

**CHINA/UNITED STATES**

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**China (P.R.C.), United States**

1984 Income Tax Agreement, Final Protocol, and Notes

PUBLICATION-DATE: April 30, 1984

EFFECTIVE-DATE: November 21, 1986; January 1, 1987. See Article 27.

STATUS: In Force

This agreement has been amended by a protocol signed May 10, 1986

Treaty Doc. 98-30

86 TNI 8-34; Doc 93-30979

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1984 Income Tax Agreement, Final Protocol, and Notes

LEGIS-HISTORY: U.S.- **China**: P.R.C.: 1984 Income Tax Agreement

Doc 93-30982 Treasury Department Technical Explanation (July 30, 1985)

Doc 93-30983 Joint Committee on Taxation Explanation (JCS-28-85, July 29, 1985)

Doc 93-30981 Senate Foreign Relations Committee Report (S. Exec. Rpt. 99-7, Dec. 11, 1985)

Doc 93-30557A 1985 Hearings: JCT (Oglesby) Prepared Statement (July 30, 1985)

Doc 93-30558 1985 Hearings: Treasury Department (Pearlman) Prepared Statement (July 30, 1985)

Doc 93-30557B 1985 Hearings: Summary of JCT Prepared Statement (July 30, 1985)

Doc 93-30979 Letters of Transmittal and Submittal (from Treaty Doc. 98-30, Aug. 10, 1984)

Doc 2000-26180 Senate Floor Action and Debate (132 Cong. Rec. 17556-60, July 24, 1986)

Doc 93-31142 U.S. Ratification Instrument (Sept. 7, 1986)

Doc 93-31110 Treasury Dept. News Release, "**United States** and People's Republic of **China** to Discuss Income Tax Treaty" (R-881, July 21, 1982)

Doc 93-31111 Treasury Dept. News Release, "Treasury Department Announces Upcoming Income Tax Treaty Negotiations With the People's Republic of **China**" (R-

Doc 93-31112 Treasury Dept. News Release, "The **United States** and the People's Republic of **China** Sign an Income Tax Treaty" (R-2656, Apr. 30, 1984)

Doc 93-30978 Treasury Dept. News Release, "U.S.-P.R.C. Income Tax Treaty Ratified" (B-767, Oct. 31, 1986)U.S.-

**China**: P.R.C.: 1986 Protocol to the 1984 Agreement

Doc 93-31068 Treasury Department Technical Explanation (June 13, 1986)

Doc 93-31069 Senate Foreign Relations Committee Report (S. Exec. Rpt. 99-15, June 13, 1986)

Doc 93-31066 Letters of Transmittal and Submittal (from Treaty Doc. 99-26, June 6, 1986)

Doc 2000-26180 Senate Floor Action and Debate (132 Cong. Rec. 17556-60, July 24, 1986)

Doc 93-31142 U.S. Ratification Instrument (Sept. 7, 1986)

Doc 93-30978 Treasury Dept. News Release, "U.S.-P.R.C. Income Tax Treaty Ratified" (B-767, Oct. 31, 1986)

Doc 93-30980 Treasury Dept. News Release, "Protocol Concerning the Interpretation of Paragraph 7 of the Protocol to the Agreement Between the Government

TEXT:

PEOPLE'S REPUBLIC OF **CHINA**

Double Taxation: Taxes on Income

Agreement, with protocol and exchange of notes, signed at Beijing April 30, 1984;

And protocol signed at Beijing May 10, 1986;

Transmitted by the President of the **United States** of America to the Senate August 10, 1984 (Treaty Doc. No. 98-30, 98th Cong., 2d Sess.);

Reported favorably by the Senate Committee on Foreign Relations December 11, 1985 (S. Ex. Rept. No. 99-7, 99th Cong., 1st Sess.);

Advice and consent to ratification by the Senate July 24, 1986;

Ratified by the President September 7, 1986;

Ratified by **China** October 22, 1986;

Proclaimed by the President October 5, 1987;

Entered into force November 21, 1986.

BY THE PRESIDENT OF THE **UNITED STATES** OF AMERICA

A PROCLAMATION

CONSIDERING THAT:

The Agreement between the Government of the **United States** of America and the Government of the People's Republic of **China** for the Avoidance of Double Taxation and the Prevention of Tax Evasion with Respect to Taxes on Income, together with a supplementary protocol and exchange of notes, was signed at Beijing on April 30, 1984, and a protocol concerning the interpretation of paragraph 7 of the supplementary protocol was signed at Beijing on May 10, 1986, the texts of which are hereto annexed;

The Senate of the **United States** of America by its resolution of July 24, 1986, two-thirds of the Senators present concurring therein, gave its advice and consent to ratification of the Agreement, exchange of notes and two protocols;

The Agreement was ratified by the President of the **United States** of America on September 7, 1986, in pursuance of the advice and consent of the Senate, and was ratified on the part of the People's Republic of **China**;

Each of the Contracting States notified the other Contracting State in writing, through diplomatic channels, of the completion of the legal procedures required to bring the Agreement into force, and accordingly the Agreement entered into force on November 21, 1986, as specified in Article 27;

NOW, THEREFORE, I, Ronald Reagan, President of the **United States** of America, proclaim and make public the Agreement, exchange of notes and two protocols to the end that they be observed and fulfilled with good faith on and after November 21, 1986, by the **United States** of America and by the citizens of the **United States** of America and all other persons subject to the jurisdiction thereof.

