

**AGREEMENT
BETWEEN
THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA
AND
THE GOVERNMENT OF THE STATE OF KUWAIT
FOR THE AVOIDANCE OF DOUBLE TAXATION AND
THE PREVENTION OF FISCAL EVASION WITH RESPECT
TO TAXES ON INCOME AND CAPITAL**

The Government of the People's Republic of China and The Government of the State of Kuwait;

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital;

Have agreed as follows:

**ARTICLE 1
PERSONAL SCOPE**

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

**ARTICLE 2
TAXES COVERED**

1. This Agreement shall apply to taxes on income and on capital imposed on behalf of a Contracting State, of a political subdivision or local authority thereof, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation.
3. The existing taxes to which this Agreement shall apply are in particular:

- (a) in Kuwait:
 - (i) the corporate income tax;
 - (ii) the 5 percent of the net profits of shareholding companies payable to the Kuwait Foundation of Advancement of Science (KFAS) ; and
 - (iii) the Zakat;

(hereinafter referred to as “Kuwaiti tax”) ;

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

(hereinafter referred to as “Chinese tax”) .

4. This Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes referred to in paragraph 3. The competent authorities of the Contracting States shall notify each other of any changes which have been made in their respective 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 “Kuwait” means the State of Kuwait and includes any area beyond the territorial sea which in accordance with international law has been or may be designated under the laws of Kuwait as an area in which Kuwait may exercise sovereign rights or jurisdiction;
 - (b) the term “China” means the People’s Republic of China; when used in 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 seabed and its sub-soil and superjacent water resources in accordance with international law;

- (c) the terms "a Contracting State" and "the other Contracting State" mean China or Kuwait as the context requires;
- (d) the term "person" means an individual and a company 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 under the taxation laws of the respective Contracting State;
- (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 "national" means an individual who under the laws of a Contracting State possesses the nationality of that Contracting State as well as a legal person, partnership and association deriving its status as such from the laws in force in a Contracting State;
- (h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of head office (effective management) in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (i) the term "competent authority" means:
 - (i) in the case of Kuwait, the Minister of Finance or his authorized representative;
 - (ii) in the case of China, the State Tax Bureau or its authorized representative.

2. As regards the application of the Agreement by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Agreement applies.

ARTICLE 4
RESIDENT

1. For the purposes of this Agreement, the term “resident of a Contracting State” in accordance with the law of that Contracting State means:

- (a) in the case of Kuwait, an individual who has his domicile in Kuwait and is a Kuwait national and a company which is incorporated in Kuwait;
- (b) in the case of China, any person who, under the law of China, is liable to taxation therein by reason of his domicile, residence, place of head office or any other criterion of a similar nature.

But this term does not include any person who is liable to tax in China in respect only of income from sources in China or capital situated therein.

2. For the purposes of paragraph 1 above, a resident of a Contracting State shall include:

- (a) the Government of a Contracting State or any political subdivision or local authority thereof; and
- (b) any government institution or other entity established, wholly-owned directly or indirectly by the Government, political subdivision or local authority referred to in sub-paragraph (a) ; and
- (c) any entity established in a Contracting State, all the capital of which has been provided by the Government of that State either alone or together with the governments of other States.

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

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him;
- (b) if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests) ;
- (c) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

- (d) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national.

4. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of head office (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; and
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. The term “permanent establishment” 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 six months;
- (b) the furnishing of services, including consultancy services, by an enterprise of a Contracting State through employees or other engaged personnel in the other Contracting State, provided that such activities continue for a project or any other project connected therewith for a period of more than six months.

4. Notwithstanding the provisions of paragraphs 1 to 3, the term “permanent establishment” shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person—other than an agent of an independent status to whom the provisions of paragraph 6 apply—is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person under-takes for the enterprise, if:

- (a) that person has, and habitually exercises in the first-mentioned Contracting State, an authority to conclude contracts in the name of the enterprise, unless his activities 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; or
- (b) that person regularly secures orders in the first-mentioned Contracting State wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises which control or are controlled by that enterprise.

