

**AGREEMENT
BETWEEN
THE PEOPLE’S REPUBLIC OF CHINA
AND THE FEDERAL REPUBLIC OF GERMANY
FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF
FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL**

The People’s Republic of China and the Federal Republic of Germany,

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

Have agreed as follows:

**Article 1
PERSONS COVERED**

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

**Article 2
TAXES COVERED**

1. This Agreement shall apply to taxes on income and on capital imposed on behalf of a Contracting State or its local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

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

a) in China:

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

b) in the Federal Republic of Germany:

- (i) the income tax (Einkommensteuer);
 - (ii) the corporation tax (Körperschaftsteuer);
 - (iii) the trade tax (Gewerbesteuer); and
 - (iv) the capital tax (Vermögensteuer);
- including the supplements levied thereon
(hereinafter referred to as “German tax”).

4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their taxation laws.

Article 3 GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:

- a) the term “China” means the People’s Republic of China, and when used in a geographical sense, means all the territory of the People’s Republic of China, including its territorial sea, in so far as the Chinese laws relating to taxation apply, and any area beyond its territorial sea, insofar as the People’s Republic of China has sovereign rights of exploration for and exploitation of resources of the sea-bed and its sub-soil and superjacent water resources in accordance with international law and its internal law;
- b) the term “Germany” means the Federal Republic of Germany, and when used in a geographical sense, means the territory of the Federal Republic of Germany as well as the area of the sea-bed, its sub-soil and the superjacent waters adjacent to the territorial sea, in so far as the Federal Republic of Germany may exercise sovereign rights and jurisdiction in conformity with international law and its national legislation for the purpose of exploring, exploiting, conserving and managing the living and non-living natural resources;
- c) the terms “a Contracting State” and “the other Contracting State” mean China or the Federal Republic of Germany as the context requires;
- d) the term “person” includes an individual, a company and any other body of persons;
- e) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- f) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- g) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- h) the term “national” means:
 - (i) in respect of the Federal Republic of Germany,

any German within the meaning of the Basic Law for the Federal Republic of Germany and any legal person, partnership and association deriving its status as such from the laws in force in the Federal Republic of Germany;

(ii) in respect of China,
any individual possessing the nationality of the People's Republic of China, and any legal person, partnership or association deriving its status as such from the laws in force in the People's Republic of China;

i) the term "competent authority" means:

(i) in the case of China, the State Administration of Taxation or its authorized representative;

(ii) in the case of the Federal Republic of Germany, the Federal Ministry of Finance or the agency to which it has delegated its powers.

2. As regards the application of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

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 State, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of effective management or any other criterion of a similar nature, and also includes that State or its local authorities. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

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

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

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

Article 5

PERMANENT ESTABLISHMENT

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

2. The term “permanent establishment” 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, or construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than twelve months;
- b) The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged for such purpose, but only if activities of that nature continue (for the same or a connected project) within a Contracting State for a period or periods aggregating more than 183 days within any twelve-month period.

4. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:

- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- c) the maintenance of a stock of goods or 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 of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e), 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 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 that Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that Contracting State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such 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, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, 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 State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

INCOME FROM IMMOVABLE PROPERTY

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

2. The term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case

include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

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

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

Article 7

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State, but only so much of them as is attributable to that permanent establishment.

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

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

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

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

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent

establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

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

Article 8 **SHIPPING AND AIR TRANSPORT**

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall include:

- a) profits from the rental on a bare-boat basis of ships or aircraft, and
- b) profits from the use, maintenance or rental of containers (including trailers and related equipment used for the transport of the containers) used for the transport of goods or merchandise;

where such use, maintenance or rental, as the case may be, is incidental to the operation of ships or aircraft in international traffic.

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

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

Article 9 **ASSOCIATED ENTERPRISES**

1. 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.

2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall, if necessary, consult each other.