IN TESTIMONY WHEREOF, I have signed this proclamation and caused the Seal of the **United States** of America to be affixed.

DONE at the city of Washington this fifth day of October in the year of our Lord one thousand nine hundred eighty-seven and of the Independence of the **United States** of America the two hundred twelfth.

RONALD REAGAN

By the President:

GEORGE P. SHULTZ  
Secretary of State

AGREEMENT BETWEEN THE GOVERNMENT OF THE **UNITED STATES** OF AMERICA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF **CHINA** FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF TAX EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the **United States** of America and the Government of the People's Republic of **China**,

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of tax evasion with respect to taxes on income,

Have agreed as follows:

Article 1

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

Article 2

1. The taxes to which this Agreement applies 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;
- (iv) the local income tax (hereinafter referred to as "Chinese tax").

(b) in the **United States** of America: the Federal income taxes imposed by the Internal Revenue Code (hereinafter referred to as "**United States** tax").

2. 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, those referred to in paragraph 1. Within an appropriate time period, the competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

Article 3

1. In this Agreement, unless the context otherwise requires,

(a) the term "the People's Republic of **China** ", when used in a geographical sense, means all the territory of the People's Republic of **China**, including its territorial sea, in which the laws relating to Chinese tax are in force, and all the area beyond its territorial sea, including the sea-bed and subsoil thereof, over which the People's Republic of **China** has jurisdiction in accordance with international law and in which the laws relating to Chinese tax are in force:

(b) the term "**United States** of America", when used in a geographical sense, means all the territory of the **United States** of America, including its territorial sea, in which the laws relating to **United States** tax are in force, and all the area beyond its territorial sea, including the sea-bed and subsoil thereof, over which the **United States** of America has jurisdiction in accordance with international law and in which the laws relating to **United States** tax are in force;

(c) the terms "a Contracting State" and "the other Contracting State" mean the People's Republic of **China** or the **United States** of America, as the context requires;

- (d) the term "tax" means Chinese tax or **United States** tax, as the context requires;
- (e) the term "person" includes an individual, a company, a partnership and any other body of persons;
- (f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (g) 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;
- (h) the term "nationals" means all individuals having the nationality of a Contracting State and all legal persons, partnerships and other bodies of persons deriving their status as such from the law in force in a Contracting State;
- (i) the term "competent authority" means
  - (i) in the People's Republic of **China**, the Ministry of Finance or its authorized representative; and
  - (ii) in the **United States** of America, the Secretary of the Treasury or his authorized representative.

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 laws of that Contracting State concerning the taxes to which the Agreement applies.

#### Article 4

1. For the purpose of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of head office, place of incorporation 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 the competent authorities of the Contracting States shall determine through consultations the Contracting State of which that individual shall be deemed to be a resident for the purposes of this Agreement.
3. Where by reason of the provisions of paragraph 1 a company is a resident of both Contracting States, then the competent authorities of the Contracting States shall determine through consultations the Contracting State of which the company shall be deemed to be a resident for the purposes of this Agreement, and, if they were unable to so determine, the company shall not be considered to be a resident of either Contracting State for purposes of enjoying benefits under this Agreement.
4. Where by reason of the provisions of paragraph 1 a company is a resident of the **United States** of America, and, under a tax agreement between the People's Republic of **China** and a third country is also a resident of that third country, the company shall not be considered to be a resident of the **United States** of America for purposes of enjoying benefits under this Agreement.

#### Article 5

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" also includes:

- (a) a building site, a construction, assembly or installation project, or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than six months;
- (b) an installation, drilling rig or ship used for the exploration or exploitation of natural resources, but only if so used for a period of more than three months; and
- (c) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where such activities continue (for the same or a connected project) within the country for a period or periods aggregating more than six months within any twelve month period.

4. Notwithstanding the provisions of paragraphs 1 through 3, 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 the activities mentioned in subparagraphs (a) through (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 Contracting 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 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 Contracting State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph if it is shown that the transactions between the agent and the enterprise were not made under arm's length conditions.

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 Contracting State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

#### Article 6

1. Income derived by a resident of a Contracting State from real property situated in the other Contracting State may be taxed in that other Contracting State.

2. The term "real property" shall have the meaning which it has under the laws of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to real property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of real 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 real property.

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

4. The provisions of paragraphs 1 and 3 shall also apply to the income from real property of an enterprise and to income from real property used for the performance of independent personal services.

#### Article 7

1. The profits of an enterprise of a Contracting State shall be taxable only in that Contracting 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 Contracting 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 the determination of 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. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties or other similar payments or by way of interest on money lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties or other similar payments or by way of interest on money lent to the head office of the enterprise or any of its other offices.

4. Insofar as the tax law of a Contracting State provides with respect to a specific industry that the profits to be attributed to a permanent establishment are to be determined on the basis of a deemed profit, nothing in paragraph 2 shall preclude that Contracting State from applying those provisions of its law, provided that the result is in accord 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 through 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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

## Article 8

### 1. 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 the relationship between the two enterprises in their commercial or financial relations differs from that which would exist between independent enterprises, then any profits which, but for those conditions would 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.

2. Where a Contracting State includes in the profits of an enterprise of that Contracting State--and taxes accordingly--profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State, and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be paid to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

## Article 9

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 Contracting 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 Contracting State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 percent 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 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 taxation laws of the Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State, of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the holding or other corporate rights 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 13, 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 Contracting 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 Contracting State or insofar as the holding or other corporate rights in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated



in that other Contracting 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 Contracting State.

