STATUTORY INSTRUMENTS

1984 No. 1826

INCOME TAX

The Double Taxation Relief (Taxes on Income) (China) Order 1984

Laid before the House of Commons in draft

Made - - - - 22nd November 1984

At the Court at Buckingham Palace, the 22nd day of November 1984

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order was laid before the House of Commons in accordance with the provisions of section 497(8) of the Income and Corporation Taxes Act 1970(**a**), and an Address has been presented to Her Majesty by that House praying that an Order may be made in the terms of that draft:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 497 of the Income and Corporation Taxes Act 1970, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (China) Order 1984.

2. It is hereby declared—

(a) that the arrangements specified in the Agreement set out in the Schedule to this Order have been made with the Government of the People's Republic of China with a view to affording relief from double taxation in relation to income tax, corporation tax or capital gains tax and taxes of a similar character imposed by the laws of China; and

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

G. I. de Deney,
Clerk of the Privy Council.

(**a**) 1970 c.10; section 497 was amended and extended by sections 98(2) and 100(1) of the Finance Act 1972 (c.41) and section 10 of the Capital Gains Tax Act 1979 (c.14).

SCHEDULE

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

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China;

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

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) The existing taxes to which this Agreement applies are:

(a) in the People's Republic of China:

(i) the individual income tax;

(ii) the income tax (including the additional local income tax) concerning joint ventures with Chinese and foreign investment; and

(iii) the income tax (including the local income tax) concerning foreign enterprises;

(hereinafter referred to as "Chinese tax");

(b) in the United Kingdom of Great Britain and Northern Ireland:

(i) the income tax;

(ii) the corporation tax; and

(iii) the capital gains tax;

(hereinafter referred to as "United Kingdom tax").

(2) This Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Agreement in addition to, or in place of, the taxes referred to in paragraph (1) of this Article. The competent authorities of the Contracting States shall notify each other of any changes which are made in their respective taxation laws.

ARTICLE 3

General definitions

(1) In this Agreement, unless the context otherwise requires:

(a) the term "China" means the People's Republic of China, including all the territory and the territorial sea of the People's Republic of China, in which the laws relating to Chinese tax are in force, and all the area beyond its territorial sea, and the sea bed and sub-soil thereof, over which the People's Republic of China has jurisdiction in accordance with international law and in which the laws relating to Chinese tax are in force;

(b) the term "United Kingdom" means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which in accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the sea bed and sub-soil and their natural resources may be exercised;

(c) the terms "a Contracting State" and "the other Contracting State" mean China or the United Kingdom as the context requires;

(d) the term "national" means:

(i) in relation to China any individual who under the law in China possesses Chinese nationality; and any legal person, partnership or other body of persons deriving its status as such from the law in force in China;

(ii) in relation to the United Kingdom, any individual who has under the law in the United Kingdom the status of United Kingdom national, provided he has the right of abode in the United Kingdom; and any legal person, partnership, association or other entity deriving its status as such from the law in force in the United Kingdom;

(e) the term "person" means an individual, a company and any other body of persons;

(f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(g) 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;

(h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management of the business 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, in the case of China, the General Taxation Bureau of the Ministry of Finance or its authorised representatives, and in the case of the United Kingdom, the Board of Inland Revenue or their authorised representatives.

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

ARTICLE 4

Resident

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

(2) Where by reason of the provisions of paragraph (1) of this Article an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:

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

(b) if the State in which he has his centre of vital interests cannot be determined, or if he 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;

(c) 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;

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

(3) Where by reason of the provisions of paragraph (1) of this Article 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 the place of effective management of its business is situated. However, where such a person has the place of effective management of its business in one of the Contracting States and the place of head office of its business in the other Contracting State, then the competent authorities of the Contracting States shall determine by mutual agreement the State of which the company shall be deemed to be a resident for the purposes of this Agreement.

ARTICLE 5

Permanent establishment

(1) For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

(2) The term "permanent establishment" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and

(g) an installation or structure used for the exploration or exploitation of natural resources.

(3) A building site or a construction, installation or assembly project constitutes a permanent establishment only if it lasts more than six months.

