

# THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2025

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## MODULE 2.02 – CHINA OPTION

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### ADVANCED INTERNATIONAL TAXATION (JURISDICTION)

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TIME ALLOWED – 3¼ HOURS

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This exam paper has **three** parts: **Part A**, **Part B** and **Part C**.

You need to answer **five** questions in total. You will **not** receive marks for any additional answers.

You must answer:

- **Both** questions in **Part A** (25 marks each)
- **One** question from **Part B** (20 marks)
- **Two** questions from **Part C** (15 marks each)

#### Further instructions

- All workings should be made in Renminbi (Chinese Yuan, RMB), unless otherwise stated. Any monetary calculations should be made to the nearest whole Renminbi. Any necessary time apportionments in your calculations should be made to the nearest whole month.
- You must provide appropriate line breaks between each question, and clearly indicate the start of each new question using the formatting tools available.
- Marks may be allocated for clarity of presentation of your answers.
- The time you spend answering questions should correspond broadly to the number of marks available for that question. You should therefore aim to spend approximately half of your time answering Part A, and the other half answering questions in Parts B and C.
- There is no separate reading time, so you can start typing your answers as soon as the exam begins. However, we recommend that you set aside some time to thoroughly read each question and plan each of your answers.

For your information this paper includes:

**Agreement between Mainland China and Hong Kong for the Avoidance of Double Taxation (including Protocols)**

**Agreement between China and the United Kingdom for the Avoidance of Double Taxation (including Protocol)**

## PART A

**You are required to answer BOTH questions from this Part.**

1. ACo is an international business company registered in Hong Kong and beneficially owned by Mr Lin, a Chinese resident individual. BCo is a Chinese resident company in Shanghai owned by the family of Mr Lin.

Mr Lin owns 15% of shares in ACo, with the remaining 85% owned by BCo. The directors of ACo are Chinese tax resident individuals, and all board meetings take place in Shanghai, China, where the company's accounting books are kept.

ACo produces paramedical equipment and supplies through its factory in Shanghai, which are sold to European clients through its selling branch situated in the United Kingdom.

Recently, ACo has concluded a technical support agreement with FCo, a company resident in the UK, which is in the same line of business as ACo. Under the agreement, ACo will grant FCo the license of its relevant paramedical equipment production patents and provide technical support services to FCo through the factory in Shanghai for eight months. Through the agreement, ACo will receive 80% of the contract revenue, with the remaining 20% received by BCo based on the market price.

**You are required to explain the Chinese income tax implications of ACo's business operations. Outline any points that may be challenged by Chinese tax authorities and the subsequent tax treatment if such challenge succeeds.** (25)

2. Under the Chinese Enterprise Income Tax Law, when a non-resident enterprise makes an indirect transfer of assets (such as the equity of a Chinese resident enterprise) through arrangements which do not have a reasonable business purpose, in order to avoid Enterprise Income Tax liabilities, the indirect transfer shall be regarded pursuant to the provisions of Article 47 of the Enterprise Income Tax Law as direct transfer of assets of Chinese resident enterprises.

For these purposes, China's State Taxation Administration issued the *Announcement on Several Issues Relating to Enterprise Income Tax on Indirect Transfer of Assets by Non-resident Enterprises* (Gonggao [2015] No. 7), in which the relevant factors are listed in considering whether the arrangements for the indirect transfer of assets have a reasonable business purpose.

**You are required to describe all relevant factors listed in this *Announcement*.** (25)

## PART B

**You are required to answer ONE question from this Part.**

3. XCo, a resident company in the United Kingdom, engages in digital marketing activities and primarily provides its global clients with advertising services. In order to expand its business into the Chinese market, in 2021 it established YCo, a wholly-owned subsidiary in China.

The two companies signed an intercompany service agreement on 1 April 2021. Under the agreement, YCo solely provides XCo with marketing services, potential client portfolio management services and back-office services (including office administration, accounting, human resources, finance, and IT support). For this purpose, YCo employed more than 30 people in China.

According to the agreement, the following were agreed:

- 1) The parties to the agreement are independent of each other.
- 2) The implementation of the agreement does not lead to an establishment of agency or partnership between them.
- 3) Neither party is authorised to enter into any contract on the other's behalf, or to bind the other through a business contract.
- 4) XCo will pay YCo for the services provided, on the basis of a fixed cost plus 8%.

In the course of its business, XCo's business sales and after-sales customer maintenance in China rely mainly on YCo's employees, while YCo's business also depends on the operating rights granted by XCo. At the same time, XCo relies on the judgement and advice of YCo staff before signing its Chinese contracts. The default terms for business contracts are provided by XCo in a standard template that it has developed, but customised modifications and special terms are then negotiated between YCo staff and each client.

With respect to YCo's business, the Chinese tax authorities have claimed that the activities being carried out by YCo staff have exceeded the scope of marketing services as set out in the intercompany agreement and constitute a permanent establishment (PE) of XCo in China. Consequently, profits recorded by XCo that are attributable to the PE shall be subject to Chinese income tax. Meanwhile, YCo is subject to tax on its own profits earned from its business activities.

**You are required to explain whether the determination of Chinese tax authority can be considered acceptable, based on the relevant Chinese domestic tax law provisions and the China-UK double tax agreement.** (20)

4. Linda is a popular online singer who resides in the United Kingdom. She is invited by an online media company resident in China, RCo, to hold a concert in China. The concert will be simultaneously recorded in video format and uploaded to RCo's website for public viewing on a pay-per-view basis.

The contract between Linda and RCo defines Linda's remuneration as follows:

- 1) For the performance exercised in the concert, Linda will be paid RMB 2 million.
- 2) The legal copyright of the recorded video, including the songs and related music, images of Linda at the concert and any derivative products relating to the concert (including pictures, records and mementos) will belong to RCo. However, Linda is entitled to a share of the relevant revenues as follows:
  - a) Online video playing revenue: Linda will be paid a one-time fixed amount of RMB 1 million as her share of the online video playing revenue after the recorded concert is released online for three months, regardless of whether or not the online video playing is profitable during the first three months or thereafter.
  - b) Derivative products revenue: for future sales of derivative products of the recorded concert, including images of Linda at the concert, Linda will be paid 8% of annual net sale proceeds of all derivative products, based on industry accounting norms. This category of payment to her will be on an annual basis, for as long as there are such revenues.

**You are required to explain the Chinese income tax implications of these payments to Linda.** (20)

## PART C

**You are required to answer TWO questions from this Part.**

5. Ms Zhang, a resident of the United Kingdom, was employed by KCo, an UK-resident airline company, throughout 2023 and 2024. In the four-month period between 1 November 2023 and 29 February 2024, she was assigned under a series of secondments to work as a flight attendant service superintendent with a Chinese airline, on aircraft operating international routes, although her home employment continued to be with KCo.

During the secondment period, Ms Zhang returned occasionally to the UK to perform services such as attending meetings, reporting to management, and supporting work that formed part of her duties for KCo. Under the terms of her employment and secondment, Ms Zhang was entitled to paid rest days on Saturdays, Sundays, China's public holidays, and annual leave which she spent visiting the UK for her own holiday purposes. Ms Zhang's entire salary for the period of secondment was paid by KCo.

**You are required to explain the Chinese income tax implications of Ms Zhang's entire salary for the period of secondment.** (15)

6. Ms Liu worked for LCo, a Chinese resident company, and lived with her family in China until her employer terminated the employment relationship with her in December 2023. Ms Liu then emigrated to the United Kingdom, together with her family, in January 2024. In February 2024 she received a severance payment of RMB 280,000 from LCo as compensation for the termination of their employment relationship.

Ms Liu had worked in LCo for ten years prior to her dismissal, and the average annual salary of employees in the local area in 2022 and 2023 was RMB 50,000.

**You are required to explain the Chinese income tax implications for Ms Liu of the severance payment in 2024.** (15)

7. ICo, a company resident in the United Kingdom, manufactures and sells appliances. For its Chinese clients, ICo operates a service centre in Xiamen, which employs five people for the provision of after-sales technical services and the collection of information from its prospective clients.

Based on the facts available, the tax bureau in Xiamen has determined that the service centre constitutes a permanent establishment of ICo in China. Moreover, in view of the fact that the service centre has an incomplete accounting book, in which the costs and expenses but not total income amount can be accurately accounted, the Xiamen tax bureau has decided to assess the taxable income amount of the service centre, based on its costs and expenses and at a profit margin of 15%.

