

PROTOCOL

TO

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

The Government of the People's Republic of China and the Government of Barbados,

Desiring to conclude a Protocol to amend the Agreement between the Government of the People's Republic of China and the Government of Barbados for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at Beijing on 15 May 2000 (hereinafter referred to as "the Agreement"),

Have agreed as follows:

ARTICLE 1

The existing sub-paragraph (a) of paragraph 3 in Article 2 of the Agreement shall be deleted and replaced by the following:

"a) in China:

- (i) the individual income tax;
 - (ii) the enterprise income tax;
- (hereinafter referred to as "Chinese tax")"

ARTICLE 2

The existing paragraph 1 in Article 4 of the Agreement shall be deleted and replaced by the following:

"1. For the purposes of this Agreement, the term 'resident of a Contracting State' means any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of effective management or any other criterion of a similar nature."

ARTICLE 3

The existing paragraph 2 in Article 10 of the Agreement shall be deleted and replaced by the following:

“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 so charged shall not exceed:

- (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;
- (b) 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.”

ARTICLE 4

The provisions of this Agreement shall in no case prevent a Contracting State from the application of the provisions of its domestic laws aiming at the prevention of fiscal evasion and avoidance, provided that the taxation in that State on the income concerned is not contrary to the Agreement.

ARTICLE 5

1. The existing paragraph 4 in Article 13 of the Agreement shall be deleted.
2. The following paragraphs shall be added to Article 13 of the Agreement as paragraphs 4, 5 and 6:

“4. Gains derived by a resident of a Contracting State from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that State.”

5. Gains derived by a resident of a Contracting State from the alienation of stocks, participation, or other rights in the capital of a company which is a resident of the other Contracting State may be taxed in that other Contracting State if the recipient of the gain, at any time during the 12 month period preceding such alienation, had participation, directly or indirectly, of at least 25 per cent in the capital of that company.

6. Gains from the alienation of any property other than that referred to in the preceding paragraphs shall be taxable only in the Contracting State of which the alienator is a resident.”

ARTICLE 6

The existing paragraph 1 in Article 23 of the Agreement shall be deleted and replaced by the following as paragraph 1:

“1. In China, subject to the provisions of its domestic law, double taxation shall be eliminated as follows:

- (a) Where a resident of China derives income from Barbados, the amount of tax on that income payable in Barbados in accordance with the provisions of this Agreement may be credited against the Chinese tax imposed on that resident;
- (b) Where the income derived from Barbados is a dividend paid by a company which is a resident of Barbados to a company which is a resident of China and which directly or indirectly holds 20% or more shares of that Barbados company, the credit shall take into account the tax paid to Barbados by the company paying the dividend in respect of its income;
- (c) The amount of credit, however, shall not exceed the amount of the Chinese tax on that income computed in accordance with the taxation laws and regulations of China.”

ARTICLE 7

The existing Article 26 of the Agreement shall be deleted and replaced by the following:

“ARTICLE 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is 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 their local authorities insofar as the taxation thereunder is not contrary to the Agreement. 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, 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 paragraphs 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 (*ordre public*).
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 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 8

This Protocol 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 country for the entry into force of this Protocol have been exchanged. This Protocol shall have effect as respects income derived during the taxable years beginning on or after the first day of January next following that in which this Protocol enters into force.

ARTICLE 9

This Protocol shall remain in force as long as the Agreement remains in force.

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

DONE in duplicate at this day of, 20...., in the Chinese and English languages, both texts being equally authentic.

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

**FOR THE GOVERNMENT OF
BARBADOS**

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