

**This reproduction of the Canada-China Income Tax Agreement signed on May 12, 1986 is provided for convenience of reference only.**

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

The Government of Canada and the Government of the People's Republic of China, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, 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 shall apply are, in particular:

*a)* in the case of Canada:

the income taxes imposed by the Government of Canada (hereinafter referred to as "Canadian tax");

*b)* in the case of the People's Republic of China:

*(i)* the individual income tax;

*(ii)* the income tax concerning joint ventures with Chinese and foreign

investment;

(iii) the income tax concerning foreign enterprises; and

(iv) the local income tax;

(hereinafter referred to as "Chinese tax").

2. This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, those referred to in paragraph 1. The relevant authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

### *Article 3*

#### General Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:
  - a) the term "Canada" used in a geographical sense, means the territory of Canada, including any area beyond the territorial seas of Canada which, in accordance with international law and under the laws of Canada, is an area within which Canada may exercise rights with respect to the seabed and subsoil and their natural resources;
  - b) the term "the People's Republic of China", when used in a geographical sense, means all the territory of the People's Republic of China, including its territorial sea, in which the laws relating to Chinese tax apply, and all the area beyond its territorial sea, including the seabed and subsoil 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 apply;
  - c) the term "a Contracting State" and "the other Contracting State" mean Canada or the People's Republic of China, as the context requires;
  - d) the term "tax" means Canadian tax or Chinese tax, as the context requires;

- e) the term "person" includes 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 "nationals" means all individuals having the nationality of a Contracting State and all legal persons, partnerships and other bodies of persons deriving their status as such from the law in force in a Contracting State;
- i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- j) the term "competent authority" means, in the case of Canada, the Minister of National Revenue or his authorized representative, and in the case of the People's Republic of China, the Ministry of Finance or its authorized representative.

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 law of that Contracting State concerning 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 laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of head office, place of management or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 an individual is a

resident of both Contracting States, then his status shall be determined as follows:

- a)* he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);
- b)* if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
- c)* if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
- d)* if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question and to determine the mode of application of this Agreement to such person.

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

3. The term "permanent establishment" likewise encompasses:

- a)* a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than six months;
- b)* the furnishing of services, including consultancy services, by an enterprise of a Contracting State through employees or other personnel in the other Contracting State, provided that such activities continue (for the same project or a connected project) for a period or periods aggregating more than six months within any twelve-month period.

4. Notwithstanding the provisions of paragraphs 1 to 3, 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 merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d)* the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or for collecting information, for the enterprise;
- e)* the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- f)* the maintenance of a fixed place of business solely for any combination

of activities mentioned in subparagraphs (a) to (e) 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, where a person - other than an agent of an independent status to whom the provisions of paragraph 6 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 his activities are limited to those mentioned in paragraph 4 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 Contracting State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

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 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 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

#### *Article 7*

##### Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that Contracting State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on or has carried on business as aforesaid, the profits of the enterprise may be taxed in the 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 and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining 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 Contracting 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, 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, for 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, 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. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

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

6. For the purposes of 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 good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then, the provisions of those Articles shall not be affected by the provisions of this Article.

#### *Article 8*

#### Shipping and Air Transport

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of head office or the

place of effective management is situated.

2. Notwithstanding the provisions of paragraph 1 and Article 7, profits derived from the operation of ships or aircraft used principally to transport passengers or goods exclusively between places in a Contracting State may be taxed in that Contracting State.

3. The provisions of this Article shall also apply to profits 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 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 recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

- a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which owns at least 10 per cent of the voting stock of the company paying the dividends;
- b) 15 per cent of the gross amount of the dividends in all other cases.

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 means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other rights which is subjected to the same taxation treatment as income from shares by the taxation 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 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 Contracting State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting 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 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.

6. Notwithstanding any provision in this Agreement, a company which is a resident of the People's Republic of China and which has permanent establishments in Canada, shall, in accordance with the provisions of Canadian

law, remain subject to the additional tax on companies other than Canadian corporations, but the rate of such additional tax shall not exceed 10 per cent. For the purpose of this paragraph, the term "earnings" means the profits attributable to such permanent establishments in Canada in a year and previous years after deducting therefrom:

- a) business losses attributable to such permanent establishments (including losses from the alienation of property forming part of the business property of such permanent establishments) in such year and previous years,
- b) all taxes chargeable in Canada on such profits, other than the additional tax referred to herein, and
- c) the profits reinvested in Canada, provided that the amount of such deduction shall be determined in accordance with the existing provisions of the law of Canada regarding the computation of the allowance in respect of investment in property in Canada, and any subsequent modification of those provisions which shall not affect the general principle hereof.