**You are required to explain whether the decision made by the Xiamen tax bureau can be considered acceptable, based on the Chinese domestic tax law provisions and the China-UK double tax agreement.** (15)

8. MCo, a wine company resident in the United Kingdom, established NCo, a wholly-owned wine producing company resident in China. In order to assist NCo in obtaining a bank loan from a Chinese financial institution to support its production, MCo has provided guarantees on the loan and has accordingly charged corresponding guarantee fees to NCo.

**You are required to explain the Chinese income tax implications of the guarantee fees received by MCo.** (15)

**Specification of Arrangements (The Mainland of China) (Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income) Order**

(Cap. 112, section 49)

*(Enacting provision omitted—E.R. 3 of 2020)*

[27 October 2006] L.N. 234 of 2006

*(Format changes—E.R. 3 of 2020)*

1. Declaration under section 49

For the purposes of section 49 of the Ordinance, it is declared—

- (a) that the arrangements specified in section 2 have been made with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of the Mainland of China; and
- (b) that it is expedient that those arrangements should have effect.

2. Arrangements specified

The arrangements specified for the purposes of section 1(a) are the arrangements in—

- (a) Articles 1 to 27 of the instrument entitled “《內地和香港特別行政區關於對所得避免雙重徵稅和防止偷漏稅的安排》”, whose English translation is “Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income”, done in duplicate in the Hong Kong Special Administrative Region on 21 August 2006 in the Chinese language, the text and an English translation\* of which Articles are reproduced in Part 1 of the Schedule; and
- (b) Paragraphs 1 to 3 of the Protocol to that instrument, the text and an English translation# of which Paragraphs are reproduced in Part 2 of the Schedule.

Schedule

[s. 2]

Part 1

Articles 1 to 27 of the Arrangement between The Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

ARTICLE 1

PERSONS COVERED

This Arrangement shall apply to persons who are residents of One Side or both Sides.

ARTICLE 2

TAXES COVERED

- 1. This Arrangement shall apply to taxes on income imposed on behalf of One Side or of its local authorities, irrespective of the manner in which they are levied.
- 2. There shall be regarded as taxes on income all taxes imposed on total income, or on items of income, including taxes on gains from the alienation of movable or immovable property and taxes on capital appreciation.
- 3. The existing taxes to which this Arrangement shall apply are:
  - (1) in the Mainland of China:
    - (i) individual income tax;
    - (ii) foreign investment enterprises income tax and foreign enterprises income tax.
  - (2) in Hong Kong:

\* The English translation of the instrument is prepared by the Department of Justice in accordance with the Chinese text of the instrument.

# The English translation of the Protocol is prepared by the Department of Justice in accordance with the Chinese text of the instrument.

- (i) profits tax;
  - (ii) salaries tax;
  - (iii) property tax,
- whether or not the tax is charged under personal assessment.
4. This Arrangement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of this Arrangement in addition to, or in place of, the existing taxes as well as any other taxes falling within paragraph 1 or 2 of this Article which may be imposed in future. The competent authorities of the both Sides shall notify each other of significant changes that have been made in their respective taxation laws within a reasonable period of time after such changes.
5. The existing taxes, together with the taxes imposed after the signature of this Arrangement, are hereinafter referred to as “Mainland tax” or “Hong Kong Special Administrative Region tax”.

### ARTICLE 3 GENERAL DEFINITIONS

1. In this Arrangement, unless the context otherwise requires:
- (1) the terms “One Side” and “the Other Side” mean the Mainland of China or the Hong Kong Special Administrative Region, as the context requires;
  - (2) the term “tax” means Mainland tax or Hong Kong Special Administrative Region tax, as the context requires;
  - (3) the term “person” includes an individual, a company, a trust, a partnership and any other body of persons;
  - (4) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
  - (5) the term “enterprise” applies to the carrying on of business activities of any form;
  - (6) the terms “enterprise of One Side” and “enterprise of the Other Side” mean respectively an enterprise carried on by a resident of One Side and an enterprise carried on by a resident of the Other Side;
  - (7) the term “shipping, air and land transport” means any transport by a ship, aircraft or land transport vehicle operated by an enterprise of One Side, except when the ship, aircraft or land transport vehicle is operated solely between places in the Other Side;
  - (8) the term “competent authority” means, in the case of the Mainland of China, the State Administration of Taxation or its authorized representatives; and in the case of the Hong Kong Special Administrative Region, the Commissioner of Inland Revenue, or his authorized representative or any person or body authorized to perform any functions at present exercisable by the Commissioner or similar functions;
  - (9) the term “business” includes the performance of professional services and other activities of an independent character.
2. In the Arrangement, the term “Mainland tax” or “Hong Kong Special Administrative Region tax” does not include any penalty or interest imposed under the laws of any One Side relating to the taxes to which this Arrangement applies by virtue of Article 2.
3. As regards the application of this Arrangement by One Side, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at the time under the laws of that Side concerning the taxes to which this Arrangement applies, and any meaning under the applicable tax laws of that Side prevails over a meaning given to the term under other laws of that Side.

### ARTICLE 4 RESIDENT

1. In this Arrangement, the term “resident of One Side” means:
- (1) in the case of the Mainland of China, any person who, under the laws of the Mainland of China, is liable to tax therein by reason of his domicile, residence, place of head office, place of effective management or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in the Mainland of China in respect only of income from sources in the Mainland of China;
  - (2) in the case of the Hong Kong Special Administrative Region:
    - (i) an individual who ordinarily resides in the Hong Kong Special Administrative Region;
    - (ii) an individual who stays in the Hong Kong Special Administrative Region for more than 180 days during a year of assessment or for more than 300 days in 2 consecutive years of assessment one of which is the relevant year of assessment;
    - (iii) a company incorporated in the Hong Kong Special Administrative Region, or if incorporated outside the Hong Kong Special Administrative Region, being normally managed or controlled in the Hong Kong Special Administrative Region;

- (iv) any other person constituted under the laws of the Hong Kong Special Administrative Region, or if constituted outside the Hong Kong Special Administrative Region, being normally managed or controlled in the Hong Kong Special Administrative Region.
- 2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Sides, then his status shall be determined as follows:
  - (1) he shall be deemed to be a resident only of the Side in which he has a permanent home available to him; if he has a permanent home available to him in both Sides, he shall be deemed to be a resident only of the Side with which his personal and economic relations are closer ("centre of vital interests");
  - (2) if the Side in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either Side, he shall be deemed to be a resident only of the Side in which he has an habitual abode;
  - (3) if he has an habitual abode in both Sides or in neither of them, the competent authorities of both Sides shall resolve by mutual agreement.
- 3. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Sides, then it shall be deemed to be a resident only of the Side in which its place of effective management is situated.

## ARTICLE 5

### PERMANENT ESTABLISHMENT

- 1. In this Arrangement, 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:
  - (1) a place of management;
  - (2) a branch;
  - (3) an office;
  - (4) a factory;
  - (5) a workshop;
  - (6) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
- 3. The term "permanent establishment" also encompasses:
  - (1) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than 6 months;
  - (2) the furnishing of services, including consultancy services, by an enterprise of One Side in the Other Side, directly or through employees or other personnel engaged by the enterprise, but only if such activities continue (for the same or a connected project) for a period or periods aggregating more than 6 months within any 12-month period.
- 4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
  - (1) facilities used solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
  - (2) a stock of goods or merchandise belonging to the enterprise kept solely for the purpose of storage, display or delivery;
  - (3) a stock of goods or merchandise belonging to the enterprise kept solely for the purpose of processing by another enterprise;
  - (4) a fixed place of business established solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
  - (5) a fixed place of business established solely for the purpose of carrying on any other activity of a preparatory or auxiliary character for the enterprise;
  - (6) a fixed place of business established solely for any combination of the activities mentioned in subparagraphs (1) to (6) of this paragraph, 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 of this Article, where a person, other than an agent of an independent status to whom paragraph 6 applies, is acting in One Side on behalf of an enterprise of the Other Side, and the person has, and habitually exercises, an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that One Side in respect of any activities which that person undertakes for that enterprise, unless the activities of such person exercised through a fixed place of business are limited to those provided for in paragraph 4 and under the provision of that paragraph such fixed place of business shall not be deemed to be a permanent establishment.
- 6. An enterprise of One Side shall not be deemed to have a permanent establishment in the Other Side only because it carries on business in that Other Side through a broker, general commission agent or any other

agent of an independent status who are acting in the ordinary course of their business. However, when the activities of such an agent are wholly or almost wholly performed on behalf of that enterprise, he shall not be deemed to be an agent of an independent status within the meaning of this paragraph.

