

ADDITIONAL PROTOCOL
BETWEEN
THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF
CHINA
AND
THE GOVERNMENT OF THE KINGDOM OF BELGIUM
AMENDING THE AGREEMENT FOR
THE AVOIDANCE OF DOUBLE TAXATION AND
THE PREVENTION OF FISCAL EVASION WITH RESPECT
TO TAXES ON INCOME AND
THE PROTOCOL SIGNED AT BEIJING
ON APRIL 18, 1985

The Government of the People's Republic of China and the Government of the Kingdom of Belgium Desiring to amend the Agreement between the Government of the Kingdom of Belgium 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 the Protocol signed at Beijing on April 18, 1985 (hereinafter referred to respectively as "the Agreement" and "the Protocol"),

Have agreed as follows:

Article I

The provisions of paragraph 3, (b) of Article 2 of the Agreement are deleted and replaced by the following provisions:

“ (b) with respect to China:

1. the individual income tax;
2. the income tax concerning enterprises with foreign investment and foreign enterprises;
3. the local income tax;

including all withholding taxes and all prepayments with respect to the above-mentioned taxes,

(hereinafter referred to as “Chinese tax”).”

Article II

The provisions of paragraph 3 of Article 11 of the Agreement are deleted and replaced by the following provisions:

“3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State, if it is:

- (a) interest derived by the other Contracting State;
- (b) interest received by banking or credit institutions the capital of which is wholly owned by that other State or which are mutually agreed upon by the competent authorities of both Contracting States;
- (c) interest received by a resident of that other State in respect of a debt-claim or a loan financed or guaranteed directly or indirectly by an institution belonging to that other State and which is mutually agreed upon by the competent authorities of both Contracting States.”

Article III

Article 16 of the Agreement is deleted and replaced by the following Article:

“ Article 16 Directors’ fees

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

The preceding paragraph shall also apply to payments derived in respect of the discharge of similar functions as those exercised by a person referred to in the said paragraph.

2. However, remuneration derived by a person referred to in paragraph 1 from the company in respect of the discharge of day-to-day functions of a managerial or technical nature, may be taxed in accordance with the provisions of Article 15, as if such remuneration were derived in respect of an employment.”

Article IV

The provisions of paragraph 2 of Article 18 of the Agreement are completed by the following provision:

“ Pensions paid and other payments made under a public welfare scheme organised by a Contracting State in order to supplement the benefits of the social security system of that State may also be taxed in the said State. ”

Article V

The provisions of paragraph 1, (b) and (c) of Article 23 of the Agreement are deleted and replaced by the following provisions:

“(b) Subject to the provisions of Belgian law regarding the deduction from Belgian tax of taxes paid abroad, where a resident of Belgium derives items of his aggregate income for Belgian tax purposes which are dividends taxable in accordance with paragraph 2 of Article 10, and not exempt from Belgian tax according to subparagraph (c) hereinafter, interest taxable in accordance with paragraphs 2 or 7 of Article 11, or royalties taxable in accordance with paragraphs 2 or 6 of Article 12, the Chinese tax levied on that income shall be allowed as a credit against Belgian tax relating to such income.

Belgium shall also allow against its tax a credit with respect to the above-mentioned dividends, interest and royalties derived from investments which are closely connected with industrial and commercial development projects in China, when such income is taxable in China in accordance with the provisions of the Agreement and the general rules of Chinese law but no Chinese tax has effectively been levied by virtue of special and temporary measures. This credit shall be calculated at a rate of 15 per cent with regard to dividends and royalties and at a rate of 10 per cent with regard to interest, but shall not exceed that part of the Belgian tax, as computed before the credit is given, which is attributable to these items of income and shall only apply for a period of 10 years beginning on or after the first of January of the year following that in which the Additional Protocol entered into force. This period may be extended by mutual agreement between the competent authorities of the Contracting States.

(c) Dividends derived by a company which is a resident of Belgium from a company which is a resident of China and which may be taxed in China in accordance with paragraph 2 of Article 10, shall be exempt from the corporate income tax in Belgium under the conditions and within the limits provided for in “Belgian law” .

Article VI

The provisions of items 1 to 7 of the Protocol are deleted and replaced by the following paragraphs:

1. For the application of paragraph 2 of Article 4 of the Agreement, the competent authorities of the Contracting States shall be guided by the provisions contained in paragraph 2 of Article 4 of the United Nations Model Double Taxation Agreement between Developed and Developing Countries.

2. The provisions of Article 8 of the Agreement shall not affect the provisions of Article 8 of the Shipping Agreement between the Government of the Kingdom of Belgium and the Government of the People's Republic of China signed at Beijing on April 20, 1975, nor the provisions of Article 10 of the Agreement between the Government of the Kingdom of Belgium and the Government of the People's Republic of China relating to civil air transport, signed at Beijing on April 20, 1975.

3. The term "dividends" as used in Article 10 of the Agreement also means:

- (a) income-even paid in the form of interest-which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident;
- (b) profits distributed to a resident of Belgium in respect of his participation in an enterprise with foreign investment established in China.

4. For the application of paragraph 2 of Article 12 of the Agreement, the tax which may be levied on royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment shall be calculated on 60 per cent of the gross amount of these royalties.

5. The provisions of Article 15 of the Agreement shall also apply to remuneration received by a resident of a Contracting State in respect of his personal activity as a partner of a company, other than a company with share capital, which is a resident of the other Contracting State, as if such remuneration were derived in respect of an employment.

6. The provisions of paragraph 2 of Article 24 of the Agreement shall not prevent a Contracting State from taxing, in accordance with its laws and subject to the other provisions of the Agreement, residents of the other Contracting State, but it is understood that the rate of tax due by a company which is a resident of that other State in respect of the profits of its permanent establishment in the first-mentioned State shall not exceed the maximum rate of tax applicable to the profits of companies which are residents of that first-mentioned State. "

Article VII

The Contracting States shall notify each other in writing through diplomatic channels that the procedures required by their respective laws for the bringing into force of this additional Protocol have been completed. This additional Protocol shall enter into force on the thirtieth day after the date of the later of the notifications. It shall apply to income arising on or after the first day of January of the year following that in which it enters into force or to income relating to taxable periods beginning on or after the first day of January of the year following that in which it enters into force.

Article VIII

This additional Protocol, which shall form an integral part of the Agreement and of the Protocol, shall remain in force as long as the last-mentioned instruments will be applicable.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this additional Protocol.

DONE at Beijing on the 27th day of November 1996, in duplicate, in the French, Dutch, Chinese and English languages, the four texts being equally authoritative.

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

**For the Government of
the Kingdom of Belgium**