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

almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

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

ARTICLE 6

INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other Contracting 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 of 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 Contracting State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other Contracting State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent

establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In 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. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or 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 the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or 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 a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

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

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

7. Where profits include items of income which are dealt with 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 derived from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of head office (effective management) of the enterprise is situated.
2. If the place of head office (effective management) of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.
3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

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 Contracting State-and taxes accordingly-profits of which an enterprise of the other Contracting State has been charged to tax in that other Contracting State, and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting State shall make an appropriate adjustment to the amount of 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 Contracting State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed 5 per cent of the gross amount of the dividends. The provisions of 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:

- (a) the Government of that other Contracting State or any of its institutions or other entity wholly owned directly or indirectly by the Government of that other Contracting State; or
- (b) a company which is a resident of that other Contracting State whose shares are at least 20 percent 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 which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

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

ARTICLE 11

INTEREST

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

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 5 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to:

- (a) the Government of the other Contracting State, a political subdivision or local authority thereof;
- (b) the Central Bank, an authority, a corporation, a foundation, a development fund or any other financial institution wholly owned by the Government referred to in sub-paragraph (a) ;
- (c) any resident of the other Contracting State with respect to debt-claims indirectly financed by the Government of that other Contracting State, a political subdivision or a local authority thereof, the Central Bank or any other financial institution owned by the Government of that other Contracting State;
- (d) a company which is resident of the other Contracting State whose shares are at least 20 per cent owned directly or indirectly by the Government of that other Contracting State;
- (e) any other entity as may be agreed upon from time to time between the competent authorities or the Contracting States,

shall be taxable only in that other Contracting State.

4. If the Government of a Contracting State participates in a loan indirectly through an agent or otherwise, the provisions of paragraph 3 shall apply proportionally to the participation of that Government in such loan. The participation shall be evidenced by a certificate to this effect by the competent authority of the Contracting State.

5. 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.

6. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the debt—claim in respect of which the interest is paid is effectively connected with such permanent establishment of fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

7. Interest shall be deemed to arise in a Contracting State when the payer is the Government of that State, a local authority thereof or a resident of that Contracting State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

8. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 12
ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.
2. However, such royalties may be taxed in the Contracting State in which they arise, and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 10 per cent of the gross amount of such royalties.
3. The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, films or tapes for radio or television broadcasting, any patent, know-how, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use industrial, commercial or scientific equipment or, for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is the Government of that State, a local authority thereof or a resident of that Contracting State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the

other provisions of this Agreement.

ARTICLE 13

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other Contracting 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 Contracting State.
3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of head office (effective management) of the enterprise is situated.
4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, and 3, shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that Contracting State except in one of 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 Contracting State;
 - (b) if his stay in the other Contracting State is for a period or periods exceeding in the aggregate 183 days in the calendar year concerned; in that case, only so much of the income as is derived from his activities

performed in that other Contracting State may be taxed in that other Contracting State.

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

ARTICLE 15

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that Contracting State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Contracting State.

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

- (a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting State.

3. Notwithstanding the provisions of paragraphs 1 and 2, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated by an enterprise of a Contracting State in international traffic, shall be taxable only in the Contracting State in which the place of head office (effective management) of the enterprise is situated.

ARTICLE 16

DIRECTORS' FEES

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

2. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in his capacity as an official in a top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

ARTICEL 17

ARTISTES AND ATHLETES

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other Contracting State.

2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by entertainers or athletes who are residents of a Contracting State from the activities exercised in the other Contracting State under a plan of cultural exchange between the Governments of the both Contracting States shall be exempt from tax in that other Contracting State.

ARTICEL 18

PENSIONS AND ANNUITIES

Subject to the provisions of paragraph 2 of Article 19, pensions, annuities and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that state.

ARTICLE 19

GOVERNMENT SERVICE

1. (a) Remuneration, other than pension, paid by the Government of a Contracting State or a local authority thereof to an individual in respect of services rendered to the Government of that Contracting State, or a local authority thereof, in the discharge of functions of a governmental nature, shall be taxable only in that Contracting State.

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

ARTICLE 20

TEACHERS AND RESEARCHERS

An individual who is, or immediately before visiting a Contracting State was, a resident of the other Contracting State and is present in the first-mentioned Contracting State for the primary purpose of teaching, giving lectures or conducting research at a university, college, school, or educational institution or scientific research institution accredited by the Government of the first-mentioned State shall be exempt from tax in the first-mentioned Contracting State, for a period of five years from the date of his first arrival in the first-mentioned Contracting State, in respect of remuneration for such teaching, lectures or research.

