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PRC STATE COUNCIL BULLETIN

No 31, 10 NOVEMBER 1985

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CHINA REPORT
POLITICAL, SOCIOLOGICAL AND MILITARY AFFAIRS

PRC STATE COUNCIL BULLETIN

No 31, 10 NOVEMBER 1985

Beijing ZHONGHUA RENMIN GONGHEGUO GUOWUYUAN GONGBAO [PRC STATE COUNCIL BULLETIN] in Chinese No 31, 10 November 1985

[This volume contains selected translations from the PRC STATE COUNCIL BULLETIN. Items marked [previously published] and [previously covered] have appeared in other JPRS or FBIS publications, and are cross-referenced wherever possible.]

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PRC, FRG AGREEMENT ON AVOIDANCE OF DOUBLE TAXATION

Beijing STATE COUNCIL BULLETIN in Chinese No 30, 10 Nov 85 pp 1019-1037

[Agreement Between the PRC and the FRG on the Avoidance of Double Taxation on Income and Properties (China has completed the legal procedures necessary for the entry into force of this agreement)]

[Text] The PRC and the FRG, desiring to promote mutual economic relations and through friendly consultation between the representatives of both governments, have agreed as follows on the avoidance of double taxation and the prevention of tax evasion in respect of income and properties:

Article 1. The Scope of Persons

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

Article 2. The Scope of Taxes

1. This agreement shall apply to all taxes levied by a Contracting State irrespective of the manner in which such taxes are levied.

2. Taxes on all or part of the income or properties, including taxes on income from the transfer of movable or immovable properties and taxes levied on increases in the value of properties, shall be treated as taxes on income and properties.

3. The taxes to which this agreement shall apply are:

A) In the PRC:

i) The individual income tax;

ii) The income tax concerning joint ventures using Chinese and foreign investment;

iii) The income tax concerning foreign enterprises; and

iv) The local income tax.

(Hereinafter referred to as "Chinese tax")

B) In the FRG:

i) The individual income tax;

ii) The corporation tax;

iii) The property tax; and

iv) The business tax.

(Hereinafter referred to as "German tax")

4. This agreement shall also apply to any identical or substantially similar taxes which are imposed after the signing of this agreement in addition to, or in place of, the present taxes. 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 purpose of this agreement, unless the context otherwise requires:

i) The terms "a Contracting State" and "the other Contracting State" mean the PRC or the FRG, as the context requires. When used in a geographical sense, they refer to all the territories, including territorial waters, on which the taxation laws of either Contracting State are enforced, as well as regions beyond the territorial waters which, according to the international law, the Contracting States concerned have sovereign rights to explore and exploit resources on the sea bottom or in the sea bed;

ii) The term "person" includes a natural person, a company and any other body of persons;

iii) The term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

iv) The terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean, respectively, an enterprise operated by a resident of a Contracting State and an enterprise operated by a resident of the other Contracting State;

v) The term "nationals" mean the natural persons under the laws of either Contracting States and all juridical persons, partnership enterprises and other bodies of persons so established under the laws of a Contracting State;

vi) The term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its head office in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

vii) The term "competent authority" means, in the case of the PRC, the Ministry of Finance or its authorized representative and, in the case of the FRG, the Federal Ministry of Finance.

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

Article 4. Residents

1. For the purpose of this Agreement, the term "residents of a Contracting State" means any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of head office or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 a natural person is a resident of both Contracting States, his identity shall be determined as follows:

i) He shall be deemed a resident of the country where he has permanent domicile; if he has permanent domicile in both countries, then he shall be deemed to be a resident of the country where he has closer personal and economic ties (center of major interests);

ii) If it is impossible to determine where he has his center of major interests, or if he does not have any permanent domicile in either country, then he shall be deemed to be a resident of the country where he has habitual residence;

iii) If he has habitual residence in both, or neither, countries, then he shall be deemed to be a resident of the country where he is a national of;

iv) If he is a national of both, or neither, countries, then the competent authorities of the Contracting States shall work out a solution through mutual consultation.