7. The fact that a company which is a resident of One Side controls or is controlled by a company which is a resident of the Other Side, or which carries on business in that Other Side (whether through a permanent establishment or otherwise), shall not of itself constitute any company of any One Side a permanent establishment of a company of the Other Side.

## ARTICLE 6

### INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of One Side from immovable property (including income from agriculture or forestry) situated in the Other Side may be taxed in that Other Side.
2. The term "immovable property" shall have the meaning which it has under the laws of the Side 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 laws in respect of real estate apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the exploring of, or the right to explore, mineral deposits, resources and other natural resources. Ships and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 of this Article 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 of this Article shall also apply to income derived from immovable property of an enterprise.

## ARTICLE 7

### BUSINESS PROFITS

1. The profits of an enterprise of One Side shall be taxable only in that Side unless the enterprise carries on business in the Other Side through a permanent establishment situated therein. If the enterprise carries on business in the Other Side through a permanent establishment situated therein, its profits may be taxed in the Other Side, but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3 of this Article, where an enterprise of One Side carries on business in the Other Side through a permanent establishment situated therein, there shall in each Side 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 business of the permanent establishment including executive and general administrative expenses so incurred, whether in the Side in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts (other than reimbursement of actual expenses) paid by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, remuneration, fees or any other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in determining the profits of a permanent establishment, for amounts (other than reimbursement of actual expenses) charged by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, remuneration, fees or any other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.
4. Insofar as it has been customary in One Side to determine the profits to be attributed to a permanent establishment by apportioning the total profits of the enterprise to its various units or by any other methods provided for in the laws, nothing in paragraph 2 shall preclude that Side from determining the profits to be taxed by such method. However, the result of adopting such method shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason only of the purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of the preceding paragraphs, 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 for a deviation.
7. Where profits include items of income which are dealt with separately in other Articles of this Arrangement, then the provisions of those Articles shall not be affected by the provisions of this Article.



## ARTICLE 8

### SHIPPING, AIR AND LAND TRANSPORT

1. Income and profits derived by an enterprise of One Side from the operation of ships, aircraft or land transport vehicles in shipping, air and land transport shall be exempt from tax (including business tax in the Mainland of China) in the Other Side.
2. The provisions of paragraph 1 of this Article shall also apply to income and profits derived from participation in partnership business, joint venture business or international business agency, to the extent of the income and profits that is proportional to the shareholding of such business.

## ARTICLE 9

### ASSOCIATED ENTERPRISES

1. Where:
  - (1) an enterprise of One Side participates directly or indirectly in the management, control or capital of an enterprise of the Other Side; or
  - (2) the same person participates directly or indirectly in the management, control or capital of an enterprise of One Side and an enterprise of the Other Side,in any of the above situations, the commercial or financial relations between the two enterprises are different from those between independent enterprises. Accordingly, any profits which would have accrued to one of the enterprises but by reason of those relations have not so accrued may be included in the profits of that enterprise and taxed as such.
2. Where One Side includes in the profits of an enterprise of that Side — and taxes accordingly — profits of an enterprise that have been charged to tax in the Other Side and such profits are profits which would have accrued to the enterprise of that One Side had the 2 enterprises been independent enterprises under the same conditions, the Other Side shall make an appropriate adjustment to the amount of the tax charged on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Arrangement and the competent authorities of both Sides shall, if necessary, consult each other.

## ARTICLE 10

### DIVIDENDS

1. Dividends paid by a company which is a resident of One Side to a resident of the Other Side, may be taxed in that Other Side.
2. However, such dividends may also be taxed in the Side of which the company paying the dividends is a resident, and according to the laws of that Side, but if the beneficial owner of the dividends is a resident of the Other Side, the tax so charged shall not exceed:
  - (1) where the beneficial owner is a company directly owning at least 25% of the capital of the company which pays the dividends, 5% of the gross amount of the dividends;
  - (2) in any other case, 10% of the gross amount of the dividends.The competent authorities of both Sides shall by mutual agreement settle the mode of application of these limitations.

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 under the laws of the Side of which the company making the distribution is a resident.
4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the dividends, being a resident of One Side, carries on business in the Other Side of which the company paying the dividends is a resident through a permanent establishment situated therein, and the shareholding in respect of which the dividends are paid is effectively connected with that permanent establishment. In such case the provisions of Article 7 shall apply.
5. Where a company which is a resident of One Side derives profits or income from the Other Side, that Other Side may not impose any tax on the dividends paid by or undistributed profits of the company even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that Other Side, except insofar as such dividends are paid to a resident of that Other Side or insofar as the shareholding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that Other Side.

## ARTICLE 11

### INTEREST

1. Interest arising in One Side and paid to a resident of the Other Side may be taxed in that Other Side.
2. However, such interest may also be taxed in the Side in which it arises and according to the laws of that Side, but if the beneficial owner of the interest is a resident of the Other Side the tax so charged shall not exceed 7% of the gross amount of the interest. The competent authorities of both Sides shall by mutual agreement settle the mode of application of this limitation.
3. Notwithstanding the provisions of paragraph 2 of this Article, interest arising in One Side is exempt from tax in that Side if it is received by the Government of the Other Side or any other institutions mutually recognized by the competent authorities of both Sides.
4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not it is secured by mortgage or whether or not it carries a right to participate in the debtor's profits, and in particular, income from bonds, debentures and Government securities, including premiums and prizes attaching to such bonds, debentures or securities. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
5. The provisions of paragraphs 1, 2 and 3 of this Article shall not apply if the beneficial owner of the interest, being the Government of One Side, a local authority thereof or a resident of that Side, carries on business in the Other Side 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 that permanent establishment. In such case the provisions of Article 7 shall apply.
6. Interest shall be deemed to arise in a Side when the payer is the Government of that Side, a local authority thereof or a resident of that Side. However, where the person paying the interest, whether or not he is the Government of a Side, a local authority thereof or a resident of a Side, has in a Side a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by that permanent establishment, then such interest shall be deemed to arise in the Side in which the permanent establishment is situated.
7. Where, by reason of a special relation between the payer and the beneficial owner of the interest or between both of them and some other person, the amount of interest paid exceeds, for whatever reasons, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relation, 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 Side, but due regard shall still be had to the other provisions of this Arrangement.

## ARTICLE 12

### ROYALTIES

1. Royalties arising in One Side and paid to a resident of the Other Side may be taxed in that Other Side.
2. However, such royalties may also be taxed in the Side in which they arise and according to the laws of that Side, but if the beneficial owner of the royalties is a resident of the Other Side the tax so charged shall not exceed 7% of the gross amount of the royalties. The competent authorities of both Sides shall by mutual agreement settle the mode of application of this limitation.
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 works including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the royalties, being the Government of One Side, a local authority thereof or a resident of that Side, carries on business in the Other Side 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 that permanent establishment. In such case the provisions of Article 7 shall apply.
5. Royalties shall be deemed to arise in a Side when the payer is the Government of that Side, a local authority thereof or a resident of that Side. However, where the person paying the royalties, whether or not he is the Government of a Side, a local authority thereof or a resident of a Side, has in a Side a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by that permanent establishment, then such royalties shall be deemed to arise in the Side in which the permanent establishment is situated.
6. Where, by reason of a special relation between the payer and the beneficial owner of the royalties or between both of them and some other person, the amount of royalties paid exceeds, for whatever reasons, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relation, 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 Side, but due regard shall still be had to other provisions of this Arrangement.

### ARTICLE 13 CAPITAL GAINS

1. Gains derived by a resident of One Side from the alienation of immovable property referred to in Article 6 and situated in the Other Side may be taxed in that Other Side.
2. Gains derived from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of One Side has in the Other Side, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that Other Side.
3. Gains derived by an enterprise of One Side from the alienation of ships or aircraft or land transport vehicles operated in shipping, air and land transport or movable property pertaining to the operation of such ships, aircraft or land transport vehicles, shall be taxable only in that Side.
4. Gains derived from the alienation of shares in a company the assets of which are comprised, directly or indirectly, mainly of immovable property situated in One Side may be taxed in that Side.
5. Gains derived from the alienation of shares, other than the shares referred to in paragraph 4, of not less than 25% of the entire shareholding of a company which is a resident of One Side may be taxed in that Side.
6. Gains derived from the alienation of any property, other than that referred to in paragraphs 1 to 5, shall be taxable only in the Side of which the alienator is a resident.