ARTICLE 21

STUDENTS AND TRAINEES

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

income received or derived by him for the purpose of his maintenance, education or training:

- (a) payments derived from sources outside the first-mentioned Contracting State for the purpose of his maintenance, education, study, research or training;
- (b) grants, scholarships or awards supplied by the Government of the first-mentioned Contracting State, or a Scientific, educational, cultural or other tax-exempt organization; and
- (c) income derived from personal services performed in the first-mentioned Contracting State.

ARTICLE 22

OTHER INCOME

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

ARTICLE 23

CAPITAL

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other Contracting State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

3. Capital represented by ships and aircraft operated in international traffic and by boats engaged in inland waterways transport, and by movable property pertaining to the operation of such ships, aircraft and boats, shall be taxable only in the Contracting State in which the place of head office (effective management) of the enterprise is situated.

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

ARTICLE 24

METHODS FOR ELIMINATION OF DOUBLE TAXATION

1. The laws in force in either of the Contracting States shall continue to govern the taxation in the respective Contracting State except where provisions to the contrary are made in this Agreement.

2. It is agreed that double taxation shall be avoided in accordance with the following paragraphs of this Article.

3. In the case of Kuwait:

If a resident of Kuwait owns items of income and capital which are taxable in China, Kuwait may tax these items of income and capital and may give credit for the Chinese taxes suffered in accordance with the provisions of its domestic law.

In such a case, Kuwait may deduct from the taxes so calculated the tax paid in China but in an amount not exceeding that proportion of the aforesaid Kuwaiti tax which such items of income bear to the entire income.

4. In the case of China:

(a) Where a resident of China derives income from Kuwait, the amount of tax on that income payable in Kuwait in accordance with the provisions of this Agreement may be credited against the Chinese tax imposed on that resident. The amount of credit shall not, however, exceed the amount of the Chinese tax on that income computed in accordance with the taxation laws and regulations of China.

(b) Where the income derived from Kuwait is a dividend paid by a company which is a resident of Kuwait to a company which is a resident of China and which owns not less than 10 per cent of the shares of the company paying the dividend, the credit shall take into account the tax paid to Kuwait by the company paying the dividend in respect of its income.

5. For the purposes of the credit referred to in paragraph 3, the amount of Chinese tax imposed on items of income under Articles 10, 11 and 12 shall be deemed to have been paid at:

- (a) (i) 10 per cent of the gross amount of dividends paid by a joint venture with Chinese and foreign investment;
- (ii) 20 per cent of the gross amount of other dividends;
- (b) 20 per cent of the gross amount of interest;
- (c) 20 per cent of the gross amount of royalties.

6. For the purposes of the credit referred to in paragraph 3, Chinese tax payable shall be deemed to include the amount of Chinese tax which would have been paid if the Chinese tax had not been exempted, reduced or refunded in accordance with:

- (a) the provisions of Articles 5 and 6 of (the Income Tax Law of the People's Republic of China Concerning Joint Ventures with Chinese and Foreign Investment) and the provisions of Article 3 of (the Detailed Rules and Regulations for the Implementation of the Income Tax Law of the People's Republic of China Concerning Joint Ventures with Chinese and Foreign Investment) ;
- (b) the provisions of Articles 4 and 5 of (the Income Tax Law of the People's Republic of China Concerning Foreign Enterprises) ;
- (c) the provisions concerning reduction in or exemption from income tax in paragraphs 1, 2 and 3 of Articles 1 and 2 and paragraphs 1 and 2 of Article 3 of (the Interim Provisions of the State Council of China on Reduction in or Exemption from Enterprise Income Tax and the Industrial and commercial Consolidated Tax for Special Economic Zones and Fourteen Coastal Cities) ;
- (d) the provisions of any reduction in, exemption from or refund of tax designed to promote economic development in China which may be introduced under the laws of China.

7. Where in accordance with the laws of Kuwait, taxes covered by this Agreement are exempted or reduced in accordance with special investment incentive measures for a limited period of time, such taxes which have been exempted or reduced shall be deemed to have been paid for the purposes of paragraph 4 of this Article.

ARTICLE 25
NON-DISCRIMINATION

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.
3. Nothing in this Article shall be construed as obliging a contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reduction for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
4. Nothing in this Article shall affect the right of a Contracting State to grant an exemption or reduction of taxation to its own nationals who are residents of that Contracting State. Such exemption or reduction shall not apply to a resident of the other Contracting State who participates directly or indirectly in the capital of a company established in the first-mentioned Contracting State.
5. Nothing in this Article shall be interpreted as obliging a Contracting State to extend to the residents of the other Contracting State, the benefit of any tax treatment, preference or privilege which may be accorded to residents of other States in accordance with special agreements.
6. In this Article, the term “taxation” means taxes which are the subject of this Agreement.