#### Article 10

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

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

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and derived by the government of the other Contracting State, a political subdivision or local authority thereof, the Central Bank of that other Contracting State or any financial institution wholly owned by that government, or by any resident of the other Contracting State with respect to debt-claims indirectly financed by the government of that other Contracting State, a political subdivision or local authority thereof, the Central Bank of that other Contracting State or any financial institution wholly owned by that government, shall be exempt from tax in the first-mentioned Contracting State.

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 or prizes attaching to such securities, bonds, or debentures.

5. The provisions of paragraphs 1, 2 and 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 Contracting 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 13, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is the government of that Contracting State itself, a political subdivision, a local authority or a resident of that Contracting 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 Contracting 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 11

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

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 10 percent 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 cinematographic films or films or tapes

used for radio or television broadcasting, any patent, technical know-how, 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 performs in that other Contracting 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 13, as the case may be, shall apply.

5. (a) Royalties will be deemed to arise in a Contracting State when the payer is the government of that Contracting State itself, a political subdivision, 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 liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

(b) Where under subparagraph (a) royalties do not rise in one of the Contracting States, and the royalties relate to the use of, or the right to use, the right or property in one of the Contracting States, the royalties shall be deemed to arise in that Contracting State.

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 12

1. Gains derived by a resident of a Contracting State from the alienation of real property referred to in Article 6 and situated in the other Contracting State may be taxed in that other Contracting State.

2. Gains from the alienation of movable (personal) property forming part of the business assets of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, or of movable (personal) 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 together with the whole enterprise) or such a fixed base, may be taxed in that other Contracting State.

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

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally or real property situated in a Contracting State may be taxed in that Contracting State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 representing a participation of 25 percent in a company which is a resident of a Contracting State may be taxed in that Contracting State.

6. Gains derived by a resident of a Contracting State from the alienation of any property other than that referred to in paragraphs 1 through 5 and arising in other Contracting State may be taxed in the other Contracting State.

## Article 13

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that Contracting State, unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities or he is present in that other Contracting State for a period or periods exceeding in the aggregate 183 days in the calendar year concerned. If he has such a fixed base or remains in that other Contracting State for the aforesaid period or periods, the income may be taxed in that other Contracting State, but only so much of it as is attributable to that fixed base or is derived in that other Contracting State during the aforesaid period or periods.

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 14

1. Subject to the provisions of Articles 15, 17, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect to an employment shall be taxable only in that Contracting 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 Contracting 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 Contracting 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 Contracting State; and

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting State.

#### Article 15

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 Contracting State.

#### Article 16

1. Notwithstanding the provisions of Articles 13 and 14, 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 Contracting State.

However, income derived by a resident of a Contracting State as an entertainer or athlete from activities exercised in accordance with a special program for cultural exchange agreed upon by the governments of both Contracting States shall be exempt from tax by the other Contracting 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, 13 and 14, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

However, if those activities are exercised in accordance with a special program for cultural exchange agreed upon by the governments of both Contracting States, the income so derived shall be exempt from tax by the other Contracting State.

#### Article 17

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that Contracting State.

2. Notwithstanding the provisions of paragraph 1, pensions and other payments made by the government, a political subdivision or a local authority of a Contracting State under its social security system or public welfare plan shall be taxable only in that Contracting State.

#### Article 18

1.(a) Remuneration, other than a pension, paid by the government or a political subdivision or a local authority of a Contracting State to an individual in respect of services rendered to that government or subdivision or authority shall be taxable only in that Contracting State.

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

(i) is a national of that other Contracting State; or

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

(2) (a) Any pension paid by, or out of funds created by, the government or a political subdivision or a local authority of a Contracting State to an individual in respect of services rendered to that government or subdivision or authority shall be taxable only in that Contracting 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 Contracting State.

3. The provisions of Articles 14, 15, 16 and 17 shall apply to remuneration and pensions in respect to services rendered in connection with a business carried on by the government or a political subdivision or a local authority of a Contracting State.

#### Article 19

An individual who is, or immediately before visiting a Contracting State was, a resident of the other Contracting State and is temporarily present in the first-mentioned Contracting State for the primary purpose of teaching, giving lectures or conducting research at a university, college, school or other accredited educational institution or scientific research institution in the first-mentioned Contracting State shall be exempt from tax in the first-mentioned Contracting State for a period not exceeding three years in the aggregate in respect of remuneration for such teaching, lectures or research.

#### Article 20

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

(a) payments received from abroad for the purpose of his maintenance, education, study, research or training;

(b) grants or awards from a government, scientific, educational or other tax-exempt organization; and

(c) income from personal services performed in that Contracting State in an amount not in excess of 5,000 **United States** dollars or its equivalent in Chinese yuan for any taxable year.

The benefits provided under this Article shall extend only for such period of time as is reasonably necessary to complete the education or training.

## Article 21

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 Contracting State.

2. The provisions of paragraph 1 shall not apply to income other than that from real 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 Contracting 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 13, 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 not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting State may also be taxed in that other Contracting State.

## Article 22

Editor's Note: See  
Paragraph 2 of Final Protocol  
Exchange of Notes signed April 30, 1986

1. In the People's Republic of **China**, double taxation shall be eliminated as follows:

(a) Where a resident of **China** derives income from the **United States**, the amount of the **United States** income tax payable in respect of that income in accordance with the provisions of this Agreement shall be allowed as a credit against the Chinese tax imposed on that resident. The amount of credit, however, shall not exceed the amount of the Chinese tax computed with respect to that income in accordance with the taxation laws and regulations of **China**.