(4) Notwithstanding the provisions of paragraphs (1) to (3) of this Article, the term "permanent establishment" shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of a stock of goods or mechandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;

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

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs *(a)* to *(e)* of this paragraph, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

(5) Notwithstanding the provisions of paragraphs (1) and (2) of this Article, where a person, other than an agent of an independent status to whom paragraph (6) of this Article applies, is acting in a Contracting State on behalf of an enterprise of the other Contracting State and has, and habitually exercises, in the first-mentioned Contracting State 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 the activities of such a person are limited to those mentioned in paragraph (4) of this Article which, if exercised through a fixed place of business, would not make that fixed place of business a permanent establishment under the provisions of that paragraph.

(6) An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such a person

is acting in the ordinary course of his business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he shall not be considered an agent of an independent status within the meaning of this paragraph.

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

ARTICLE 6

Income from immovable property

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

(2) The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

(3) The provisions of paragraph (1) of this Article shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

(4) The provisions of paragraphs (1) and (3) of this Article shall also apply to 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) of this Article, 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 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 by way of fees for technical services, 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, of 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 by way of fees for technical services, 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) 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.

(5) 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 Contracting State in which the place of effective management of the business of the enterprise is situated.

(2) If the place of effective management of the business 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 this Article shall also apply to profits derived from participation in a pool, a joint business or 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 derived from a company which is a resident of a Contracting State by 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 law 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 10 per cent of the gross amount of the dividends.

(3) The term "dividends" as used in this Article shall have the meaning which it has under the taxation law of the Contracting State of which the company paying the dividend is a resident and shall include any item which is treated under that law as a dividend or distribution.

(4) The provisions of paragraph (2) of this Article shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

(5) The provisions of paragraphs (1) and (2) of this Article 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 15, as the case may be, shall apply.

(6) Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State that other State may not impose any tax on the dividends paid by the company, except insofar as such

dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.

ARTICLE 11

Interest

(1) Interest arising in a Contracting State which is derived by 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 beneficial owner of the interest is a resident of the other Contracting State the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

(3) Notwithstanding the provisions of paragraph (2) of this Article, interest arising in a Contracting State and derived by the Government of the other Contracting State, a political subdivision or local authority thereof, the Central Bank of that other Contracting State or any agency of that Government, or by any other resident of that other Contracting State with respect to debt-claims of that resident which are financed, guaranteed or insured by the Government of that other Contracting State, a political subdivision or local authority thereof, the Central Bank of that other Contracting State or any agency of that Government, shall be exempt from tax in the first-mentioned Contracting State.

(4) The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, but shall not include any item which is treated as a distribution under the provisions of Article 10 of this Agreement.

(5) The provisions of paragraphs (1) and (2) of this Article 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 15, as the case may be, shall apply.

(6) Interest shall be deemed to arise in a Contracting State when the payer is the Government of that State or a political subdivision thereof or 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 that permanent establishment or fixed base, then such

interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

(7) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the law 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 which are derived by 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 beneficial owner of the royalties is a resident of the other Contracting State the tax so charged shall not exceed:

(a) in the case of royalties referred to in sub-paragraph *(a)* of paragraph (3) of this Article, 10 per cent of the gross amount of the royalties; and

(b) in the case of royalties referred to in sub-paragraph *(b)* of paragraph (3) of this Article, 10 per cent of the adjusted amount of the royalties. For the purpose of this sub-paragraph "the adjusted amount" means 70 per cent of the gross amount of the royalties.

(3) The term "royalties" as used in this Article comprises:

(a) payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films, and films or tapes for radio or television broadcasting, or any patent, know-how, trademark, design or model, plan, secret formula or process; and

(b) payments of any kind received as a consideration for the use of, or the right to use, any industrial, commercial or scientific equipment.

(4) The provisions of paragraphs (1) and (2) of this Article 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 15, 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 or a political subdivision thereof or 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 obligation to pay the royalties was incurred, and such royalties are

borne by that permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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

ARTICLE 13

Technical fees

(1) Technical fees arising in a Contracting State which are derived by a resident of the other Contracting State may be taxed in that other State.

(2) However, such technical fees may also be taxed in the Contracting State in which they arise, and according to the law of that State; but if the beneficial owner of the technical fees is a resident of the other Contracting State the tax so charged shall not exceed 10 per cent of the adjusted amount of the technical fees. For the purpose of this paragraph, "the adjusted amount" means 70 per cent of the gross amount of the technical fees.