### ARTICLE 14 INCOME FROM EMPLOYMENT

1. Subject to the provisions of Articles 15, 17, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of One Side in respect of an employment shall be taxable only in that Side unless the employment is exercised in the Other Side. If the employment is exercised in the Other Side, such remuneration as is derived therefrom may be taxed in that Other Side.
2. Notwithstanding the provisions of paragraph 1 of this Article, remuneration derived by a resident of One Side in respect of an employment exercised in the Other Side shall be taxable only in that One Side if all the following 3 conditions are satisfied:
  - (1) the recipient is present in the Other Side for a period or periods not exceeding in the aggregate 183 days in any 12-month period commencing or ending in the taxable period concerned;
  - (2) the remuneration is paid by, or on behalf of, an employer who is not a resident of the Other Side;
  - (3) the remuneration is not borne by a permanent establishment which the employer has in the Other Side.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship, an aircraft or a land transport vehicle operated in shipping, air and land transport by an enterprise of One Side shall be taxable only in that Side.

### ARTICLE 15 DIRECTORS' FEES

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

### ARTICLE 16 ARTISTES AND SPORTSPERSONS

1. Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of One Side as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the Other Side, may be taxed in that Other Side.
2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Side in which the activities of the entertainer or sportsperson are exercised.

### ARTICLE 17 PENSIONS

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration (whether a payment in lump sum or by instalments) paid to a resident of One Side in consideration of past employment shall be taxable only in that Side.

2. Notwithstanding the provisions of paragraph 1 of this Article, pensions and other payments (whether a payment in lump sum or by instalments) made under a pension scheme which is:
  - (1) a public scheme which is part of the social security system implemented by the Government of One Side or a local authority thereof;
  - (2) an arrangement in which individuals may participate to secure retirement benefits and which is recognized for tax purposes in One Side,shall be taxable only in the Side in which the scheme is implemented.

#### ARTICLE 18 GOVERNMENT SERVICE

1.
  - (1) Salaries, wages and other similar remuneration, other than a pension, paid by the Government of One Side or a local authority thereof to an individual in respect of services rendered to that Government or authority, in the discharge of government functions, shall be taxable only in that Side.
  - (2) However, if the services are rendered in the Other Side and the individual is a resident of that Other Side who did not become a resident of that Other Side by reason only of the rendering of such services, such salaries, wages and other similar remuneration shall be taxable only in that Other Side.
2.
  - (1) Any pension (whether a payment in lump sum or by instalments) paid by, or paid out of funds created or contributed as employer by, the Government of One Side or a local authority thereof to an individual in respect of services rendered to that Government or authority shall be taxable only in that Side.
  - (2) However, if the individual who rendered the services is a resident of the Other Side and the case falls within subparagraph (2) of paragraph 1 of this Article, any corresponding pension (whether a payment in lump sum or by instalments) shall be taxable only in that Other Side.
3. The provisions of Articles 14, 15, 16 and 17 shall apply to remunerations and pensions received in respect of services rendered in connection with a business carried on by the Government of One Side or a local authority thereof.

#### ARTICLE 19 STUDENTS

Payments which a student who is or was immediately before visiting One Side a resident of the Other Side and who is present in the One Side solely for the purpose of his education receives for the purpose of his maintenance and education shall not be taxed in that One Side, provided that such payments arise from sources outside that One Side.

#### ARTICLE 20 OTHER INCOME

1. Items of income of a resident of One Side, wherever arising, not dealt with in the foregoing Articles of this Arrangement shall be taxable only in that Side.
2. The provisions of paragraph 1 of this Article shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of One Side, carries on business in the Other Side through a permanent establishment situated therein and a right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.
3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, items of income of a resident of One Side not dealt with in the foregoing Articles of this Arrangement and arising in the Other Side may also be taxed in that Other Side.

#### ARTICLE 21 METHODS FOR ELIMINATION OF DOUBLE TAXATION

1. In the Mainland of China, double taxation shall be eliminated as follows:

Tax paid in the Hong Kong Special Administrative Region in accordance with the provisions of this Arrangement in respect of income derived from sources in the Hong Kong Special Administrative Region by a resident of the Mainland of China shall be allowed as a credit against Mainland tax imposed on that resident. However, the amount of the credit shall not exceed the amount of Mainland tax in respect of that item of income computed in accordance with the tax laws and regulations of the Mainland of China.
2. In the Hong Kong Special Administrative Region, double taxation shall be eliminated as follows:

Subject to the provisions of the tax laws of the Hong Kong Special Administrative Region relating to the allowance of a deduction and a credit for tax paid in any territory outside the Hong Kong Special Administrative Region, tax paid in the Mainland of China in accordance with the provisions of this Arrangement in respect of

any item of income derived from sources in the Mainland of China by a resident of the Hong Kong Special Administrative Region shall be allowed as a credit against Hong Kong Special Administrative Region tax imposed on that resident. However, the amount of the credit shall not exceed the amount of Hong Kong Special Administrative Region tax in respect of that item of income computed in accordance with the tax laws and regulations of the Hong Kong Special Administrative Region.

3. Where a resident company of One Side pays dividends to a resident company of the Other Side and that resident company of the Other Side, directly or indirectly, controls not less than 10% of the shares of the company which pays the dividends, the credit that the resident company of the Other Side is entitled to shall include the tax paid by the company which pays the dividends in respect of the profits from which such dividends are derived (but not exceeding the appropriate portion of profits incidental to the derivation of such dividends).

## ARTICLE 22

### NON-DISCRIMINATION

1. The taxation on a permanent establishment which an enterprise of One Side has in the Other Side shall not be less favourably levied in that Other Side than the taxation levied on enterprises of that Other Side carrying on the same activities. The provisions of this Article shall not be construed as obliging One Side to grant to residents of the Other Side any deduction, reliefs and reductions on account of the civil status or family responsibilities which it grants to its own residents.
2. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of One Side to a resident of the Other Side shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of that One Side.
3. Enterprises of One Side, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the Other Side, shall not be subjected in the One Side 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 One Side are or may be subjected.

## ARTICLE 23

### MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of One Side or both Sides result or will result for him in taxation not in accordance with the provisions of this Arrangement, he may, irrespective of the remedies provided by the domestic laws of those Sides, present his case to the competent authority of the Side of which he is a resident. The case must be presented within 3 years from the first notification of the action resulting in taxation not in accordance with the provision of this Arrangement.
2. The above-mentioned competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the Other Side, with a view to the avoidance of taxation which is not in accordance with this Arrangement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic laws of both Sides.
3. The competent authorities of both Sides shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Arrangement, and may also consult together for the elimination of double taxation in cases not provided for in this Arrangement.
4. The competent authorities of both Sides may communicate with each other directly for the purposes of reaching an agreement under paragraphs 2 and 3 of this Article. For the purpose of reaching an agreement, representatives of the competent authorities of both Sides may meet and exchange their opinions verbally.

## ARTICLE 24

### EXCHANGE OF INFORMATION

1. The competent authorities of both Sides shall exchange such information as is necessary for carrying out the provisions of this Arrangement or of the domestic laws of both Sides concerning taxes covered by this Arrangement insofar as the taxation thereunder is not contrary to this Arrangement and, in particular, information for the prevention of fiscal evasion. The exchange of information is not restricted by Article 1. Any information received by One Side shall be treated as secret in the same manner as information obtained under the domestic laws of that Side and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Arrangement. 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, including, in the case of the Hong Kong Special Administrative Region, the decisions of the Board of Review.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on One Side the obligation:
  - (1) to carry out administrative measures at variance with the laws and the administrative practice of that Side or of the Other Side;
  - (2) to supply information which is not obtainable under the laws or in the normal course of the administration of that Side or of the Other Side;
  - (3) 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 25

### MISCELLANEOUS PROVISIONS

Nothing in this Arrangement shall prejudice the right of either Side to apply its domestic laws and measures concerning tax avoidance, whether or not described as such. For the purpose of this Article, "laws and measures concerning tax avoidance" includes any laws and measures for preventing, prohibiting, avoiding or resisting any transaction, arrangement or practice, the purpose or effect of which is to confer a tax benefit on any person.