(b) Where the income derived from the **United States** is a dividend paid by a company which is a resident of the **United States** to a company which is a resident of **China** and which owns not less than 10 percent of the shares of the company paying the dividend, the credit shall take into account the **United States** income tax payable by the company paying the dividend in respect of the profits out of which the dividends are paid.

2. In the **United States** of America, in accordance with the provisions of the law of the **United States**, the **United States** shall allow to a resident or citizen of the **United States** as a credit against the **United States** tax on income:

(a) the income tax paid to **China** by or on behalf of such resident or citizen; and

(b) in the case of a **United States** company owning at least 10 percent of the voting rights in a company which is a resident of **China** and from which the **United States** company receives dividends, the income tax paid to **China** by or on behalf of the distributing company with respect to the profits out of which the dividends are paid.

For the purposes of this paragraph of this Agreement, the taxes referred to in paragraphs 1(a) and 2 of Article 2 shall be considered income taxes.

3. Income derived by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Agreement shall be deemed to arise in that other Contracting State.

## Article 23

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 Contracting State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, apply to persons who are not residents of one or both of the Contracting States.

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

3. Except where the provisions of Article 8, paragraph 7 of Article 10 or paragraph 6 of Article 11 apply, interest, royalties and other disbursements paid by a resident of a Contracting State to a resident of the other Contracting State shall, for the purposes of determining the taxable profits of the first-mentioned resident, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Contracting 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 Contracting 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 Contracting State are or may be subjected.

#### Article 24

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 Contracting 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 23, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

2. The competent authority shall endeavor, 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 through consultation with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with this 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 endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this 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 paragraphs 2 and 3. To facilitate reaching a mutual agreement, the competent authorities of both Contracting States may meet for an oral exchange of opinions.

#### Article 25

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

#### Article 26

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 27

Each of the Contracting States shall notify the other Contracting State in writing, through diplomatic channels, upon the completion of their respective legal procedures to bring this Agreement into force. The Agreement shall enter into force on the thirtieth day after the date of the latter of such notifications and shall take effect as respects income derived during taxable years beginning on or after the first day of January next following the date on which this Agreement enters into force.

#### Article 28

This Agreement shall remain in force indefinitely, but either Contracting State may terminate the Agreement by giving notice to the other Contracting State in writing through diplomatic channels on or before June 30 in any calendar year after five years from the date on which this Agreement enters into force. In such event, the Agreement shall cease to have effect with respect to income derived during taxable years beginning on or after the first day of January of the year following that in which the notice of termination is given.

Done at Beijing on the 30th day of April, 1984, in duplicate, in the Chinese and English languages, the two texts having equal authenticity.

FOR THE GOVERNMENT OF THE **UNITED STATES** OF AMERICA:

Ronald Reagan

FOR THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF **CHINA**:

Zhao Ziyang

PROTOCOL TO THE AGREEMENT BETWEEN THE GOVERNMENT OF THE **UNITED STATES** OF AMERICA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF **CHINA** FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF TAX EVASION WITH RESPECT TO TAXES ON INCOME

At the signing of the Agreement between the Government of the **United States** of America and the Government of the People's Republic of **China** for the Avoidance of Double Taxation and the Prevention of Tax Evasion with Respect to Taxes on Income (hereinafter referred to as "the agreement"), both sides have agreed upon the following provisions which form an integral part of the Agreement:

1. This Agreement shall not restrict in any manner any tax benefit which is or may hereafter be accorded in a Contracting State by the laws of that Contracting State or by any Agreement between the governments of the Contracting States.

2. Notwithstanding any provision of the Agreement, the **United States** may tax its citizens. Except as provided in paragraph 2 of Article 8, paragraph 2 of Article 17, and Articles 18, 19, 20, 22, 23, 24 and 26 of this Agreement, the **United States** may tax its residents (as determined under Article 4).

3. The **United States** may impose its social security tax, its personal holding company tax and its accumulated earnings tax notwithstanding any provision of this Agreement. However, a Chinese company shall be exempt from the personal holding company tax or the accumulated earnings tax in the **United States** during a taxable year if during that taxable year the company is wholly-owned, directly or indirectly, either by one or more individuals who are residents of **China** (and who are not citizens of the **United States**) or by the Government of **China** or any wholly-owned agency thereof.

4. The term "person" as defined in Article 3 of the Agreement shall include an estate or a trust.

5. In applying paragraph 2 of Article 4 of this Agreement, the competent authorities of both Contracting States shall be guided by the rules contained in paragraph 2 of Article 4 of the United Nations Model Double Taxation Convention between Developed and Developing Countries.

6. For purposes of paragraph 3 of Article 11 of this Agreement, it is agreed by both sides that, in the case of royalties paid for the rental of industrial, commercial or scientific equipment, the tax shall be imposed on 70 percent of the gross amount of such royalties.

7. It is agreed by both sides that the competent authorities of the Contracting States may through consultation deny the benefits of Articles 9, 10 and 11 to a company of a third country if the company becomes a resident of a Contracting State for the principal purpose of enjoying benefits under this Agreement.

8. This Agreement shall not affect the application of the agreement between the two governments with respect to mutual exemption from taxation of transportation income of shipping and air transport enterprises, signed at Beijing on March 5, 1982.