7. The additional tax referred to in paragraph 6 shall be levied only to the extent that the cumulative amount of earnings of the company, or of a person related thereto from the same or similar business as that carried on by the company, exceeds five hundred thousand Canadian dollars (\$500,000).

### *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 beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.
3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State is exempt from tax in that Contracting State, if it is paid:

- a) in the case of Canada:
  - (i) to the Government of Canada;
  - (ii) to the Bank of Canada;
  - (iii) on a loan directly or indirectly financed or guaranteed by the Canadian Export Development Corporation;
  - (iv) to a financial establishment owned by the Government of Canada and mutually agreed upon by the competent authorities of the Contracting States;
  
- b) in the case of the People's Republic of China:
  - (i) to the Government of the People's Republic of China;
  - (ii) to the People's Bank of China;
  - (iii) on a loan directly or indirectly financed or guaranteed by the Bank of China or the Chinese International Trust and Investment Company (CITIC);
  - (iv) to a financial establishment owned by the Government of the People's Republic of China and mutually agreed upon by the competent authorities of the Contracting States.

4. The term "interest" as used in this Article includes 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, as well as premiums and bonuses attaching to such securities, bonds or debentures.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other 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 political subdivision, a local authority 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 beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## *Article 12*

### Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other 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 beneficial owner of the royalties the tax so charged shall not exceed 10 per cent 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, know-how, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other 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 the Government of that Contracting State, a political subdivision, a local authority 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 beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

### *Article 13*

#### Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other Contracting State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State

for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other Contracting State.

3. Gains from the alienation of ships or aircraft operated in international traffic and movable property pertaining to the operation of such ships or aircraft which are received by a resident of a Contracting State shall be taxable only in that Contracting State.
4. Gains from the alienation of shares in the capital of a company, the assets of which consist mainly, directly or indirectly, of immovable property situated in a Contracting State, may be taxed in that Contracting State.
5. Gains derived by a resident of a Contracting State from the alienation of any property other than that referred to in paragraphs 1 to 4 above, may be taxed in the Contracting State in which they arise.

#### *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 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, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or
  - b) if his stay in the other Contracting State for a period or periods exceeding in the aggregate 183 days in the calendar year concerned; in that case, only so much of the income as is derived from his activities performed in that other Contracting State may be taxed in that other Contracting State.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and

accountants.

*Article 15*

Dependent Personal Services

1. Subject to the provisions of Articles 16, 18 and 19, 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:
  - a) 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; and
  - b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other Contracting State; and
  - c) 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 provisions of paragraphs 1 and 2, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State, shall be taxable only in that Contracting State.

*Article 16*

Directors' Fees and Remuneration of  
Top-Level Managerial Officials

1. Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.
2. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in his capacity as an official in a top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

*Article 17*

Artistes and Athletes

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television 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 Contracting State.
2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.
3. Notwithstanding the provisions of paragraphs 1 and 2, income derived from the activities of an entertainer or an athlete who is a resident of a Contracting State, exercised in the other Contracting State within the framework of an official cultural exchange program between the Contracting States, shall not be taxed in that other Contracting State.

*Article 18*

Government Service

1. a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Contracting State or subdivision or authority 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 Contracting State and the individual is a resident of that Contracting State who:
    - (i) is a national of that Contracting State; or
    - (ii) did not become a resident of that Contracting State solely for the purpose of rendering the services.
2. The provisions of Articles 15, 16 and 17 shall apply to remuneration 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 19*

Students

Payments which a student, apprentice or business 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 Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that Contracting State.

*Article 20*

Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not

dealt with in the foregoing Articles of this Agreement shall be taxable only in that 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, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other 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, and arising in the other Contracting State may be taxed in that other Contracting State.

#### *Article 21*

##### Elimination of Double Taxation

1. In the case of Canada, double taxation shall be avoided as follows:
  - a) Subject to the existing provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada and to any subsequent modification of those provisions - which shall not affect the general principle hereof - and unless a greater deduction or relief is provided under the laws of Canada, tax payable in the People's Republic of China on profits, income or gains arising in the People's Republic of China shall be deducted from any Canadian tax payable in respect of such profits, income or gains.
  - b) Subject to the existing provisions of the law of Canada regarding the determination of the exempt surplus of a foreign affiliate and to any subsequent modification of those provisions - which shall not affect the general principle hereof - for the purpose of computing Canadian tax, a company resident in Canada shall be allowed to deduct in computing its taxable income any dividend received by it out of the exempt surplus of a foreign affiliate resident in the People's Republic of China, and for this

purpose, the Canadian participant in a Chinese-Canadian joint venture established according to the law of the People's Republic of China concerning joint ventures with Chinese and foreign investment shall be treated as having a foreign affiliate in respect of its interest in the joint venture.