## ARTICLE 26

### ENTRY INTO FORCE

This Arrangement shall, upon the written notifications by both Sides of the completion of their respective required approval procedures, enter into force on the date of the later of these notifications. The provisions of this Arrangement shall apply to income derived in the following years:

- (1) in the Mainland of China: taxable years beginning on or after 1 January in the calendar year next following the year in which this Arrangement enters into force;
  - (2) in the Hong Kong Special Administrative Region: years of assessment beginning on or after 1 April in the calendar year next following the year in which this Arrangement enters into force.
2. The Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation on Income signed on 11 February 1998 shall cease to have effect on the date on which this Arrangement applies to the relevant types of tax in accordance with paragraph 1 of this Article.
3. Paragraph 6 of Article 11 of the Air Services Arrangement between the Mainland of China and the Hong Kong Special Administrative Region signed on 2 February 2000 shall cease to have effect on the date on which this Arrangement applies to the relevant types of tax in accordance with paragraph 1 of this Article.

## ARTICLE 27

### TERMINATION

This Arrangement shall remain in force indefinitely, but One Side may give the Other Side written notice of termination on or before 30 June in any calendar year beginning after the expiration of a period of 5 years from the date of its entry into force. In such event this Arrangement shall cease to have effect from:

- (1) in the Mainland of China: the taxable year beginning on or after 1 January in the calendar year next following the year in which the notice is given;
  - (2) in the Hong Kong Special Administrative Region: the year of assessment beginning on or after 1 April in the calendar year next following the year in which the notice is given.

## Part 2

Paragraphs 1 to 3 of the Protocol to the Arrangement between The Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

1. For the purpose of paragraph 2 of Article 3, the term "penalty or interest", in relation to the Hong Kong Special Administrative Region, includes (but not limited to) any sum added to the Hong Kong Special Administrative Region tax by reason of default and recovered therewith, as well as any additional tax assessed for infringement of or failure to comply with its tax laws.
2. For the purpose of paragraph 4 of Article 13, the term "assets" shall be read as the value of the assets, and the term "mainly" shall be read as "not less than 50%".
3. For the purpose of paragraph 1 of Article 24, information may not be disclosed to any other jurisdiction for any purpose without the consent of the Side which furnished the information in the first place.

**Specification of Arrangements (the Mainland of China) (Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income) (Second Protocol) Order**

(Cap. 112, section 49)

*(Enacting provision omitted—E.R. 5 of 2020)*

[22 May 2008]

*(Format changes—E.R. 5 of 2020)*

1. *(Omitted as spent—E.R. 5 of 2020)*

2. Declaration under section 49

For the purposes of section 49 of the Ordinance, it is declared—

- (a) that the arrangements specified in section 3(1) have been made with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of the Mainland of China; and
- (b) that it is expedient that those arrangements should have effect.

3. Arrangements specified

- (1) The arrangements specified for the purposes of section 2(a) are the arrangements in Articles 1 to 6 of the Second Protocol to the specified instrument.
- (2) The text and an English translation of the Second Protocol to the specified instrument are reproduced in the Schedule.\*
- (3) In this section—

Second Protocol (第二議定書) means the instrument entitled “《內地和香港特別行政區關於對所得避免雙重徵稅和防止偷漏稅的安排第二議定書》”, whose English translation is “The Second Protocol to the Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income”, done in duplicate in Beijing on 30 January 2008 in the Chinese language;

specified instrument (指明文書) means the instrument entitled “《內地和香港特別行政區關於對所得避免雙重徵稅和防止偷漏稅的安排》”, whose English translation is “Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income”, done in duplicate in the Hong Kong Special Administrative Region on 21 August 2006 in the Chinese language#.

Schedule

[s. 3]

The Second Protocol to the Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

The Mainland of China and the Hong Kong Special Administrative Region agreed to amend the “Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income” (“the Arrangement”), done in the Hong Kong Special Administrative Region on 21 August 2006, as follows:

ARTICLE 1

To repeal subparagraph (1) of paragraph 3 of Article 2 of the Arrangement and substitute:

- “(1) in the Mainland of China;
  - (i) individual income tax;
  - (ii) enterprise income tax.”.

ARTICLE 2

To repeal subparagraph (1) of paragraph 1 of Article 4 of the Arrangement and substitute:

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\* The English translation of the Second Protocol is prepared by the Department of Justice in accordance with the Chinese text of the Second Protocol.

# See the Specification of Arrangements (The Mainland of China)(Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income) Order (Cap. 112 sub. leg. AY) for Articles 1 to 27 of the instrument and paragraphs 1 to 3 of the Protocol to the instrument.

- "(1) in the case of the Mainland of China, any person who, under the laws of the Mainland of China, is liable to tax therein by reason of his domicile, residence, place of establishment, place of effective management or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in the Mainland of China in respect only of income from sources in the Mainland of China;"

#### ARTICLE 3

To amend subparagraph b) of paragraph 3 of Article 5 of the Arrangement by repealing "6 months" and substituting "183 days".

#### ARTICLE 4

The provision in paragraph 4 of Article 13 of the Arrangement, as read with paragraph 2 of the Protocol, which refers to a company the assets of which comprise not less than 50% immovable property situated in One Side, shall be implemented in accordance with the following provision:

Not less than 50% of the assets of the company must consist of immovable property at any time within the 3 years before the alienation of the shares of the company by the holder of the shares.

#### ARTICLE 5

To repeal paragraph 5 of Article 13 of the Arrangement and substitute:

- "5. Gains derived by a resident of One Side from the alienation of shares, other than the shares referred to in paragraph 4, or other rights in the capital of a company which is a resident of the Other Side may be taxed in that Other Side if, at any time within the 12 months before the alienation, the recipient of the gains had a participation, directly or indirectly, of not less than 25% of the capital of the company."

#### ARTICLE 6

This Protocol shall, upon the written notifications by both Sides of the completion of their respective required approval procedures, enter into force on the date of the later of these notifications.

In witness whereof the undersigned, being duly authorized, have signed this Protocol.

Done in duplicate in Beijing on 30 January 2008 in the Chinese language.

The Hong Kong Special Administrative Region  
of the People's Republic of China  
Secretary for Financial Services and the  
Treasury  
K C CHAN

The People's Republic of China  
State Administration of Taxation  
Deputy Commissioner  
WANG Li



**Specification of Arrangements (The Mainland of China) (Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income) (Third Protocol) Order**

(Cap. 112, section 49(1A))

*(Enacting provision omitted—E.R. 4 of 2020)*

[9 December 2010]

*(Format changes—E.R. 4 of 2020)*

1. *(Omitted as spent—E.R. 4 of 2020)*
2. Declaration under section 49(1A)  
For the purposes of section 49(1A) of the Ordinance, it is declared—
  - (a) that the arrangements specified in section 3(1) have been made with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of the Mainland of China; and
  - (b) that it is expedient that those arrangements should have effect.
3. Arrangements specified
  - (1) The arrangements specified for the purposes of section 2(a) are the arrangements in Articles 1 and 2 of the instrument titled “《內地和香港特別行政區關於對所得避免雙重徵稅和防止偷漏稅的安排》第三議定書”(which title is translated into English as “The Third Protocol to the Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income” in this Order), done in duplicate at Beijing on 27 May 2010 in the Chinese language.
  - (2) The Chinese text of the Articles is reproduced in the Schedule; an English translation of the Articles is also set out in that Schedule.

Schedule

[s. 3]

Articles 1 and 2 of The Third Protocol to the Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

ARTICLE 1

To repeal Article 24 of the Arrangement and substitute:

- "1. The competent authorities of both Sides shall exchange such information as is foreseeably relevant for carrying out the provisions of this Arrangement or to the administration or enforcement of the domestic laws of both Sides concerning taxes covered by this Arrangement, insofar as the taxation thereunder is not contrary to this Arrangement. The exchange of information is not restricted by Article 1.
2. Any information received under paragraph 1 by One Side shall be treated as secret in the same manner as information obtained under the domestic laws of that Side and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes referred to in paragraph 1. 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, including, in the case of the Hong Kong Special Administrative Region, the decisions of the Board of Review.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on One Side the obligation:
  - (1) to carry out administrative measures at variance with the laws and administrative practice of that Side or of the Other Side;
  - (2) to supply information which is not obtainable under the laws or in the normal course of the administration of that Side or of the Other Side;
  - (3) 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.
4. If information is requested by One Side in accordance with this Article, the Other Side shall use its information gathering measures to obtain the requested information, even though that Other Side may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit One Side to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 of this Article be construed to permit One Side to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person."

