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# **AGREEMENT BETWEEN THE GOVERNMENT OF THE ITALIAN REPUBLIC 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

**BEIJING, 31 OCTOBER 1986<sup>1</sup>**

<sup>1</sup> Agreement ratified with Law 31 October 1989, n. 376 (G.U. 23 November 1989, n. 274, S.O). Exchange of ratification instruments: 13 November 1990. Entry into force: 13 December 1990 (G.U. 27 November 1990, n. 277).



The Government of the People's Republic of China and the Government of the Republic of Italy, desiring to conclude an Agreement to avoid double taxation and to prevent fiscal evasion with respect to taxes on income,

Have agreed as follows:

#### **Article 1 - Personal scope**

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

#### **Article 2 - Taxes covered**

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political or administrative subdivisions or 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 elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the Agreement shall apply are in particular:

- (a) in the case of the People's Republic of China:
  - (1) the individual income tax;
  - (2) the income tax concerning joint ventures with Chinese and foreign investment;
  - (3) the income tax concerning foreign enterprises; and
  - (4) the local income tax (hereinafter referred to as "Chinese tax");

- (b) in the case of the Republic of Italy:
  - (1) the personal income tax (l'imposta sul reddito delle persone fisiche);
  - (2) the corporate income tax (l'imposta sul reddito delle persone giuridiche);
  - (3) the local income tax (l'imposta locale sui redditi); even if they are collected by withholding at source (hereinafter referred to as "Italian tax").

4. This Agreement shall also apply 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 taxes referred to

in paragraph 3. The competent authorities of the Contracting States shall notify each other of any substantial 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 "China" means the People's Republic of China; when used in a geographical sense, means all the territory of the People's Republic of China, including its territorial sea, in which the 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;

(b) the term "Italy" means the Republic of Italy and includes any area beyond the territorial waters of Italy which, in accordance with the customary international law and the laws of Italy concerning the exploration for and exploitation of natural resources, may be designated as an area within which the rights of Italy with respect to the seabed and sub-soil and natural resources may be exercised;

(c) the terms "a Contracting State" and "the other Contracting State" mean China or Italy 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 which has its place of head office or its

place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(h) the term “nationals” means:

- (1) all individuals possessing the nationality of a Contracting State;
- (2) all legal persons, partnerships and associations deriving their status as such from the laws in force in a Contracting State;

(i) the term “competent authority” means:

- (1) in the case of China, the Ministry of Finance, or his authorized representative;
- (2) in the case of the Republic of Italy, the Ministry of Finance.

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

#### **Article 4 - Resident**

1. For the purpose 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 head office, place of management, or any other criterion of a similar nature.

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

(a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);

(b) if the Contracting 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 Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

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

(d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its head office or 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” shall include 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;

(h) 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;

(i) the furnishing of services, including consultancy services, by an enterprise of a Contracting State through employees or other personnel in the other Contracting State, provided that such activities continue for the same project or a connected project for a period or periods aggregating more than six months within any twelve-month period.

3. The term “permanent establishment” shall not be deemed 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 for collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.

4. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom the provisions of paragraph 5 apply - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, 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 the first mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, unless his activities are limited to those mentioned in paragraph 3 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provision of that paragraph.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other 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.

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

#### **Article 6 - Income from immovable property**

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

2. The term “immovable property” shall be defined in accordance with 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 shall also be considered as “immovable property”. Ships, boats 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 the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

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 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 from the operation of ships or aircraft in international traffic shall be taxable only in the Con-

tracting State in which the place of head office or the place of effective management of the enterprise is situated.

2. If the place of head office or the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or in an international operating agency.

#### **Article 9 - Associated enterprises**

Where:

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise, and taxed accordingly.

#### **Article 10 - Dividends**

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10% 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. The term “dividends” as used in the Article means income from shares, “jouissance” shares or “jouissance” rights, mining shares, founders’ shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the taxation law of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein 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.

5. 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 such other State.

#### **Article 11 - Interest**

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

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

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt

from tax in that State if the interest is paid to:

(a) the Government of the other Contracting State, a local authority and the central bank thereof or any financial institution wholly owned by that Government;

(b) any resident of that other State with respect to debt-claims indirectly financed by the Government of that other State, a local authority and the central bank thereof or any financial institution wholly owned by that Government.