Done at Beijing on the 30th day of April, 1984, in duplicate, in the Chinese and English languages, the two texts having equal authenticity.

FOR THE GOVERNMENT OF THE **UNITED STATES** OF AMERICA:

Ronald Reagan

FOR THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF **CHINA**:

Zhao Ziyang

EXCHANGE OF NOTES

Beijing, April 30, 1984

His Excellency Zhao Ziyang,  
Premier of the State Council  
of the People's Republic of **China**

Excellency:

I have the honor to refer to the Agreement between the Government of the **United States** of America and the Government of the People's Republic of **China** for the Avoidance of Double Taxation and the Prevention of Tax Evasion with Respect to Taxes on Income which was signed on behalf of the Government of the **United States** of America, the following understanding reached between the two Governments:

Both sides agree that a tax sparing credit shall not be provided in Article 22 of this Agreement at this time. However, the Agreement shall be promptly amended to incorporate a tax sparing credit provision if the **United States** hereafter amends its laws concerning the provision of tax sparing credits, or the **United States** reaches agreement on the provisions of a tax sparing credit with any other country.



I have the honor to request Your Excellency to confirm the foregoing understanding on behalf to Your Excellency's Government.

I avail myself of this opportunity to assure Your Excellency of my highest consideration.

Ronald Reagan,  
President of the **United States** of America

II.

His Excellency Ronald Reagan,  
President of the **United States** of America.

Excellency:

I have the honour to acknowledge receipt of Your Excellency's Note of today's date, which reads as follows:

I have the honor to refer to the Agreement between the Government of the **United States** of America and the Government of the People's Republic of **China** for the Avoidance of Double Taxation and the Prevention of Tax Evasion with Respect to Taxes on Income which was signed today (hereinafter referred to as "the Agreement") and to confirm, on behalf of the Government of the **United States** of America, the following understanding reached between the two Governments.

Both sides agree that a tax sparing credit shall not be provided in Article 22 of the Agreement at this time. However, the Agreement shall be promptly amended to incorporate a tax sparing credit provision if the **United States** hereafter amends its laws concerning the provision of tax sparing credits, or the **United States** reaches agreement on the provision of a tax sparing credit with any other country.

I have the honor to request Your Excellency to confirm the foregoing understanding on behalf of Your Excellency's Government.

I avail myself of this opportunity to assure Your Excellency of my highest consideration.

I have the honour to confirm the understanding contained in Your Excellency's Note, on behalf of the Government of the People's Republic of **China**.

I avail myself of this opportunity to assure Your Excellency of my highest consideration.

Zhao Ziyang,  
Premier of the State Council of the People's Republic of **China**

## **BRAZIL/INDIA**

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**Brazil,India**

1988 Income Tax Convention and Final Protocol

PUBLICATION-DATE: April 26, 1988

EFFECTIVE-DATE: March 11, 1992; In **Brazil**, from January 1, 1993. In **India**, from April 1, 1993. See Article 28.

STATUS: In Force

1671 UNTS 3, Reg. No. 28876;

93 TNI 116-12; Doc 93-31474

1988 Income Tax Convention and Final Protocol

TEXT:

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF **INDIA** AND THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF **BRAZIL** FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of **India** and the Government of the Federative Republic of **Brazil**.

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have 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. The taxes to which the Convention shall apply are:

a) in the case of **Brazil**:

- the federal income tax, excluding the supplementary income tax and the tax on activities of minor importance;

(hereinafter referred to as "Brazilian tax");

b) in the case of **India**:

i) the income tax including any surcharge thereon;

ii) the surtax;

(hereinafter referred to as "Indian tax").

2. The Convention shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the above-mentioned taxes. The competent authorities of the Contracting States shall notify each other of any substantial 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 term "nationals" means:

I- all individuals possessing the nationality of a Contracting State;

II- all legal persons, partnerships and associations deriving their status as such from the law in force in a Contracting State;

b) the terms "a Contracting State" and "the other Contracting State" mean **Brazil or India**, as the context requires;

c) the term "person" includes an individual, a company and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;

d) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

e) 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;

f) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

g) the term "tax" means Brazilian tax or Indian tax, as the context requires;

h) the term "competent authority" means:

I- in **Brazil**: the Minister of Finance, the Secretary of Federal Revenue or their authorized representative;

II- in **India**: the Central Government in the Ministry of Finance (Department of Revenue) or their authorized representative.

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

#### Fiscal domicile

1. For the purposes of this Convention, the term "resident of a Contracting State" means any 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, 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 effective 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;

f) a mine, an oil or gas well, a quarry or other place of extraction of natural resources;

g) a building site or construction or assembly project which exists for more than six months;

h) an installation, drilling rig or ship used for the exploration or exploitation of natural resources, but only if so used for a period of more than six months.

3. 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 or display 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 or display;

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.

4. Notwithstanding the provisions of paragraphs 1 and 2, where a person-other than an agent of an independent status to whom paragraph 5 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 3 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.

5. 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. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise itself or on behalf of that enterprise and other enterprises controlling, controlled by, or subject to the same common control, as that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

6. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

#### Article 6

##### Income from immovable property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, 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, 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, in accordance with the provisions of and subject to the limitations of the taxation laws of the Contracting State concerned.

4. 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.

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

#### 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 effective management of the enterprise is situated.

2. If the place of effective 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 the participation in a pool, a joint business or an international operating agency.