## ARTICLE 2

This Protocol shall, upon the written notifications by both Sides of the completion of their respective required approval procedures, enter into force on the date of the later of these notifications.

**Specification of Arrangements (The Mainland of China) (Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income) (Fourth Protocol) Order**

(Cap. 112, section 49(1A))

(Enacting provision omitted—E.R. 4 of 2015)

[4 December 2015]

1. (Omitted as spent—E.R. 4 of 2015)

2. Declaration under section 49(1A)

For the purposes of section 49(1A) of the Ordinance, it is declared—

- (a) that the arrangements specified in section 3(1) have been made; and
- (b) that it is expedient that those arrangements should have effect.

3. Arrangements specified

- (1) The arrangements specified for the purposes of section 2(a) are the arrangements in Articles 1 to 6 of the instrument titled “《內地和香港特別行政區關於對所得避免雙重徵稅和防止偷漏稅的安排》第四議定書” (which is translated into English as “The Fourth Protocol to the Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income” in this Order), done in duplicate at Hong Kong on 1 April 2015 in the Chinese language.
- (2) The Chinese text of the Articles referred to in subsection (1) is reproduced in the Schedule. An English translation of the Articles is also set out in the Schedule.

Schedule

[s. 3]

Articles 1 to 6 of The Fourth Protocol to the Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

ARTICLE 1

To repeal paragraph 1 of Article 8 of the Arrangement and substitute:

- "1. Income and profits derived by an enterprise of One Side from the operation of ships, aircraft or land transport vehicles in shipping, air and land transport in the Other Side shall be exempt from tax (including value added tax and other similar taxes in the Mainland of China) in that Other Side."

ARTICLE 2

In relation to paragraph 2 of Article 12 of the Arrangement, for royalties paid to an aircraft and ship leasing business, the tax charged shall not exceed 5% of the gross amount of the royalties.

ARTICLE 3

To repeal paragraph 6 of Article 13 of the Arrangement and substitute:

- "6. Notwithstanding the provisions of paragraphs 4 and 5, gains derived by a resident of One Side from the alienation of shares of a company that is a resident of the Other Side quoted on a recognized stock exchange shall be taxable only in the Side of which the alienator is a resident. The alienation is limited to cases where the shares are bought and sold in the same stock exchange.

An investment fund that meets the following conditions shall be regarded as an investment fund that is a resident of One Side, and this paragraph shall apply to such an investment fund:

- (1) the investment fund is one established under the relevant laws of the Side in which the investment fund is situated, and is recognized by an industry regulatory body of that Side and subject to the supervision of the body;
- (2) the manager of the investment fund shall either be a company registered and incorporated in that Side or other persons constituted in that Side, and shall manage the investment fund in accordance with the requirements of the industry regulatory body of that Side; and
- (3) more than 85% of the funds are raised through the market of that Side. Investment funds that raise funds in the following manners shall be regarded as raising funds through the market of that Side:
  - (i) being listed for trading on the stock exchange of that Side;
  - (ii) by sale or placement in that Side through a financial institution that carries on a substantive business;

- (iii) by sale or placement in that Side directly to investors;
- (iv) any other manner as agreed by the competent authorities of both Sides.

7. Gains derived from the alienation of any property, other than that referred to in paragraphs 1 to 5, shall be taxable only in the Side of which the alienator is a resident.”

#### ARTICLE 4

In relation to Articles 10, 11, 12 and 13 of the Arrangement, if the creation or disposition of the interests acquired is caused by any person with the main purpose of taking advantages of any of such Articles, the Article shall not apply.

#### ARTICLE 5

In relation to Article 24 of the Arrangement, both Sides agree that in addition to taxes to which the Arrangement applies, the information to be exchanged shall cover the following other taxes enforced and imposed in the Mainland of China:

- (1) value added tax;
- (2) consumption tax;
- (3) business tax;
- (4) land appreciation tax;
- (5) real estate tax.

#### ARTICLE 6

This Protocol shall, upon written notifications by both Sides of the completion of their respective required approval procedures, enter into force on the date of the later of these notifications.

**Specification of Arrangements (The Mainland of China) (Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income) (Fifth Protocol) Order**

(Cap. 112, section 49(1A))

(Enacting provision omitted—E.R. 2 of 2020)

[6 December 2019]

1. (Omitted as spent—E.R. 2 of 2020)

2. Interpretation

In this Order—

*Fifth Protocol* (《第五議定書》) means The Fifth Protocol to the Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (a translation of “《內地和香港特別行政區關於對所得避免雙重徵稅和防止偷漏稅的安排》第五議定書”), done in duplicate at Beijing on 19 July 2019 in the Chinese language.

3. Declaration under section 49(1A)

(1) For the purposes of section 49(1A) of the Ordinance, it is declared—

(a) that the arrangements in the Fifth Protocol have been made; and

(b) that it is expedient that those arrangements should have effect.

(2) The Chinese text of the Fifth Protocol is reproduced in the Chinese text of the Schedule. An English translation of the Fifth Protocol is set out in the English text of the Schedule.

Schedule

[s. 3]

The Fifth Protocol to the Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

The Mainland of China and the Hong Kong Special Administrative Region have agreed to amend the “Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income” (hereafter the “Arrangement”), done at Hong Kong on 21 August 2006, and the related protocols as follows:

ARTICLE 1

To repeal the Preamble to the Arrangement and substitute:

“The Mainland of China and the Hong Kong Special Administrative Region, desiring to further develop their economic relationship and to enhance their co-operation in tax matters, intending to eliminate double taxation with respect to taxes on income without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining tax reliefs provided in this Arrangement for the indirect benefit of residents of third tax jurisdictions), have agreed as follows:”

Article 2

To repeal paragraph 3 of Article 4 of the Arrangement and substitute:

"3. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Sides, the competent authorities of both Sides shall endeavour to determine by mutual agreement the Side of which such person shall be deemed to be a resident for the purposes of this Arrangement, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Arrangement, except to the extent and in such manner as may be agreed upon by the competent authorities of both Sides.”

ARTICLE 3

1. To repeal paragraphs 5 and 6 of Article 5 of the Arrangement and substitute:

"5. Notwithstanding the provisions of paragraphs 1 and 2 but subject to the provisions of paragraph 6, where a person is acting in One Side on behalf of an enterprise and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are:

(1) in the name of the enterprise; or

(2) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use; or

(3) for the provision of services by that enterprise,

that enterprise shall be deemed to have a permanent establishment in that One Side 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 the fixed place of business a permanent establishment under the provisions of that paragraph.

6. Paragraph 5 shall not apply where the person carries on business in One Side as an independent agent and acts in that One Side on behalf of an enterprise of the Other Side in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which that person is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise."

2. To add paragraph 8 to Article 5 of the Arrangement:

"8. For the purposes of this Article, a person is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50% of the beneficial interest in the other (or, in the case of a company, more than 50% of the voting rights and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly more than 50% of the beneficial interest (or, in the case of a company, more than 50% of the voting rights and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise."

#### ARTICLE 4

To repeal paragraph 4 of Article 13 of the Arrangement, paragraph 2 of the Protocol to the Arrangement and Article 4 of the Second Protocol to the Arrangement, and substitute the following for paragraph 4 of Article 13 of the Arrangement:

"4. Gains derived by a resident of One Side from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the Other Side if, at any time during the three years preceding the alienation, these shares or comparable interests derived more than 50% of their value directly or indirectly from immovable property, as defined in Article 6, situated in that Other Side."

#### ARTICLE 5

1. To repeal paragraph 1 of Article 14 of the Arrangement and substitute:

"1. Subject to the provisions of Articles 15, 17, 18, 18A, 19 and 20, salaries, wages and other similar remuneration derived by a resident of One Side in respect of an employment shall be taxable only in that One Side unless the employment is exercised in the Other Side. If the employment is exercised in the Other Side, such remuneration as is derived therefrom may be taxed in that Other Side."

2. To add to the Arrangement:

#### "ARTICLE 18A

##### TEACHERS AND RESEARCHERS

1. Where an individual is employed by a university, college, school in One Side or by an educational institution or scientific research institution recognized by the Government of One Side and is, or was immediately before visiting the Other Side, a resident of that One Side and is present in that Other Side for the primary purpose of teaching or research at a university, college, school in that Other Side or at an educational institution or scientific research institution recognized by the Government of that Other Side, the remuneration derived by the individual in respect of such teaching or research, to the extent it is paid by, or on behalf of, the employer of that One Side, shall not be taxed in that Other Side for a period of three years, provided that such remuneration is subject to tax in that One Side.
2. The period of "three years" provided in paragraph 1 of this Article shall begin on the date of the individual's first arrival in the Other Side for the above purpose or the date from which the provisions begin to apply under paragraph 2 of Article 7 of this Protocol, whichever is the later.
3. Paragraph 1 of this Article shall not apply to income derived from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons."