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

Article 5. Permanent Establishment

1. For the purpose 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:
 - i) A place of management;
 - ii) A branch;
 - iii) An office;
 - iv) A factory;
 - v) A workshop; and
 - vi) A mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. The term "permanent establishment" also includes:
 - i) A building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities continue for a period of more than 6 months;
 - ii) Services, including consultancy services, furnished by an enterprise of a Contracting State through employees or other personnel for the same project or connected projects in the other Contracting State, provided that such activities continue for a period or periods aggregating more than 6 months within any 12-month period.
4. Notwithstanding the provisions of paragraphs 1 to 3, the term "permanent establishment" shall be deemed not to include:
 - i) Facilities used solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - ii) Warehouses for storing goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - iii) Warehouses for storing goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - iv) Fixed places of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
 - v) Fixed places of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary nature;

vi) Fixed places of business solely for the purpose of combining the activities referred to in subparagraphs (i) to (v), provided that such combination shall turn the activities of that place of business into a preparatory or auxiliary nature.

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

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 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.

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

Article 6. Income From Immovable Property

1. Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other Contracting State.

2. The term "immovable property" shall have the meaning which it has under the laws 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 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 derived from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7. Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that Contracting State unless the enterprise carried 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 that other Contracting State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purpose of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting 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 above shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this article.

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

6. For the purposes of paragraphs 1 to 5, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is 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. Sea and Air Transport

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State where the head office of the enterprise is situated.

2. Where a shipping enterprise has its head office set up on board a ship, it shall be deemed to be situated in the Contracting State in which the parent port of the ship is situated. If it does not have a parent port, then it shall be deemed to be situated in the Contracting State of which the operator of the ships is a resident.

3. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9. Associated Enterprises

Where

i) 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

ii) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and in 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 Contracting State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that Contracting State. But, if the receiver is the beneficiary of the dividends the tax so charged shall not exceed 10 percent 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 this article mean income from shares, mining shares, sponsor shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficiary 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 Contracting State independent personal activities 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 Contracting State may not impose any tax on the dividends paid by this company, except insofar as such dividends are paid to a resident of that other Contracting State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other Contracting State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other Contracting State.

Article 11. Interest

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

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that Contracting State. But, if the recipient is the beneficiary of the interest, the tax so charged shall not exceed 10 percent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2,

A) Interest arising in the FRG shall be exempt from German tax if the interest is paid to:

i) the Government of the PRC;

ii) the People's Bank of China, Agricultural Bank of China, People's Construction Bank of China, China Investment Bank, Industrial and Commercial Bank of China;

iii) the Bank of China and the China International Trade and Investment Corporation which directly guarantee or extend the loan;

iv) state financial institutions owned by the PRC and recognized by the competent authorities of both Contracting States.

B) Interest arising in the PRC shall be exempt from Chinese tax if the interest is paid to:

i) the Government of the FRG;

ii) the German Federal Bank, Reconstruction Loan Bank and German investment and financial corporation in the developing countries;

iii) the Hermes Underwriting Company which directly guarantees or extends the loan;

iv) state financial institutions owned by the FRG and recognized by the competent authorities of both Contracting States.

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 debtor's profits, and in particular, income from government securities and income from bonds of debentures, including premiums and prizes attaching to such securities, bonds or debentures. Fines on deferred payments shall not be treated as interest as defined in this Article.

5. The provisions of paragraphs 1 to 3 shall not apply if the beneficiary of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment 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 the government of that Contracting State, a local authority thereof or a resident of that Contracting State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficiary 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 beneficiary in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12. Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.
2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that Contracting State; but, if the recipient is the beneficiary of the royalties, the tax so charged shall not exceed 10 percent 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 beneficiary of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is a Contracting State, a local authority thereof or a resident of that Contracting State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.
6. Where, by reason of a special relationship between the payer and the beneficiary 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 have been agreed upon by the payer and the beneficiary in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13. Gains From Property

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 that forms part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, or 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, or from the alienation of movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Contracting State where the head office of the enterprise is situated.

4. Gains derived by a resident of a Contracting State from the alienation of any property other than that referred to in paragraphs 1 to 3 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,

i) where a fixed base situated in the other Contracting State is regularly available to him for the purpose of performing the above-mentioned activities, that other Contracting State may only levy tax on income derived from that fixed base;

ii) where he is present in that other Contracting State for a period or periods exceeding in the aggregate 183 days in the calendar year concerned, in which case that other Contracting State may only levy tax on income derived from activities exercised therein.

