26. MUTUAL AGREEMENT PROCEDURE*

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident or, to the extent that the case falls under article 25, paragraph 1, notify the competent authorities 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 which is inconsistent with this Convention.

2. If the said competent authority considers the objection justified and is not itself able to arrive at a satisfactory solution, it shall endeavour to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation inconsistent with this Convention.

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 Convention. They may also consult together for the avoidance of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other direct for the purpose of reaching 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 implementing this Convention. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic law of that State and may be disclosed only to persons or authorities (including courts and administrative agencies) concerned with the assessment or collection, enforcement or prosecution, or adjudication of appeals in respect of the taxes covered in the Convention. Such persons or authorities shall use the information only for such purposes but may disclose 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 administration of either 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.

*Article 28. DIPLOMATIC AND CONSULAR OFFICERS*

Nothing in this Convention shall affect the fiscal privileges to which members of diplomatic and consular missions are entitled under the general rules of international law or under the provisions of special agreements.

*Article 29. BERLIN CLAUSE*

This Convention shall apply in keeping with the current situation also to Berlin (West).

*Article 30. ENTRY INTO FORCE*

This Convention shall enter into force 30 days after the date on which both Governments have notified each other that the domestic legal requirements for its entry into force have been fulfilled. It shall apply:

- (a) In respect of taxes withheld at source on dividends paid on or after 1 January 1985;
- (b) In respect of taxes withheld at source on interest and royalties paid on or after 1 July 1985;
- (c) In respect of the other taxes levied for the fiscal year beginning on or after 1 January 1985.

*Article 31. TERMINATION*

This Convention shall remain in force for an indefinite period, but either Contracting State may denounce the Convention on or before 30 June of any calendar year after the expiry of five years from the date of its entry into force by giving notice of termination in writing to the other Contracting State through the diplomatic channel, and in such case, the Convention shall cease to have effect:

- (a) In respect of taxes withheld at source on dividends, interest and royalties paid on or after 1 January of the year following the year of denunciation;
- (b) In respect of the other taxes for the fiscal years beginning on or after 1 January of the year following the year of denunciation.

DONE at Bonn, on 10 June 1985, in two originals in the German and Chinese languages, both texts being equally authentic.

For the Federal Republic of Germany:

HANS-DIETRICH GENSCHER

GERHARD STOLTENBERG

For the People's Republic of China:

TIAN JI YUN



## PROTOCOL

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

At the signing of the Convention between the two States for the avoidance of double taxation with respect to taxes on income and on capital, have agreed on the following provisions which constitute an integral part of the Convention:

1. *Ad article 7*

(a) A building site or construction in the Contracting State where the permanent establishment is situated shall be taxed only in respect of such income as arises from that business itself. Where, in connection with such business or independently thereof, machinery or equipment is delivered by the principal establishment or another establishment of the enterprise or of a third person, the amount of such deliveries shall not be debited against the income of the building site or construction.

(b) Income in respect of planning, programming, construction or research work and technical services, which derives in a Contracting State from a person resident in that State and is connected with an establishment operating in the other Contracting State, shall not be debited against that establishment.

(c) Notwithstanding paragraph 3, no deduction shall be permitted for sums which are paid by the establishment (except for the reimbursement of actual expenses) to the principal establishment or another establishment of the enterprise in the form of

(aa) Licence fees, fees or other similar payments in return for the use of patents or other rights;

(bb) Commissions for special services or management; and

(cc) Interest on loans made to the establishment, provided that no banking institutions are involved.

2. *Ad article 8*

This Convention shall not affect the provisions in article 8 of the Agreement of 31 October 1975, concluded between the two Contracting States on maritime transport,<sup>1</sup> and in the exchange of notes of 27 February/14 March 1980 between the Government of the two Contracting States concerning taxation of the reciprocal airlines.

3. *Ad article 10*

(a) So long as the corporate tax rate for distributed profits in a Contracting State is lower than for non-distributed profits and the difference between the two rates amounts to 15 points or more, the tax on dividends which a company resident in that State pays to a person resident in the other Contracting State, notwithstanding paragraph 2, shall not exceed 15 per cent of the gross amount of the dividends;

(b) The term "dividends" used in paragraph 3 shall include income of a silent partner deriving from his participation as a silent partner and distributions of shareholdings in an investment project.

<sup>1</sup> United Nations, *Treaty Series*, vol. 1108, p. 391.

#### 4. *Ad articles 10 and 11*

Notwithstanding the provisions of these articles, dividends and interest in the Contracting State from which they arise may be taxed under the law of that State, provided that:

- (a) They are based on rights or claims with profit-sharing (including income of a silent partner arising from his participation or from loans carrying the right to participate or participating bonds within the meaning of the fiscal law of the Federal Republic of Germany); and
- (b) They are deductible from the computation of taxable profit of the person owing the dividends or taxes.

#### 5. *Ad article 12*

In the case of royalties which are paid for using, or for the right to use, industrial, commercial or scientific equipment, the tax base for applying the percentage prescribed in paragraph 2 shall be 70 per cent of the gross amount of such payments.

#### 6. *Ad article 24, paragraph 2*

(a) Where a company resident in the Federal Republic of Germany uses income from sources inside the People's Republic of China for distribution, paragraph 2 shall not preclude determination of the distribution charge under German fiscal law;

(b) The provisions of paragraph 2, subparagraphs (a) and (c), shall apply to the profits of an establishment, to movable and immovable property which constitutes the operating assets of an establishment, and to the profits from alienation of such property, to the dividends paid by a company and to participation in a company only if the person resident in the Federal Republic of Germany provides evidence that the income of the establishment or company arises exclusively or almost exclusively

- (aa) From one of the following activities carried on in the People's Republic of China: Manufacture or sale of goods or merchandise; technical advice or technical services, or banking or insurance businesses; or
- (bb) From dividends which are paid by one or more companies resident in the People's Republic of China, more than 25 per cent of whose capital belongs to the first-mentioned company and whose income arises again exclusively or almost exclusively from one of the following activities carried on in the People's Republic of China: Manufacture or sale of goods or merchandise; technical advice or technical services, or banking or insurance businesses.

In cases where the provisions of paragraph 2, subparagraphs (a) and (c) do not apply, the Chinese tax which is levied on the designated income and assets under the law of the People's Republic of China and in accordance with this Convention shall, as provided by the German fiscal law concerning the crediting of foreign taxes, be credited to the German corporate tax which is levied on such income, or to the German capital tax which is levied on such assets.

#### 7. *Ad article 27*

It is agreed that German fiscal law on the avoidance of tax evasion in certain circumstances provides for the submission of information on request, and that,

notwithstanding the said article, information may be submitted on the basis of these provisions to the competent authority in the People's Republic of China.

DONE at Bonn, on 10 June 1985, in two originals in the German and Chinese languages, both texts being equally authentic.

For the Federal Republic of Germany:

HANS-DIETRICH GENSCHER

GERHARD STOLTENBERG

For the People's Republic of China:

TIAN JI YUN