4. The term "operation of ships or aircraft" shall mean business of transportation of persons, mail, livestock or goods carried on by the owners or lessees or charterers of the ships or aircraft, including the sale of tickets for such transportation on behalf of other enterprises.

#### 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 a company which is the beneficial owner of the dividends the tax so charged shall not exceed 15 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, "jouissance" shares or "jouissance" rights, 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 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, and the holding by virtue of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Where a resident of **India** has a permanent establishment in **Brazil**, this permanent establishment may be subject to a tax withheld at source in accordance with Brazilian law. However, such a tax cannot exceed 15 per cent of the gross amount of the profits of that permanent establishment determined after the payment of the corporate tax related to such profits.

6. 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 situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

#### Article 11 Interest

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

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraphs 1 and 2:

a) interest arising in a Contracting State and paid to the Government of the other Contracting State, a political subdivision thereof or any agency (including a financial institution) wholly owned by that Government, or political subdivision shall be exempt from tax in the first-mentioned State, unless subparagraph b) applies;

b) interest from securities, bonds or debentures issued by the Government of a Contracting State, a political subdivision thereof or any agency (including a financial institution) wholly owned by that Government or political subdivision shall be taxable only in that State.

4. The term "interest" as used in this Article means income from government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as other income assimilated to income from money lent by the taxation law of the Contracting State in which the income arises.

5. The provisions of paragraphs 1 and 2 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 and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

6. The tax rate limitation provided for in paragraph 2 shall not apply to interest arising in a Contracting State and paid to a permanent establishment of an enterprise of the other Contracting State which is situated in a third State.

7. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, 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 in connection with which the



indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

8. Where, by a 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 Convention.

## Article 12 Royalties

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

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed:

- a) 25 per cent of the gross amount of the royalties arising from the use or the right to use trade marks;
- b) 15 per cent of the gross amount of the royalties in all other cases.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films, films or tapes for television or radio broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

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

## 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, which is 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, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in the other State. However, gains

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

3. Gains from the alienation of any property other than that referred to in paragraphs 1 and 2, may be taxed in both Contracting States.

#### 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, unless the remuneration for such services or activities is paid by a resident of the other Contracting State or is borne by a permanent establishment situated therein. In such case, the income may be taxed in that other State.

2. The term "professional services" includes especially independent scientific, technical, 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 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

- a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned, and
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- c) the remuneration is not borne by a permanent establishment 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 effective management 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 or of any council 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 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. The provisions of paragraphs 1 and 2 of this Article shall not apply to income derived from activities performed in a Contracting State by an entertainer or an athlete if the visit to that Contracting State is substantially supported by public funds of, or sponsored by the other Contracting State, including those of any political subdivision or local authority.

#### Article 18

##### Pensions and social security payments

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration, alimony and annuities paid to a resident of a Contracting State may be taxed in that State.

2. However, such pensions and other similar remuneration, alimony and annuities may also be taxed in the other Contracting State if the payment is made by a resident of that other State or a permanent establishment situated therein.

3. Notwithstanding the provisions of paragraphs 1 and 2, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political subdivision or a local authority thereof shall be taxable only in that State.

4. As used in this Article:

a) the term "pensions and other similar remuneration" means periodic payments made in consideration of past employment or by way of compensation for injuries in connection with past employment;

b) the term "annuities" means stated sums payable periodically at stated times during life, or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

#### Article 19

##### Governmental payments

1. Remuneration not including pensions, paid by a Contracting State, a political subdivision or a local authority thereof to an individual in respect of services rendered to that State, to a political subdivision or local authority shall be taxable only in that State.

However, such remuneration shall be taxable only in the Contracting State of which the recipient is a resident if the services are rendered in that State and the recipient of the remuneration is a resident of that State who

a) is a national of that State, or

b) did not become a resident of that State solely for the purpose of performing the services.

2. Pensions paid by, or out of funds created by, a Contracting State, a political subdivision or a local authority thereof to an individual in respect of services rendered to that State, to a political subdivision or a local authority thereof may be taxed in that State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions paid in respect of services rendered in connection with any business carried on by a Contracting State, a political subdivision or a local authority thereof.

#### Article 20

##### Teachers and researchers

1. An individual who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who, at the invitation of the Government of the first-mentioned State or of a university, college, school, museum or

other cultural institution of that first-mentioned State or under an official programme of cultural exchange, is present in that State for a period not exceeding two consecutive years solely for the purpose of teaching, giving lectures or carrying out research at such institution shall be exempt from tax in that State on his remuneration for such activity, provided that the payment of such remuneration is derived by him from outside that State.

2. This Article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.

#### Article 21

##### Students and apprentices

1. Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

2. In respect of grants, scholarships and remuneration from employment not covered by paragraph 1, a student or business apprentice described in paragraph 1 shall, in addition, be entitled during such education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the State which he is visiting.

3. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article, for more than five consecutive years from the date of his first arrival in that State.

#### Article 22

##### Other income

Items of income of a resident of a Contracting State, arising from the other Contracting State and not dealt with in the foregoing Articles of this Convention, may be taxed in that other state.

#### Article 23

##### Methods for the elimination of double taxation.

1. Subject to the provisions of paragraphs 3 and 4, where a resident of a Contracting State derives income which, in accordance with the provisions of this Convention, may be taxed in the other Contracting State, the first-mentioned State shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in that other State.

Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to the income which may be taxed in that other State.

2. For the deduction mentioned in paragraph 1, the tax paid in that other State shall always be deemed to have been paid at the rate of 25 per cent of the gross amount of interest referred to in paragraph 2 of Article 11 and of royalties referred to in paragraph 2b of Article 12, provided, however, that the tax so deemed to have been paid shall not exceed the tax leviable on that income in the first-mentioned State.

3. Where a company which is a resident of a Contracting State derives dividends which, in accordance with the provisions of paragraph 2 of Article 10, may be taxed in the other Contracting State, the first-mentioned State shall exempt such dividends from tax.

4. Where a resident of **India** derives profits which, in accordance with the provisions of paragraph 5 of Article 10 may be taxed in **Brazil, India** shall exempt such profits from tax.

#### Article 24

##### Non-discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

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

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

4. In this Article, the term "taxation" means taxes to which this Convention applies.

#### Article 25

##### 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. This case must be presented within five years of the date of receipt of notice of the action which gives rise to taxation not in accordance with the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to avoidance of taxation not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the national laws 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 Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

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. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a commission consisting of representatives of the Competent authorities of the Contracting States.

#### Article 26

##### Exchange of information

1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of the Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention, in so far as the taxation thereunder is not contrary to the Convention, in particular for the prevention of fraud or evasion of such taxes. 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. However, if the information is originally regarded as secret in the transmitting State, it 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 which are the subject of the Convention. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchange of information shall be made, including, where appropriate, exchange of information regarding tax avoidance.

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 or administrative practice of that or of the other Contracting State;
- b) to supply information or documents which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c) to supply information or documents 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 27

##### Diplomatic agents and consular officers

Nothing in this Convention 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 28

##### Entry into force

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Brasilia as soon as possible.
2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect for the first time:

##### a) in **Brazil**:

I- in respect of taxes withheld at source, to amounts paid or credited on or after the first day of January of the calendar year immediately following that in which the Convention enters into force;

II- in respect of other taxes covered by the Convention, for the taxable year beginning on or after the first day of January of the calendar year immediately following that in which the Convention enters into force.

##### b) in **India**:

in respect of income arising in any previous year beginning on or after the first day of April immediately following the calendar year in which the Convention enters into force.

#### Article 29

##### Termination

Either Contracting State may terminate this Convention after a period of five years from the date on which the Convention enters into force by giving to the other Contracting State, through diplomatic channels, a written notice of termination, provided that any such notice shall be given only on or before the thirtieth day of June in any calendar year.

In such case the Convention shall cease to have effect:

##### a) in **Brazil**:

I- in respect of taxes withheld at source, to amounts paid or credited on or after the first day of January of the calendar year immediately following that in which the notice of termination is given;

II- in respect of other taxes, for taxable years beginning on or after the first day of January of the calendar year immediately following that in which the notice of termination is given.

b) in **India**:

in respect of income arising in any previous year beginning on or after the first day of April immediately following the calendar year in which the notice is given.

In witness whereof the undersigned being duly authorized thereto have signed this Convention.

Done at New Delhi this 26th day of April 1988, in duplicate in Hindi, Portuguese and English languages, all three texts being equally authentic. In case of any divergence of interpretation the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF **INDIA**

P.K. Appachoo

FOR THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF **BRAZIL**

Octavio Rainho da Silva Neves

Final Protocol

At the moment of the signature of the Convention between the Republic of **India** and the Federative Republic of **Brazil** for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income the undersigned, being duly authorized thereto, have agreed upon the following provisions which constitute an integral part of the Convention.

1. With reference to Article 3, paragraph 1, item (q).

It is understood that the term "tax" shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes.

2. With reference to Article 12, paragraph 3.

It is understood that the provisions of paragraph 3 of Article 12 shall apply to payments of any kind to any person, other than payments to an employee of a person making such payments, in consideration for the rendering of assistance or services of a managerial, administrative, scientific, technical or consultancy nature.

3. With reference to Article 20.

It is understood that the terms "museum or other cultural institution" shall refer only to such organisations which have been approved in this regard by the competent authority of the Contracting State concerned.

4. With reference to Article 24, paragraph 2.

It is understood that the provisions of paragraph 5 of Article 10 are not in conflict with the provisions of paragraph 2 of Article 24.

5. It is understood that either Contracting State may, at any time not earlier than ten years from the date on which the Convention enters into force, seek to review any or all of its provisions, by notice in writing through competent authority thereof to the competent authority of the other Contracting State. The competent authorities shall, within a period of six months thereafter, initiate appropriate proceedings for such review.

In witness whereof the undersigned being duly authorised thereto have signed this Protocol.

Done at New Delhi this 26th day of April 1988, in duplicate, in Hindi, Portuguese and English languages, all three texts being equally authentic. In case of any divergence of interpretation the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF **INDIA**

P.K. Appachoo

FOR THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF **BRAZIL.**

Octavio Rainho da Silva Neves



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1986 Protocol to the 1984 Agreement

PUBLICATION-DATE: May 10, 1986

EFFECTIVE-DATE: November 21, 1986; As indicated in Article 27 of the Agreement.