(3) The term "technical fees" as used in this Article means payments of any kind to any person in consideration for any services of a technical, supervisory or consultancy nature, including the use of, or the right to use, information concerning industrial, commercial or scientific experience, but it does not include payments made to an employee of the person making the payments for dependent personal services mentioned in Article 16.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the technical fees arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the technical fees are effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

(5) Technical fees shall be deemed to arise in a Contracting State when the payer is the Government of that State or a political subdivision thereof or a local authority or a resident of that State. Where, however, the person paying the technical fees, 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 obligation to pay the technical fees was incurred, and such technical fees are borne by that permanent establishment or fixed base, then such technical fees 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 technical fees paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 14

Capital Gains

(1) Subject to the provisions of paragraph (2) of this Article, capital gains which arise in a Contracting State may be taxed by that State in accordance with the provisions of its domestic law.

(2) Gains from the alienation of ships or aircraft operated in international traffic and any property, other than immovable property, pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the business of the enterprise is situated.

ARTICLE 15

Independent personal services

(1) Subject to the provisions of Article 13, income derived by a resident of a Contracting State in respect of professional services or other activities of independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:

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

(b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the fiscal year concerned; in that case so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

ARTICLE 16

Dependent personal services

(1) Subject to the provisions of Articles 17, 19, 20, 21 and 22 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) of this Article, 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 fiscal year concerned; and

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

(3) Nothwithstanding the provisions of paragraphs (1) and (2) 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 effective management of the business of the enterprise is situated.

(4) Notwithstanding the provisions of paragraphs (1) and (2) of this Article, salaries, wages and other remuneration earned by a national of a Contracting State in respect of services rendered to an enterprise of that Contracting State engaged in the operation of aircraft in international traffic as an officer or employee posted to the other Contracting State shall be taxable only in the first-mentioned Contracting State.

ARTICLE 17

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 18

Entertainers and athletes

(1) Notwithstanding the provisions of Articles 15 and 16, 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 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, 15 and 16, 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) of this Article, income derived from such activities as are referred to in paragraph (1) performed under a cultural agreement or arrangement between the Contracting States shall be exempt from tax in the Contracting State in which the activities are exercised if the visit to that State is wholly or substantially supported by public or government funds of either Contracting State.

ARTICLE 19

Pensions

Subject to the provisions of paragraph (2) of Article 20, pensions and other similar remuneration paid to a resident of Contracting State in consideration of past employment shall be taxable only in that State.

ARTICLE 20

Government service

(1) *(a)* Remuneration, other than a pension, paid by the Government of a Contracting State or by a political subdivision or a local authority thereof to an individual in respect of services rendered to the Government of that State or subdivision or local 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 other 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 performing the services.

(2) *(a)* Any pension paid by, or out of funds created by, the Government of a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to the Government of that State or subdivision or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

(3) The provisions of Articles 16, 17, 18 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

ARTICLE 21

Teachers and researchers

An individual who, immediately before visiting a Contracting State, was a resident of the other Contracting State and who is present in the first-mentioned State for a period not exceeding three years for the purpose of

teaching, giving lectures or conducting research at a university, college, school or other recognised educational or scientific research institution in the first-mentioned State shall be exempt from tax in the first-mentioned State for a period not exceeding three years from the date of his first arrival in that State in respect of remuneration from such teaching, lectures or research.

ARTICLE 22

Students, apprentices and trainees

(1) 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 shall be exempt from tax in that State on:

(i) all remittances made from abroad for the purpose of his maintenance, education or training;

(ii) all scholarships, grants, allowances and awards from governmental, charitable, scientific, literary or educational organisations for the purposes of his maintenance, education or training; and

(iii) income from personal services performed in that Contracting State (other than any rendered by a business apprentice to the person or partnership to whom he is apprenticed, or, in the case of a trainee, other than services rendered to the person providing the training) in an amount not in excess of £1,000 sterling, or its equivalent in Chinese yuan, for any year of assessment.