Article 10 DIVIDENDS

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

- a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;
- b) 15 per cent of the gross amount of the dividends where those dividends are paid out of income or gains derived directly or indirectly from immovable property within the meaning of Article 6 by an investment vehicle which distributes most of this income or gains annually and whose income or gains from such immovable property is exempted from tax;
- c) 10 per cent of the gross amount of the dividends in all other cases.

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, or other income which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the

dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11 **INTEREST**

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

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

3. Notwithstanding the provisions of paragraph 2,

- a) interest arising in a Contracting State and paid to the Government of the other Contracting State shall be exempt from tax in the first-mentioned State;
- b) interest arising in a Contracting State and paid in consideration of a loan guaranteed or insured by the other Contracting State or any financial institution wholly owned by it shall be exempt from tax in the first-mentioned State;
- c) interest arising in China and paid to the German Federal Bank (Deutsche Bundesbank), the Development Loan Corporation (Kreditanstalt für Wiederaufbau) or the German Investment and Development Company (DEG - Deutsche Investitions- und Entwicklungsgesellschaft mbH), and any public credit institution of the Federal Republic of Germany, if the competent authorities of both States have agreed thereto, shall be exempt from Chinese tax;
- d) interest arising in the Federal Republic of Germany and paid to:
 - (i) the People's Bank of China;
 - (ii) the China Development Bank Corporation;
 - (iii) the Agricultural Development Bank of China;

- (iv) the Export-Import Bank of China;
- (v) the National Council for Social Security Fund;
- (vi) the China Investment Corporation, and
- (vii) any other public credit institution of the Government of China, if the competent authorities of both States have agreed thereto;

shall be exempt from German tax.

4. Notwithstanding the provisions of paragraph 2, interest as referred to in paragraph 1 may be taxed only in the Contracting State of which the recipient is a resident if the recipient is the beneficial owner of the interest and the interest is paid in connection with the sale of commercial or scientific equipment on credit.

5. The term “interest” as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

6. The provisions of paragraphs 1 to 4 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

7. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

8. 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 beneficially owned by a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed:

- a) in the case of royalties referred to in sub-paragraph a) of paragraph 3, 10 per cent of the gross amount of the royalties, and
- b) in the case of royalties referred to in sub-paragraph b) of paragraph 3, 10 per cent of the adjusted amount of the royalties. For the purpose of this sub-paragraph “the adjusted amount” means 60 per cent of the gross amount of the royalties.

3. The term “royalties” as used in this Article means:

- a) payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films, and films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information (know-how) concerning industrial, commercial or scientific experience, and
- b) payments of any kind received as a consideration for the use of, or the right to use, any industrial, commercial or scientific equipment.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is 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 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 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 State.
3. Gains from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. Gains derived by a resident of a Contracting State from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.
5. Gains derived by a resident of a Contracting State from the alienation of shares, other than shares in which there is substantial and regular trading on a recognized stock exchange provided that the total of the shares alienated by the resident during the fiscal year in which the alienation takes place does not exceed 3 per cent of the quoted shares, of a company which is a resident of the other Contracting State may be taxed in that other Contracting State if the first-mentioned resident, at any time during the 12 month period preceding the alienation has owned, directly or indirectly, at least 25 per cent of the shares of that company.
6. Gains from the alienation of any property, other than that referred to in paragraphs 1 to 5, shall be taxable only in the Contracting State of which the alienator is a resident.

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 State except in one of 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 State;

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

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

Article 15

INCOME FROM EMPLOYMENT

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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

- a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned, and
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, may be taxed in the Contracting State in which the place of effective management of the enterprise which operates the ship or aircraft is situated.

Article 16

DIRECTORS' FEES

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

Article 17
ARTISTES AND SPORTSMEN

1. Notwithstanding the provisions of Articles 7, 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 a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman 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 sportsman are exercised.
3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by an entertainer or sportsman who is resident in a Contracting State from activities exercised in the other Contracting State within the framework of a cultural exchange program agreed upon by the Governments of both Contracting States shall not be taxed in that other State.