2. For the purposes of paragraph 1(a), tax payable in the People's Republic of China by a company which is a resident of Canada 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) Articles 5 and 6 of the Income Tax Law of the People's Republic of China concerning Joint Venture 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;
- b) Articles 4 and 5 of the Income Tax Law of the People's Republic of China concerning Foreign Enterprises;
- c) Articles I, II, III, IV and X of Part 1, Articles I, II, III and IV of Part II and Articles I, II and III of Part III of the interim provisions of the State Council of the People's Republic of China concerning reduction or exemption from enterprise income tax in special economic zones and coastal cities;

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

- d) any other provision which may subsequently be made granting an exemption 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;
- e) For the application of this paragraph, the amount of Chinese tax shall be deemed to be:
  - (I) in the case of dividends



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 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 individuals who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities. The provisions of this paragraph shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. 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 Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State, are or may be subjected.

### *Article 23*

#### Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those Contracting States, address to the competent authority of the Contracting State of which he is a resident, or to that of the Contracting State of which he is a national if his case comes under paragraph 1 of Article 22, an application in writing stating the grounds for claiming the revision of such taxation.

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 the provision of 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. 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 purpose of reaching an agreement in the sense of paragraphs 2 and 3. When it seems advisable for the purpose of reaching agreement, the competent authorities may meet together for an oral exchange of opinions.

## Article 24

### 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 this Agreement, in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. Any information so exchanged shall be treated as secret and shall be disclosed only to persons or authorities, including courts, involved in the assessment or collection of the taxes covered by this Agreement or the determination of appeals in relation thereto. Such information may be disclosed in public court proceedings or in judicial decisions.

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

- a) to carry out administrative measures at variance with the laws and the administrative practice of that or of the other Contracting State;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State; 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 25*

Diplomatic Agents and Consular Officers

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

*Article 26*

Entry Into Force

This Agreement shall enter into force on the thirtieth day after the date on which diplomatic notes indicating the completion of internal legal procedures necessary in each country for the entry into force of this Agreement have been exchanged. This Agreement shall have effect:

- a) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January next following that in which this Agreement enters into force; and
- b) in respect of other taxes for taxation years beginning on or after the first day of January next following that in which this Agreement enters into force.

*Article 27*

Termination

This Agreement shall continue in effect indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry

into force, give to the other Contracting State, through diplomatic channels, written notice of termination. In such event, this Agreement shall cease to have effect:

- a)* in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January in the calendar year next following that in which the notice of termination is given; and
- b)* in respect of other taxes for taxation years beginning on or after the first day of January in the calendar year next following that in which the notice of termination is given.

**IN WITNESS WHEREOF** the undersigned, duly authorized to that effect, have signed this Agreement.

**DONE** in duplicate at Beijing, this 12th day of May, 1986 in the English, French and Chinese languages, each version being equally authentic.

**FOR THE GOVERNMENT  
OF CANADA:**

Brian Mulroney  
Prime Minister

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

Ziyang Zhao  
Prime Minister

## PROTOCOL

At the moment of signing the Agreement this day concluded between the Government of Canada and the Government of the People's Republic of China for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed upon the following additional provisions which shall be an integral part of the Agreement.

1. With respect to paragraph 1(e) of Article 3, the term "person" also includes, in the case of Canada, an estate, a trust and a partnership.
2. With respect to paragraph 1(f) of Article 3, it is understood that in French the term "société" also means a "corporation" as the word is used in the Canadian law.
3. With respect to paragraph 1 of Article 6, the provisions shall also apply to profits from the alienation of property referred to therein.
4. The provisions of the Agreement shall not be construed to restrict in any manner any tax benefit which is or may hereafter be accorded in a Contracting State by the laws of that Contracting State or by any agreement between the governments of the Contracting States.

**IN WITNESS WHEREOF** the undersigned, duly authorized to that effect, have signed this Protocol.

**DONE** in duplicate at Beijing, this 12th day of May, 1986 in the English, French and Chinese languages, each version being equally authentic.

**FOR THE GOVERNMENT  
OF CANADA:**

Brian Mulroney  
Prime Minister

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

Ziyang Zhao  
Prime Minister