ARTICLE 26
MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, irrespective of the remedies provided by the domestic laws of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the provisions of this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic laws of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of paragraphs 2 and 3. When it seems advisable for reaching agreement, representatives of the competent authorities of the Contracting States may meet together for an oral exchange of opinions.

ARTICLE 27

EXCHANGE OF INFORMATION

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

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

ARTICLE 28

DIPLOMATIC AGENTS AND CONSULAR OFFICERS

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

ARTICLE 29

MISCELLANEOUS

1. The competent authorities of the Contracting States shall mutually agree on arrangements concerning the manner in which the limitations and exemptions contained in the foregoing Articles are to be implemented.
2. This Agreement shall not affect the right of a resident of a Contracting State to benefit from tax and investment incentives, exemptions and allowances provided for by the other Contracting State in accordance with its domestic laws and regulations.

ARTICLE 30

ENTRY INTO FORCE

1. This Agreement shall enter into force on the thirtieth day after the date on which diplomatic notes indicating the completion of internal legal procedures necessary in each Contracting State for the entry into force of this Agreement have been exchanged.
2. This Agreement shall have effect in both Contracting States:
 - (a) in respect of taxes which are levied for tax year beginning on or after January 1, 1989;
 - (b) in respect of taxes withheld at source on dividends, interest and royalties paid on or after January 1, 1989.

ARTICLE 31
DURATION AND TERMINATION

This Agreement shall remain in force for a period of five years and shall be automatically extended for another period of five years and shall thereafter be renewable for similar periods accordingly unless either Contracting State notifies the other in writing, six months before the expiry of the first or any subsequent period, of its intention to terminate the Agreement. In such event, the Agreement shall cease to have effect:

- (a) in respect of taxes which are levied for any tax period beginning on or after first day of January of the year next following that in which the notice is given;
- (b) in respect of taxes withheld at source on dividends, interest and royalties paid on or after first day of January of the year next following that in which the notice is given.

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

DONE at Kuwait in duplicate, this 27th day of Jumada I 1410H, corresponding to this 25th day of December, 1989, in the Chinese, Arabic and English languages, all texts being equally authentic. In case of divergency, the English text shall prevail.

For the Government

For the Government

of the People's Republic of China

of the State of Kuwait

PROTOCOL

The Government of the People's Republic of China and the Government of the State of Kuwait on signing at Kuwait on this 27th day of Jumada I, 1410H, corresponding to 25th day of December, 1989, the Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital have agreed upon the following provisions which shall form an integral part of the said Agreement.

1. With reference to Article 4:

It is agreed that government institutions of Kuwait within the meaning of paragraph 2 (b) of this Article are the following corporate entities created under special law which are wholly owned and controlled by the State of Kuwait:

-the Central Bank of Kuwait,

-public corporations,

-authorities,

-government agencies,

-foundations,

-development funds.

Subject to the provisions of paragraph 2 sub-paragraph (b) of this Article, further institutions can be recognized as government institutions by agreement of the competent authorities of the Contracting States from time to time.

2. With respect to Article 6:

Notwithstanding paragraph 1 of this Article, individuals who are residents of a Contracting State and have at their disposal one or more residences for their private use in the other Contracting State without having their permanent domicile therein under the law of that other Contracting State shall be exempt from tax on income from immovable property in that other Contracting State.

3. With respect to Article 7:

A company which is owned by the Government of China, that engages in labour supply projects in Kuwait, shall be taxable in Kuwait only on the profits which are attributable to that company. This implies that when computing the taxable profits of the company, all payments to Chinese workers “according to internal contracts” for their services rendered in Kuwait, shall be deductible as expense, provided that these expense do not include any profits which are attributable to the company and that the company gives evidence to that effect.

4. With respect to Article 15:

Employees who are sent by the air and shipping transportation enterprises of a Contracting State to the other Contracting State shall be only taxed on their remuneration in the first-mentioned Contracting State.

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

DONE at Kuwait in duplicate, this 27th day of Jumada I, 1410 H, corresponding to 25th day of December, 1989, in the Chinese, Arabic and English languages, all texts being equally authentic. In case of divergency, the English text shall prevail.

For the Government

For the Government

of the People’s Republic of China

of the State of Kuwait