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. Non-independent Personal Services

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

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

i) the recipient is present in that other Contracting State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned;

ii) the remuneration is paid by, or on behalf of, an employer who is not a resident of that Contracting State; and

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

3. Notwithstanding the above provisions, remuneration in respect of an employment aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in the Contracting State where the head office of that enterprise is situated.

Article 16. Directors' Fees or Supervisors' Fees

Directors' fees, supervisors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or board of supervisors of a company which is a resident of the other Contracting State may be taxed in that other Contracting 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 artist, such as a theater, motion picture, radio or television artist, a musician, or an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other Contracting State.

2. Where income in respect of personal activities exercised by an artist or an athlete in his capacity as such accrues not to the artist 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 that artist or athlete exercises his activities.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by an artist or athlete who is a resident of a Contracting State from activities exercised pursuant to cultural exchange programs agreed upon the governments of the Contracting States shall be exempt from tax in the 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 Contracting State.

Article 19. Government Service

1. (A) Remuneration, other than pensions, paid by a Contracting State, a local authority thereof or its institutions to a natural person in respect of services rendered to that Contracting State, local authority or institution shall be taxable only in that Contracting State.

(B) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other Contracting State and the natural person is a resident of that other Contracting State who:

i) is a national of that other Contracting State; or

ii) did not become a resident of that other Contracting State solely for the purpose of rendering the services.

2. (A) Any pension paid by a Contracting State, a local authority thereof or its institutions to a natural person in respect of services rendered to that Contracting State, local authority or institution shall be taxable only in that Contracting State.

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

3. The provisions of Articles 15, 16, 17 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a local authority thereof.

Article 20. Teachers and Researchers

1. A teacher or researcher who is, or immediately before visiting a Contracting State was, a resident of the other Contracting State and who is present in the first-mentioned Contracting State mainly for the purpose of further studies, teaching or research at a university, college, school or other educational and scientific institutions in the first-mentioned Contracting State for a period of up to three years shall be exempt from tax in the first-mentioned Contracting State.

2. The provisions of paragraph 1 shall not apply to gains derived from research that mainly serves the private interests of a certain individual or individuals rather than public interests.

Article 21. Students and Other Trainees

The following payments received by a student, business apprentice or trainee who is presently in the other Contracting State merely for the purpose of his education or training and who is, or immediately before so being present was, a resident of a Contracting State, shall be exempt from tax of the first-mentioned Contracting State:

- i) any payment received from places outside of the other Contracting State for the purpose of his sustenance, education or training;
- ii) scholarships, subsidies and living expenses received from state, philanthropic, scientific, cultural or educational institutions for the purpose of sustenance, education or training;
- iii) remuneration not exceeding DM6,000, or its equivalent in renminbi, in a calendar year from personal services exercised in the other Contracting State for the purpose of subsidizing his living, education or training expenses, for a period of up to five years.

Article 22. Other Income

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

Article 23. Property

1. Immovable property referred to in Article 6 owned by a resident of a Contracting State and located in the other Contracting State may be taxed in that other Contracting State.
2. Movable property that forms part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, or property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other Contracting State.
3. Ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Contracting State where the head office of the enterprise is situated.

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

Article 24. Methods of Eliminating Double Taxation

1. In respect of the residents of the PRC, double taxation shall be eliminated as follows:

i) Where a resident derives income from the FRG, the amount of German tax payable in accordance with the provisions of this Agreement shall be allowed as a credit against the Chinese tax imposed on this resident. The amount of credit, however, shall not exceed the amount of Chinese tax computed as appropriate to that income in accordance with the taxation laws and regulations of the PRC.

ii) Where the income derived is dividend paid by a company which is a resident of the FRG to a company which is a resident of the PRC and which owns not less than 10 percent of the shares of the company paying the dividends, the amount of German tax payable by the company paying the dividends in respect of that income shall be allowed as credit against the Chinese tax.

2. In respect of the residents of the FRG, double taxation shall be eliminated as follows:

i) Income other than those referred to in sub-paragraph (ii) below shall be exempt from German tax if it is income derived from the PRC or property situated in the PRC and taxable in China in accordance with the provisions of this Agreement. However, the FRG may take into account the income or property which is exempt from tax when determining tax rates.

As regards dividends, the foregoing provision only applies to dividends paid by a company which is a resident of the PRC to a company (not a partnership enterprise) which is a resident of the FRG and which directly owns not less than 10 percent of the capital of that company.