STATUS: In Force

Treaty Doc. 99-26

89 TNI 23-51; Doc 93-31066

TIAS 12065

1986 Protocol to the 1984 Agreement

LEGIS-HISTORY: U.S.- **China**: P.R.C.: 1984 Income Tax Agreement

Doc 93-30982 Treasury Department Technical Explanation (July 30, 1985)

Doc 93-30983 Joint Committee on Taxation Explanation (JCS-28-85, July 29, 1985)

Doc 93-30981 Senate Foreign Relations Committee Report (S. Exec. Rpt. 99-7, Dec. 11, 1985)

Doc 93-30557A 1985 Hearings: JCT (Oglesby) Prepared Statement (July 30, 1985)

Doc 93-30558 1985 Hearings: Treasury Department (Pearlman) Prepared Statement (July 30, 1985)

Doc 93-30557B 1985 Hearings: Summary of JCT Prepared Statement (July 30, 1985)

Doc 93-30979 Letters of Transmittal and Submittal (from Treaty Doc. 98-30, Aug. 10, 1984)

Doc 2000-26180 Senate Floor Action and Debate (132 Cong. Rec. 17556-60, July 24, 1986)

Doc 93-31142 U.S. Ratification Instrument (Sept. 7, 1986)

Doc 93-31110 Treasury Dept. News Release, "**United States** and People's Republic of **China** to Discuss Income Tax Treaty" (R-881, July 21, 1982)

Doc 93-31111 Treasury Dept. News Release, "Treasury Department Announces Upcoming Income Tax Treaty Negotiations With the People's Republic of **China**" (R-

Doc 93-31112 Treasury Dept. News Release, "The **United States** and the People's Republic of **China** Sign an Income Tax Treaty" (R-2656, Apr. 30, 1984)

Doc 93-30978 Treasury Dept. News Release, "U.S.-P.R.C. Income Tax Treaty Ratified" (B-767, Oct. 31, 1986)U.S.-

**China**: P.R.C.: 1986 Protocol to the 1984 Agreement

Doc 93-31068 Treasury Department Technical Explanation (June 13, 1986)

Doc 93-31069 Senate Foreign Relations Committee Report (S. Exec. Rpt. 99-15, June 13, 1986)

Doc 93-31066 Letters of Transmittal and Submittal (from Treaty Doc. 99-26, June 6, 1986)

Doc 2000-26180 Senate Floor Action and Debate (132 Cong. Rec. 17556-60, July 24, 1986)

Doc 93-31142 U.S. Ratification Instrument (Sept. 7, 1986)

Doc 93-30978 Treasury Dept. News Release, "U.S.-P.R.C. Income Tax Treaty Ratified" (B-767, Oct. 31, 1986)

Doc 93-30980 Treasury Dept. News Release, "Protocol Concerning the Interpretation of Paragraph 7 of the Protocol to the Agreement Between the Government

TEXT:

PROTOCOL CONCERNING THE INTERPRETATION OF PARAGRAPH 7 OF THE PROTOCOL TO THE AGREEMENT BETWEEN THE GOVERNMENT OF THE **UNITED STATES** OF AMERICA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF **CHINA** FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF TAX EVASION WITH RESPECT TO TAXES ON INCOME, SIGNED AT BEIJING ON APRIL 30, 1984.

The Government of the **United States** of America and the Government of the People's Republic of **China**, desiring to conclude a Protocol in addition to the Agreement between them for the avoidance of double taxation and the prevention of tax evasion, and the supplementary Protocol attached thereto, have agreed as follows:

Both sides have agreed, with respect to the interpretation of Paragraph 7 of the Protocol to the Agreement, that their understanding is as follows:

1. A person (other than an individual) which is a resident of a Contracting State shall not be entitled under this Agreement to relief from taxation in the other Contracting State unless:

(a)

(i) more than 50 percent of the beneficial interest in such person (or in the case of a company more than 50 percent of the number of shares of each class of the company's shares) is owned, directly or indirectly, by any combination of one or more of:

(A) individuals who are residents of one of the Contracting States;

(B) citizens of the **United States**;

(C) companies as described in subparagraph 1(b) of this protocol; and

(D) one of the Contracting States, its political subdivisions or local authorities; and

(ii) in the case of relief from taxation under Articles 9 (dividends), 10 (interest), and 11 (royalties), not more than 50 percent of the gross income of such person is used to make payments of interest to persons who are other than persons described in clauses (A) through (D) of subparagraph (a)(i), whether directly or indirectly; or

(b) it is a company which is a resident of a Contracting State and in whose principal class of shares there is substantial and regular trading on a recognized stock exchange.

2. Paragraph 1 shall not apply if the establishment, acquisition and maintenance of such person and the conduct of its operations did not have as a principal purpose the purpose of obtaining benefits under the Agreement.

3. For the purposes of paragraph 1(b), the term 'a recognized stock exchange' means:

(a) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the Securities and Exchange Commission as a national securities exchange for the purpose of the Securities Exchange Act of 1934; and

(b) any national securities exchange approved to be established by the Government of the People's Republic of **China** or its authorized institution; and

(c) any other stock exchange agreed upon by the competent authorities of the Contracting States.

4. Before a resident of a Contracting State is denied relief from taxation in the other Contracting State by reason of paragraph 1, 2 and/or 3, the competent authorities of the Contracting States shall consult each other.

This Protocol is certified for addition to the Agreement and its supplemental Protocol by the undersigned.

Done at Beijing on the 10th day of May, 1986, in duplicate, in the English and Chinese language, the two texts having equal authenticity.

James A. Baker, III  
Secretary of the Treasury

**United States** of America

Wang Bingqian  
State Councillor and  
Minister of Finance  
People's Republic of **China**