4. The term “interest” as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind.

5. The provisions of paragraphs from 1 to 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 that State itself, a political or administrative subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the

beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

#### **Article 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 law of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 10% of the gross amount of the royalties.

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

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, 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 that State itself, a political or administrative subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment 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, 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 law 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 together with the whole enterprise) or of such a fixed base, may be taxed in that other Contracting State.

3. Gains from the alienation of ships or aircraft operated in international traffic and 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 or the place of effective management of the enterprise is situated.

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

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

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

#### **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; however, such income may also be taxed in the other Contracting State in the following circumstances:

(a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in such case only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or

(b) if his stay in the other Contracting State is for a period or periods exceeding in the aggregate 183 days during any calendar year; in such 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 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a

Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the calendar 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, may be taxed in the Contracting State in which the place of head office or the place of effective management of the enterprise is situated.

#### **Article 16 - Directors' fees**

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

#### **Article 17 - Artists 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 artist, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

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

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by entertainers or athletes who are resident of a Contracting State from the activities exercised in the other Contracting State under a plan of cultural exchange between the

Governments of both Contracting States shall be exempt from tax in that other Contracting State.

#### **Article 18 - Pensions**

Subject to the provisions of paragraph 2 of Article 19, pensions 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 a pension, paid by a Contracting State or a political or administrative subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such 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 or administrative 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 national of and a resident of that State.

3. The provisions of Articles 15, 16, 17 and 18 shall apply to remunerations and pensions in respect of services rendered in connection with a business carried on by one of the Contracting States or a political or administrative subdivision 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 purpose of teaching, giving lectures or conducting research at a university, college, school or educational institution or

scientific research institution shall be exempt from tax in the first-mentioned Contracting State, for a period not exceeding three 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**

1. Payments which 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 or training receives for the purpose of his maintenance, education or training shall not be taxed in that Contracting State.

2. Remuneration which a student, business apprentice or trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State derives from an employment which he exercises in the first-mentioned State for the purpose of his education or training shall not be taxed in that first-mentioned State.

3. The exemptions under paragraph 1 of this Article shall only continue for such a period of time as may reasonably or customarily be required to complete the education or training undertaken but in no event shall any individual have the benefit of paragraph 1 of this Article for more than 5 years from the commencement of such education or training.

#### **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 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 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. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting State may be taxed in that other Contracting State.

#### **Article 23 - Elimination of double taxation**

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

2. If a resident of Italy owns items of income which are taxable in China, Italy, in determining its income taxes specified in Article 2 of this Agreement, may include in the basis upon which such taxes are imposed the said items of income, unless specific provisions of this Agreement otherwise provide. In such case, Italy shall deduct from the taxes so calculated the income tax paid in China but in an amount not exceeding that proportion of the aforesaid Italian tax which such items of income bear to the entire income.

However no deduction will be granted if the item of income is subjected in Italy to a final withholding tax by request of the recipient of the said income in accordance with the Italian law.

3. In the case of a resident of China:

- where a resident of the People's Republic of China derives income from Italy, the amount of tax payable in Italy in respect of that income in accordance with the provisions of this Agreement shall be allowed as a credit against the Chinese tax imposed on that resident. The amount of credit, however, shall not exceed the amount of the Chinese tax computed as appropriate to that income in accordance with the taxation laws and regulations of the People's Republic of China;
- where the income derived from Italy is a dividend paid by a company which is a resident of Italy to a company which is a resident of the People's Republic of China and which owns not less than 10% of the shares of the company paying the dividend, the credit shall take into account the tax payable in Italy by the company paying the dividend in respect of its income.

4. For the purpose of paragraphs 2 and 3 of this

Article where a tax on business profits, dividends, interest or royalties arising in a Contracting State is exempted or reduced for a limited period of time in accordance with the laws and regulations of that State, such tax which has been exempted or reduced shall be deemed to have been paid at a full amount in the case of business profits and at an amount not exceeding:

(a) 10% of the gross amount of the dividends and interest referred to under Articles 10 and 11;

(b) 15% of the gross amount of the royalties referred to under Article 12.