#### ARTICLE 6

To repeal Article 4 of the Fourth Protocol to the Arrangement and add to the Arrangement:

#### "ARTICLE 24A

##### ENTITLEMENT TO BENEFITS UNDER THE ARRANGEMENT

Notwithstanding the other provisions of this Arrangement, a benefit under this Arrangement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Arrangement.”

#### ARTICLE 7

1. This Protocol shall, upon the written notifications by both Sides of the completion of their respective required approval procedures, enter into force on the date of the later of these notifications.
2. The provisions of this Protocol shall apply:
  - (1) in the Mainland of China, to income derived in the taxable years beginning on or after 1 January in the calendar year next following the year in which this Protocol enters into force;
  - (2) in the Hong Kong Special Administrative Region, to income derived in the years of assessment beginning on or after 1 April in the calendar year next following the year in which this Protocol enters into force.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto, have signed this Protocol.

DONE in duplicate at Beijing on the 19th day of July 2019 in the Chinese language.

[SIGNED]

**UK/CHINA DOUBLE TAXATION AGREEMENT**

**SIGNED 27 JUNE 2011**

**Amended by a Protocol signed on 27 February 2013**

**The DTA and amending Protocol entered into force on 13 December 2013**

**Effective in the United Kingdom;**

**(i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 April 2014;**

**(ii) in respect of corporation tax, for any financial year beginning on or after 1 January 2014;**

**Effective in China:**

**(i) in respect of profit, income and capital gains arising in any tax year beginning on or after 1st January 2014.**



AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND  
NORTHERN IRELAND AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA FOR THE  
AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO  
TAXES ON INCOME AND ON CAPITAL GAINS

The Government of the United Kingdom of Great Britain and Northern Ireland 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 fiscal evasion with respect to taxes on income and on capital gains,

Have agreed as follows:

ARTICLE 1

PERSONS COVERED

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

ARTICLE 2

TAXES COVERED

1. This Agreement shall apply to taxes on income and on capital gains imposed on behalf of a Contracting State or of its political subdivisions or of its local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and on capital gains all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property.
3. The existing taxes to which the Agreement shall apply are in particular:
  - a) in China:
    - (i) the individual income tax;
    - (ii) the enterprise income tax;(hereinafter referred to as "Chinese tax");
  - b) in the United Kingdom:
    - (i) the income tax;
    - (ii) the corporation tax;
    - (iii) the capital gains tax;(hereinafter referred to as "United Kingdom tax").
4. The Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their taxation laws within a reasonable period of time after such changes.

ARTICLE 3

GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:
  - a) the term "China" means the People's Republic of China and, when used in a geographical sense, means all the territory of the People's Republic of China, including its territorial sea, in which the Chinese laws relating to taxation apply, and any area beyond its territorial sea, within which the People's Republic of China has sovereign rights of exploration for and exploitation of resources of the sea bed and its sub-soil and superjacent water resources in accordance with international law;
  - b) the term "United Kingdom" means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom designated under its laws concerning the Continental Shelf and in accordance with international law as an area within which the rights of the United Kingdom with respect to the sea bed and sub-soil and their natural resources may be exercised;
  - c) the terms "a Contracting State" and "the other Contracting State" mean China or the United Kingdom as the context requires;
  - d) the term "person" includes an individual, a company and any other body of persons;
  - e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
  - f) 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;

- g) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
  - h) the term “competent authority” means, in the case of China, the State Administration of Taxation or its authorised representative, and in the case of the United Kingdom, the Commissioners for Her Majesty’s Revenue and Customs or their authorised representative;
  - i) the term “national” means:
    - (i) in relation to China, any individual who under the law in China possesses Chinese nationality; and any legal person, partnership or other body of persons deriving its status as such from the law in force in China;
    - (ii) in relation to the United Kingdom, any British citizen, or any British subject not possessing the citizenship of any other Commonwealth country or territory, provided he has the right of abode in the United Kingdom; and any legal person, partnership, association or other entity deriving its status as such from the laws in force in the United Kingdom.
2. As regards the application of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which this Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

#### ARTICLE 4

##### RESIDENT

- 1. For the purposes of this Agreement, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income or capital gains from sources in that State.
- 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 only 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 only 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 does not have a permanent home available to him in either State, he shall be deemed to be a resident only 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 only 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 only of the State in which its place of effective management is situated.

#### ARTICLE 5

##### PERMANENT ESTABLISHMENT

- 1. For the purposes of this Agreement, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
- 2. The term “permanent establishment” includes especially:
  - a) a place of management;
  - b) a branch;
  - c) an office;
  - d) a factory;
  - e) a workshop;
  - f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
  - g) an installation or structure used for the exploration or exploitation of natural resources.
- 3. The term “permanent establishment” likewise encompasses:
  - 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 12 months;

- b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within a Contracting State for a period or periods aggregating more than 183 days in any twelve-month period commencing or ending in the fiscal year concerned.
- 4. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:
  - a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
  - b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
  - c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
  - e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
  - f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
- 5. Notwithstanding the provisions of paragraphs 1 and 2, where a person — other than an agent of an independent status to whom paragraph 6 applies — is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts on behalf of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
- 6. An enterprise 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, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, he will not be considered an agent of an independent status within the meaning of this paragraph.
- 7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

## ARTICLE 6

### INCOME FROM IMMOVABLE PROPERTY

- 1. Income derived by a resident of a Contracting State from immovable property (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 business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.
4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of the preceding paragraphs, 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 or capital gains 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

### SHIPPING AND AIR TRANSPORT

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.
2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include:
  - a) profits from the rental on a bare boat basis of ships or aircraft; and
  - b) profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise;where such rental or such use, maintenance or rental, as the case may be, is incidental to the operation of ships or aircraft in international traffic.
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, but only to so much of the profits so derived as is attributable to the participant in proportion to its share in the joint operation.
4. Nothing in this Agreement shall affect the provisions of the Agreement between the Government of the People's Republic of China and the Government of the United Kingdom of Great Britain and Northern Ireland for the Reciprocal Avoidance of Double Taxation on Revenues arising from the Business of Air Transport, signed at Beijing on 10 March 1981, to the extent that they have effect as regards taxes to which this Agreement applies. However, where any greater relief for such taxes is afforded by any provision of this Agreement, that provision shall apply.

## ARTICLE 9

### ASSOCIATED ENTERPRISES

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 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.
2. Where a Contracting State includes in the profits of an enterprise of that State and taxes accordingly profits on which an enterprise of the other Contracting State has been charged to tax in that other 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 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 had to the other provisions of this Agreement and the competent authorities of the Contracting States shall, if necessary, consult each other.

## 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 beneficial owner of the dividends is a resident of the other Contracting State, the tax charged shall not exceed:
  - a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25 per cent of the capital of the company paying the dividends;
  - b) 15 per cent of the gross amount of the dividends where those dividends are paid out of income or gains derived directly or indirectly from immovable property within the meaning of Article 6 by an investment vehicle which distributes most of this income or gains annually and whose income or gains from such immovable property is exempted from tax;
  - c) 10 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

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

3. Notwithstanding the provisions of paragraphs 1 and 2, dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State shall be taxable only in that other Contracting State if the beneficial owner of the dividend is the Government of that other Contracting State or any of its institutions; or other entity the capital of which is wholly-owned directly or indirectly by the Government of that other Contracting State.
4. 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 and any other item which, under the laws of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.
5. 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 State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
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 or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.
7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.

## 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 beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.
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 agency of, or entity wholly owned by, that Government, or by any other resident of that other Contracting State with respect to debt-claims of that resident which are financed, guaranteed or insured by the Government of that other Contracting State, a political sub-division or local authority thereof, the Central Bank of that other Contracting State or any agency of, or entity 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 and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article. The term shall not include any item which is treated as a dividend under the provisions of Article 10 of this Agreement.
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 State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest paid exceeds, for whatever reason, 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.
8. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

## 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 beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed:
  - a) in the case of royalties referred to in sub-paragraph a) of paragraph 3, 10 per cent of the gross amount of the royalties; and
  - b) in the case of royalties referred to in sub-paragraph b) of paragraph 3, 10 per cent of the adjusted amount of the royalties. For the purpose of this subparagraph "the adjusted amount" means 60 per cent of the gross amount of the royalties.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

3. The term "royalties" as used in this Article means:
  - a) payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information (know-how) concerning industrial, commercial or scientific experience; and
  - b) payments of any kind received as a consideration for the use of, or the right to use, industrial, commercial, or scientific equipment.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is 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 State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties paid exceeds, for whatever reason, 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.
7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the right in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.