(2) The exemptions under paragraph (1) of this Article shall only continue for such 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 23

Elimination of double taxation

(1) In China double taxation shall be eliminated as follows:

(a) Where a resident of China derives profits, income or capital gains from the United Kingdom, the amount of the United Kingdom tax payable in respect of such profits, income or capital gains in accordance with the provisions of this Agreement shall be allowed as a credit against the Chinese tax imposed on that resident. The amount of credit, however, shall not exceed the amount of the Chinese tax computed with respect to such profits, income or capital gains in accordance with the tax laws and regulations of China.

(b) Where the income derived from the United Kingdom is a dividend paid by a company which is a resident of the United Kingdom to a company which is a resident of China and which owns more than 10 per cent of the shares of the company paying the dividend, the credit shall take into account the United Kingdom tax payable by the company paying the dividend in respect of its income.

(2) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof):

(a) Chinese tax payable under the law of China and in accordance with this Agreement whether directly or by deduction, on profits, income or capital gains from sources within China (excluding, in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or capital gains by reference to which the Chinese tax is computed;

(b) in the case of a dividend paid by a company which is a resident of China to a company which is a resident of the United Kingdom and which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend, the credit shall take into account (in addition to any Chinese tax for which credit may be allowed under the provisions of sub-paragraph *(a)* of this paragraph) the Chinese tax payable by the company in respect of the profits out of which such dividend is paid.

(3) For the purpose of paragraph (2) of this Article, the term "Chinese tax payable" shall be deemed to include any amount which would have been payable as Chinese tax for any year but for an exemption from, or reduction of, tax granted for that year or any part thereof under any of the following provisions of Chinese law:

(a) (i) 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 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;

(ii) Articles 4 and 5 of the Income Tax Law of the People's Republic of China Concerning Foreign Enterprises;

so far as they were in force on, and have not been modified since, the date of signature of this Agreement, or have been modified only in minor respects so as not to affect their general character; or

(b) any other provision which may subsequently be made granting an exemption from or reduction of tax which is agreed by the competent authorities of the Contracting States to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.

Provided that relief from United Kingdom tax shall not be given by virtue of this paragraph in respect of income from any source if the income arises in a period starting more than ten years after the exemption from, or reduction of, Chinese tax was first granted in respect of that source.

(4) For the purposes of paragraphs (1) and (2) of this Article profits, income and capital gains owned by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Agreement shall be deemed to arise from sources in that other Contracting State.

(5) Where profits on which an enterprise of a Contracting State has been

charged to tax in that State are also included in the profits of an enterprise of the other State and the profits so included are profits which would have accrued to that enterprise of the other State if the conditions made between the enterprises had been those which would have been made between independent enterprises dealing at arm's length, the amount included in the profits of both enterprises shall be treated for the purposes of this Article as income from a source in the other State of the enterprise of the first-mentioned State and relief shall be given accordingly under the provisions of paragraph (1) or paragraph (2) of this Article.

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.

(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) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

(4) Except where the provisions of Article 9, paragraph (7) of Article 11, paragraph (6) of Article 12 or paragraph (6) of Article 13 apply, interest, royalties, technical fees 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.

(5) Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident.

ARTICLE 25

Mutual agreement procedure

(1) Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the

remedies provided by the domestic laws of those States, present his case to the competent authority of the Contracting State of which he is a resident.

(2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with this 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 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) of this Article.

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 this Agreement insofar as the taxation thereunder is not contrary to the provisions of this Agreement, in particular for the prevention of fraud or fiscal evasion. The exchange of information shall not be restricted by Article 1. Any information so exchanged 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) of this Article be construed so as to impose on the competent authority of either Contracting State the obligation:

(a) to carry out administrative measures at variance with the law and administrative practice prevailing in either Contracting State;

(b) to supply information which is not obtainable under the law or in the normal course of the administration of either Contracting State; or

(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.

ARTICLE 27

Diplomatic agents and consular officials

(1) Nothing in this Agreement shall affect the fiscal privileges of members of

diplomatic or permanent missions or consular posts under the general rules of international law or under the provisions of special agreements.

(2) Notwithstanding the provisions of paragraph (1) of Article 4, an individual who is a member of the diplomatic or permanent mission or consular post of a Contracting State or any third State which is situated in the other Contracting State and who is subject to tax in that other State only if he derives income from sources therein, shall not be deemed to be a resident of that other State.