#### **Article 24 - Non-discrimination**

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions 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 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, di-

rectly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

#### **Article 25 - 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, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within two 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 Agreement.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the 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 paragraphs 2 and 3. When it seems advisable for reaching an agreement, representatives of the competent authorities of the Contracting States may meet together for an oral exchange of opinions.

#### **Article 26 - 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 in so far 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 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) 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 the 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 27 - 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 28 - Entry into force**

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 country for the entry into force of this Agreement have been exchanged. This

Agreement 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 Agreement enters into force.

#### **Article 29 - Termination**

This Agreement shall continue in effect indefinitely, but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, given written notice of termination to the other Contracting State through the diplomatic channel. In such event this Agreement shall cease to have effect as respects income derived during the taxable years beginning on or after the first day of January in the calendar year next following that in which the notice of termination is given.

Done in duplicate at Beijing, the 31th day of October of the year 1986, in the Chinese, Italian and English languages, all texts being equally authoritative, except in the case of doubts, when the English text shall prevail.

#### **PROTOCOL**

At the signing of the Agreement concluded today between the Government of the People's Republic of China and the Government of the Republic of Italy for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income the undersigned have agreed upon the following provisions which shall form an integral part of the said Agreement.

It is understood:

a. that, where a tax on capital is subsequently introduced, the Agreement shall also apply to such tax and the double taxation shall be avoided according to the provisions of Article 23;

b. that, with reference to paragraph 3 of Article 7 of the Agreement, no deduction shall be allowed in respect of amounts paid or charges (other than reimbursement of actual expense) by a permanent establishment of an enterprise to the head office of the enterprise or any other offices thereof, by way of:

- (1) royalties, fees or other similar payments in return for the use of patents or other rights;
- (2) commission, for specific services performed or for management; and

(3) interest on money lent to the permanent establishment; except where the enterprise is a banking institution;

c. that, with reference to paragraph 3 of Article 10, the term "dividends" includes the profits distributed by joint ventures;

d. that, with reference to paragraph 4 of Article 11, the term "interest" shall also include other income assimilated to income from money lent by the taxation laws of the State in which the income arises;

e. that,

(1) with reference to paragraph 2 of Article 12, when applying this provision payments derived from the use, or the right to use, of industrial, commercial or scientific equipments shall be taxed on the basis of 70% of the gross amount of royalties;

(2) with further reference to paragraph 2 of Article 12, the tax therein provided shall apply, in the case where a mixed contract includes the supply of technical know-how as well as the sale of equipment or machinery, only on the relevant payment for know-how;

(3) with reference to paragraph 3 of Article 12, the definition of the term "royalties" includes payments for know-how;

f. that, with reference to the last sentence of paragraph 4 of Article 10, of paragraph 5 of Article 11, of paragraph 4 of Article 12 and paragraph 2 of Article 22, the provisions therein contained shall not prevent either Contracting State from applying its internal law, provided that it is not contrary to the principles embodied in Articles 7 and 14 of this Agreement;

g. that, with reference to paragraph 1 of Article 25, the expression "notwithstanding the remedies provided by the national laws" means that the mutual agreement procedure is not alternative with the national contentious proceedings which shall be, in any case, first of all initiated, when the claim is related with an assessment of the taxes not in accordance with this Agreement;

h. that taxes withheld at the source in Italy will be refunded by request of the taxpayer if the right

to collect the said taxes is affected by the provisions of this Agreement. Claims for refund, that shall be produced within the time limit fixed by the law of Italy, shall be accompanied by an official certificate of the Chinese relevant competent authorities certifying the existence of the conditions required for being entitled to the application of the allowances provided for by this Agreement. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of the preceding provisions, in accordance with Article 25 of this Agreement. However, this provision shall not prevent the competent authorities of the Contracting States from the carrying out, by mutual agreement, of practice other than refunds for the allowance of the reductions for taxation purposes provided for in this Agreement.

Done in duplicate at Beijing the 31th day of October 1986, in the Chinese, Italian and English languages, all the texts being equally authoritative, except in the case of doubt when the English text shall prevail.



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