In the levying of property tax, if the dividends for the aforementioned shares are tax-exempted in accordance with the foregoing provisions, these shares shall also be exempt from tax irrespective of whether or not dividends have been paid.

ii) As provided for by the FRG tax laws concerning foreign tax credits, the following Chinese tax payable by a resident of the FRG in accordance with Chinese tax laws and the provisions of this Agreement in respect of individual income tax or corporation tax on income arising in the PRC shall be allowed as credit against the German tax:

- a) dividends not included in subparagraph (i);
- b) interest;

- c) royalties;
- d) income applicable to paragraph 4 of Article 13;
- e) remuneration applicable to Article 16;
- f) income applicable to Article 17;
- g) income applicable to paragraph 3 of Article 22.

iii) Where the provisions of subparagraph (ii) applies, Chinese tax to be allowed as credit shall be:

- a) 10 percent in the case of the total amount of dividends referred to in item (a) of subparagraph (ii);
- b) 15 percent in the case of the total amount of interest and royalties referred to in items (b) and (c) of subparagraph (ii).

Article 25. Non-differential Treatment

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any obligations connected therewith which is other or more burdensome than the taxation and connected obligations to which nationals of that other Contracting State in the same circumstances are or may be subjected. The provisions of this paragraph shall, notwithstanding the provisions of Article 1, also apply to persons who are 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 favorably levied in that other Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities. Nothing contained in this provision shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for tax purposes which are available to residents of the first-mentioned Contracting State on the grounds of civil status, family burdens or other personal circumstances.

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 if they had been paid to a resident of the first-mentioned Contracting State. As a corresponding measure, liabilities owed by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable property of that enterprise, be deductible under the same conditions if they had been owed to a resident of the first-mentioned Contracting State.

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

5. Notwithstanding the provisions of Article 2, the provisions of this Article shall apply to all kinds of taxes.

Article 26. Consultative Procedures

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 the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic laws of those Contracting States, present his case to the competent authority of the Contracting State of which he is a resident of, if his case comes under paragraph 1 of Article 25, to that of the Contracting State of which he is a national. The case must be presented within 3 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 endeavor, 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 the provisions of this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic laws of the Contracting States.

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

4. The competent authorities of the Contracting States may communicate with each other directly for the purposes of reaching an agreement on the foregoing paragraphs.

Article 27. Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement. Any information so exchanged shall be treated as secret just as in the case of information exchanged under the domestic laws of that country, and shall be disclosed only to persons or authorities (including courts and administrative departments) involved in the assessment, collection, enforcement of the

taxation covered by this Agreement or in the prosecution and determination of appeals in relation thereto. The above-mentioned persons or authorities shall use such information solely for the above-mentioned purposes, but may quote relevant information in proceedings and rulings in open courts.

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

- i) to carry out administrative measures at variance with the laws and the administrative practice of that or of the other Contracting State;
- ii) 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; or
- iii) 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 order.

Article 28. Diplomatic Agents and Consular Officers

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

Article 29. The Berlin Clause

This Agreement in its present form shall also apply to Berlin (West).

Article 30. 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 between the two governments and shall have effect as regards:

- i) withholding tax in respect of the sources of dividends paid on or after the first day of January 1985;
- ii) withholding tax in respect of the sources of interest or royalties paid on or after the first day of July 1985; and
- iii) other taxes levied in the taxable years beginning on or after the first day of January 1985.

Article 31. Termination

This Agreement shall continue in effect indefinitely but either of the Contracting States may, before the thirtieth day of June in any calendar year beginning after the expiration of a period of 5 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 as regards:

i) withholding tax in respect of the sources of dividends, interest and royalties paid on or after the first day of January in the year next following that in which the notice of termination is given;

ii) other taxes levied during the taxation years beginning on or after the first day of January in the year next following that in which the notice of termination is given.

Done at Bonn on 10 June 1985, in duplicate in the Chinese and German languages, both being equally authentic.