#### ARTICLE 13 CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic by the enterprise, or of containers used in international traffic, or of movable property pertaining to the operation or use of such ships, aircraft or containers, shall be taxable only in that State.
4. Gains derived by a resident of a Contracting State from the alienation of shares deriving more than 50% of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.
5. Gains derived by a resident of a Contracting State from the alienation of shares in a company which is a resident of the other Contracting State may be taxed in that other Contracting State if the first-mentioned resident, at any time during the twelve-month period preceding such alienation, owned directly or indirectly, at least 25 per cent of the shares of that company.
6. Gains from the alienation of any property, other than that referred to in paragraphs 1 to 5, shall be taxable only in the Contracting State of which the alienator is a resident.

#### ARTICLE 14 INDEPENDENT PERSONAL SERVICES

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 State except in the following circumstances, when such income may also be taxed in the other Contracting State:
  - a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State; or
  - b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

#### ARTICLE 15 INCOME FROM EMPLOYMENT

1. Subject to the provisions of Articles 16, 18 and 19, 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 any twelve month period commencing or ending 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 or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

#### ARTICLE 16 DIRECTORS' FEES

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

#### ARTICLE 17 ARTISTES AND SPORTSMEN

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, 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 a sportsman in his capacity as such accrues not to the entertainer or sportsman 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 sportsman are exercised.

#### ARTICLE 18 PENSIONS

Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid (including annuities paid as part of a pension arrangement) to an individual who is a resident of a Contracting State shall be taxable only in that State.

#### ARTICLE 19 GOVERNMENT SERVICE

1. a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
- b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
  - (i) is a national of that State; or
  - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2. a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
- b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration, and to pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

#### ARTICLE 20 STUDENTS

Payments which a student 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 receives for the purpose of his maintenance or education shall not be taxed in that State, provided that such payments arise from sources outside that State.



## ARTICLE 21

### OTHER INCOME

1. Items of income beneficially owned by a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement (other than income paid out of trusts or the estates of deceased persons in the course of administration) shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the beneficial owner of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
3. Where, by reason of a special relationship between the resident referred to in paragraph 1 and some other person, or between both of them and some third person, the amount of the income referred to in that paragraph exceeds the amount (if any) which would have been agreed upon between them in the absence of such a relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the income shall remain taxable according to the laws of each Contracting State, due regard being had to the other applicable provisions of this Agreement.
4. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the income is paid to take advantage of this Article by means of that creation or assignment.

## ARTICLE 22

### ELIMINATION OF DOUBLE TAXATION

1. In China, double taxation shall be eliminated as follows:
  - a) Where a resident of China derives profit, income or capital gains from the United Kingdom, the amount of the United Kingdom tax payable in respect of such profit, income or capital gain 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 such profit, income or capital gains in accordance with the tax laws and regulations of China;
  - b) Where the income derived from the United Kingdom is a dividend paid by a company which is a resident of the United Kingdom to a company which is a resident of China and which owns more than 20 per cent of the shares of the company paying the dividend, the credit shall take into account the United Kingdom tax payable by the company paying the dividend in respect of its income.
2. Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom or, as the case may be, regarding the exemption from United Kingdom tax of a dividend arising in a territory outside the United Kingdom (which shall not affect the general principle hereof):
  - a) Chinese tax payable under the laws of China and in accordance with this Agreement, whether directly or by deduction, on profits, income or chargeable gains from sources within China (excluding in the case of a dividend tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which the Chinese tax is computed;
  - b) a dividend which is paid by a company which is a resident of China to a company which is a resident of the United Kingdom shall be exempted from United Kingdom tax, when the conditions for exemption under the law of the United Kingdom are met;
  - c) in the case of a dividend not exempted from tax under sub-paragraph b) above (because the conditions for exemption under the law of the United Kingdom are not met) which is paid by a company which is a resident of China to a company which is a resident of the United Kingdom and which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend, the credit mentioned in sub-paragraph a) above shall also take into account the Chinese tax payable by the company in respect of its profits out of which such dividend is paid;
  - d) for the purposes of this paragraph, profits, income and capital gains owned by a resident of the United Kingdom which may be taxed in China in accordance with this Agreement shall be deemed to arise from sources in China.

## ARTICLE 23

### MISCELLANEOUS RULE

Nothing in this Agreement shall prejudice the right of each Contracting State to apply its domestic laws and measures concerning the prevention of tax evasion and avoidance, whether or not described as such, insofar as they do not give rise to taxation contrary to this Agreement.

## 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, in particular with respect to residence, 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.
3. Except where the provisions of paragraph 1 of Article 9, paragraphs 7 or 8 of Article 11, paragraphs 6 or 7 of Article 12 or paragraphs 3 or 4 of Article 21 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.
4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the firstmentioned State are or may be subjected.
5. Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident or to its nationals.
6. The provisions of this Article shall apply to the taxes which are covered by Article 2 of this Agreement.

## 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 the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

## ARTICLE 26

### EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement, in particular, to prevent fraud and to facilitate the administration of statutory provisions against legal avoidance. The exchange of information is not restricted by Articles 1 and 2.
2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes referred to in paragraph 1, or the oversight of the above. 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.
3. In no case shall the provisions of paragraph 1 and 2 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.
4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 of this Article but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.
5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

## ARTICLE 27

### MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

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

## ARTICLE 28

### ENTRY INTO FORCE

1. Each of the Contracting States shall notify the other, through diplomatic channels in writing, of the completion of the procedures required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the later of these notifications and shall thereupon have effect:
- a) in China, in respect of profit, income and capital gains arising in any tax year beginning on or after 1st January in the calendar year next following that in which this Agreement enters into force;
  - b) in the United Kingdom,
    - (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6th April next following the date on which this Agreement enters into force;
    - (ii) in respect of corporation tax, for any financial year beginning on or after 1st April next following the date on which this Agreement enters into force;
2. The Agreement between the Government of the People's Republic of China and the Government of the United Kingdom of Great Britain and Northern Ireland for the Reciprocal Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, signed at Beijing on July 26th, 1984, as amended by the protocol signed at Beijing on September 2nd 1996 (the prior Agreement) shall cease to have effect in relation to any tax with effect from the date on which this Agreement has effect in relation to that tax in accordance with paragraph 1 of this Article.
3. Notwithstanding the entry into force of this Agreement, an individual who is entitled to the benefits of Article 21 (Teachers and Researchers) and Article 22 (Students, Apprentices and Trainees) of the prior Agreement at the time of the entry into force of this Agreement shall continue to be entitled to such benefits until such time as the individual would have ceased to be entitled to such benefits if the prior Agreement had remained in force.

## ARTICLE 29

### TERMINATION

This Agreement shall continue in effect indefinitely but either of the Contracting States may terminate this Agreement through diplomatic channels in writing, by giving notice of termination at least six months before the end of any calendar year beginning after the expiry of five years from the date of entry into force of this Agreement. In such event this Agreement shall cease to have effect:

- a) in China, as regards profits, income and capital gains derived during the tax year beginning on or after 1st January in the calendar year next following that in which the notice is given;
- b) in the United Kingdom,
  - (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6th April next following the date on which the notice is given;
  - (ii) in respect of corporation tax, for any financial year beginning on or after 1st April next following the date on which the notice is given.

IN WITNESS whereof the undersigned, duly authorised thereto, have signed this Agreement.

DONE at London on the 27th day of June, 2011, in duplicate in the Chinese and English languages, both texts being equally authoritative.

For the Government of the United Kingdom  
of Great Britain and Northern Ireland:

For the Government of the  
People's Republic of China:

William Hague

Yang Jiechi

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Protocol.

DONE at Beijing on the 27th day of February 2013, in duplicate in the Chinese and English languages, both texts being equally authoritative.

For the Government of the United Kingdom  
of Great Britain and Northern Ireland:

For the Government of the  
People's Republic of China:

Sebastian Wood

Wang Li