ARTICLE 28

Existing Agreement

Nothing in this Agreement shall affect the provisions of the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China for the Reciprocal Avoidance of Double Taxation on Revenues arising from the Business of Air Transport, signed at Beijing on 10 March 1981(**a**), to the extent that they have effect as regards taxes to which this Agreement applies. However, where any greater relief for such taxes is afforded by any provision of this Agreement, that provision shall apply.

ARTICLE 29

Entry into force

Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the thirtieth day following the date of the later of these notifications and shall thereupon have effect:

(a) in China, in respect of profits, income and capital gains arising in any tax year beginning on or after the first day of January in the calendar year next following that in which this Agreement enters into force;

(b) in the United Kingdom:

(i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 April in the calendar year next following that in which this Agreement enters into force;

(ii) in respect of corporation tax, for any financial year beginning on or after 1 April in the calendar year next following that in which this Agreement enters into force.

ARTICLE 30

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

(**a**) S.I. 1981/1119.

year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting State, through the diplomatic channel, written notice of termination.

In such event this Agreement shall cease to have effect:

(a) in China, as regards profits, income and capital gains derived during the tax year beginning on or after 1 January in the calendar year next following that in which the notice is given;

(b) in the United Kingdom:

(i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 April in the calendar year next following that in which the notice is given;

(ii) in respect of corporation tax, for any financial year beginning on or after 1 April in the calendar year next following that in which the notice is given.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Beijing this 26th day of July 1984 in the English and Chinese languages, both texts being equally authoritative.

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

Richard Evans

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

Tian Yinong

EXPLANATORY NOTE

(This Note is not part of the Order.)

Under the Agreement with the People's Republic of China scheduled to this Order certain trading profits not arising through a permanent establishment (Article 7) and the earnings of temporary business visitors (Articles 15 and 16) are, subject to certain conditions, to be taxed only in the country of the taxpayer's residence. Where an enterprise which is a resident of one country carries on business through a permanent establishment in the other, the profits of the enterprise which are attributable to that permanent establishment may be taxed in that other country (Articles 5 and 7). Shipping and air transport profits are to be taxed only in the country in which the place of effective management of the enterprise is situated (Article 8).

Income derived by entertainers and athletes from their personal activities may be taxed in the country in which those activities are exercised. Where however the activities are performed under a cultural agreement or arrangement between the two countries and are supported by public or government funds of either country, the income is taxable only in the country of residence (Article 18). Government service salaries and pensions are normally to be taxed by the paying government only (Article 20) while other pensions are to be taxed only in the country of the taxpayer's residence (Article 19). The remuneration of visiting teachers (Article 21) and certain payments made to visiting students, business apprentices or trainees (Article 22) are, subject to certain conditions, to be exempt from tax in the country visited.

Income from immovable property (Article 6) and capital gains (Article 14) may be taxed in the country in which the property is situated.

The rate of tax imposed in the country of source on dividends (Article 10) and interest (Article 11) derived by a resident of the other country is not to exceed 10 per cent of the gross amount of the dividends or interest. The country of source will exempt from tax interest payable to the Government, a political subdivision or local authority, the Central Bank or any Government agency of the other country, and any interest in respect of debt-claims financed, guaranteed or insured by the Government of the other country.

The rate of tax in the source country on royalties flowing to the other country is generally not to exceed 10 per cent of the gross amount of the royalties except for payments received as consideration for the use of, or the right to use, any industrial, commercial or scientific equipment, in which case the rate of tax is not to exceed 10 per cent of 70 per cent of the gross amount of the royalties (Article 12).

Similarly, the rate of tax in the source country on technical fees flowing to the other country is not to exceed 10 per cent of 70 per cent of the gross amount of the technical fees (Article 13).

Where income continues to be taxable in both countries relief from double taxation is to be given by the country of the taxpayer's residence. The credit to be given in the United Kingdom for tax payable in China includes credit for tax spared under certain provisions of Chinese law (Article 23).

There are provisions to safeguard nationals and enterprises of one country against discriminatory taxation in the other (Article 24) and for consultation

and the exchange of information between the competent authorities of the two countries (Articles 25 and 26).

The Agreement is to enter into force on the thirtieth day after exchange of notifications by the two countries that their respective legislative procedures have been completed and to take effect in the calendar year next following that in which it enters into force (Article 29).

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