For the PRC

Tian Jiyun (signed)

For the FRG:

Hans-Dietrich Genscher (signed)

Gerhard Stoltenberg (signed)

PROTOCOL

At the time of the conclusion of the Agreement between the PRC and the FRG on the avoidance of Double Taxation on Income and Properties, the following provisions which form an integral part of the Agreement have been agreed upon:

1. With respect to Article 7,

i) the Contracting State where the permanent establishment is situated shall only count income generated by the construction or installation activity itself into the income of the construction or installation project in question, and shall not count money paid for goods supplied by the head office, other permanent establishments or third parties, in connection with the above-mentioned activity or otherwise, into the income of the said construction or installation project.

ii) Income derived by a resident of a Contracting State from planning, designing, research and technical services performed in that Contracting State in connection with a permanent establishment situated in the other Contracting State shall not be counted into that permanent establishment.

iii) Notwithstanding the provisions of paragraph 3, no deductions shall be allowed in respect of amounts paid or charged (other than reimbursement of actual expenses) by a permanent establishment to the head office of the enterprise or any other permanent establishments thereof, by way of:

a) royalties, fees or other similar payments in return for the use of patents or other rights;

b) commission, for specific services performed or for management; and

c) interest on moneys lent to the permanent establishment; except where the enterprise is a banking institution.

2. With respect to Article 8,

this Agreement shall not affect the provisions of Article 8 of the Agreement on Maritime Transport signed by the Contracting States on 31 October 1975 and of the Notes on the Question of Taxation with respect to Bilateral Air Transport exchanged between the governments of the two Contracting States on 27 February and 14 March 1980.

3. With respect to Article 10,

i) notwithstanding the provisions of paragraph 2, where the tax rate payable by a company which is a resident of a Contracting State in respect of distributed corporate (enterprise) income is lower than that in respect of undistributed corporate (enterprise) income, or where the difference between the two amounts to or exceeds 15 percent, taxes levied on the dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State shall not exceed 15 percent of the total dividends paid.

ii) The term "dividends" referred to in paragraph 3 also include income derived by the undisclosed partner from undisclosed partnership shares and securities investment.

4. With respect to Articles 10 and 11,

notwithstanding the provisions of Articles 10 and 11, dividends and interests arising in the following manner may be taxed in the Contracting State where they have arisen in accordance with the laws of that country:

i) from rights to participate in profits or from debt-claims (including the undisclosed partners' shares, "combined loans" in the sense used in the tax laws of the FRG, or the right to participate in the distribution of profits);

ii) amounts that are deductible when determining the profits of the person paying the said dividends and interests.

5. With respect to Article 12,

where the provisions of paragraph 2 apply, tax on royalties paid for the use, or right to use, industrial, commercial or scientific equipment shall only be levied on 70 percent of the gross amount of such royalties.

6. With respect to paragraph 2 of Article 24,

i) where income arising in the PRC is distributed by a company which is a resident of the FRG, the provisions of paragraph 2 do not preclude the possibility of the supplementary levying of corporate tax on that amount in accordance with the tax laws of the FRG.

ii) the provisions of subparagraphs (i) and (iii) under paragraph 2 shall only apply to profits of the permanent establishment and to movable and immovable property that form part of the business property of the permanent establishment, except where a resident of the FRG can prove that the income of the permanent establishment or company is derived wholly or partly in the following manner, in which case the provisions shall also apply to profits from the alienation of such property, to dividends paid by the company and to shares of the company:

a) from the manufacturing or sale of materials or commodities, technical counselling or technical services, banking or insurance activities; or

b) from dividends paid by one or more company which is a resident of the PRC, which has over 25 percent of its capital coming from the first-mentioned company under this paragraph, and which derives its income wholly or partly from the manufacture or sale of materials or commodities, technical counselling or technical services, or banking or insurance activities.

Where the provisions of subparagraphs (ii) and (iii) do not apply, Chinese tax payable on the above-mentioned income and property in accordance with the laws of the PRC and the provisions of this Agreement shall, under the provisions of the German tax law on foreign tax credits to be allowed against German individual income tax and corporation tax, be allowed as credit against the individual income tax and corporation tax, or German property tax, payable on this income or property.

7. With respect to Article 27,

notwithstanding the provisions of this Article, both sides have unanimously agreed that for the purpose of preventing the avoidance and evasion of tax, the German tax law makes provisions for the furnishing of information under given conditions and may, in accordance with these provisions, furnish information to the competent authorities of the PRC.

Done at Bonn on 10 June 1985 in duplicate in the Chinese and German languages, both being equally authentic.

For the PRC:

Tian Jiyun (signed)

For the FRG:

Hans-Dietrich Genscher (signed)

Gerhard Stoltenberg (signed)

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CSO: 4005/610

END