Article 18
PENSIONS

1. Subject to the provisions of paragraph 2 of Article 19, pensions and similar payments or annuities paid to a resident of a Contracting State from the other Contracting State shall only be taxable in the first-mentioned State.
2. Notwithstanding the provisions of paragraph 1, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a local authority thereof shall be taxable only in that State.

Article 19
GOVERNMENT SERVICE

1. a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a local authority thereof to an individual in respect of services rendered to that State or local authority shall be taxable only in that State.

b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2. a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a local authority thereof to an

individual in respect of services rendered to that State or local authority shall be taxable only in that State.

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

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

Article 20

VISITING PROFESSORS, TEACHERS AND STUDENTS

1. An individual who visits a Contracting State at the invitation of that State or of a university, college, school, museum or other cultural institution of that State or under an official programme of cultural exchange for a period not exceeding two years solely for the purpose of teaching, giving lectures or carrying out research at such institution and who is, or was immediately before that visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned State on his remuneration for such activity, provided that such remuneration is derived by him from outside that State. If the period exceeds two years, the remuneration for such activities may be taxed in the first-mentioned State from the beginning of the visit.

2. The provisions of paragraph 1 shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

3. Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

Article 21

OTHER INCOME

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

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

Article 22
CAPITAL

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.
2. Capital represented by 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 may be taxed in that other State.
3. Capital represented by ships and aircraft operated in international traffic and by movable property pertaining to the operation of such ships and aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Article 23
METHODS FOR ELIMINATION OF DOUBLE TAXATION

1. In China, in accordance with the provisions of the law of China, double taxation shall be eliminated as follows:
 - a) Where a resident of China derives income from the Federal Republic of Germany, the amount of tax on that income payable in the Federal Republic of Germany in accordance with the provisions of this Agreement may be credited against the Chinese tax imposed on that resident. The amount of the credit, however, shall not exceed the amount of the Chinese tax on that income computed in accordance with the taxation laws and regulations of China.
 - b) Where the income derived from the Federal Republic of Germany is a dividend paid by a company which is a resident of the Federal Republic of Germany to a company which is a resident of China and which owns not less than 20 per cent of the shares of the company paying the dividend, the credit shall take into account the tax paid to the Federal Republic of Germany by the company paying the dividend in respect of its income.
2. In the Federal Republic of Germany, in accordance with the provisions of the law of the Federal Republic of Germany, double taxation shall be eliminated as follows:
 - a) Unless foreign tax credit is to be allowed under sub-paragraph b), there shall be exempted from the assessment basis of the German tax any item of income arising in China and any item of capital situated within China which, according to this Agreement, may be taxed in China.

In the case of items of income from dividends, the preceding provision shall apply only to such dividends as are paid to a company (not including partnerships) being a resident of the Federal Republic of Germany by a company being a resident of China at least 25 per cent of the capital of which is owned directly by the German company and which were not deducted when determining the profits of the company distributing these dividends.

There shall be exempted from the assessment basis of the taxes on capital any shareholding the dividends of which if paid, would be exempted, according to the foregoing sentences.

- b) Subject to the provisions of German tax law regarding credit for foreign tax, there shall be allowed as a credit against German tax on income payable in respect of the following items of income the Chinese tax paid under the laws of China and in accordance with this Agreement:
- (i) dividends not dealt with in sub-paragraph a);
 - (ii) interest;
 - (iii) royalties;
 - (iv) items of income that may be taxed in China according to paragraphs 4 and 5 of Article 13;
 - (v) directors' fees;
 - (vi) items of income that may be taxed according to Article 17.
- c) The provisions of sub-paragraph b) shall apply instead of the provisions of sub-paragraph a) to items of income as defined in Articles 7 and 10 and to the assets from which such income is derived if the resident of the Federal Republic of Germany does not prove that the gross income of the permanent establishment in the business year in which the profit has been realised or of the company resident in China in the business year for which the dividends were paid was derived exclusively or almost exclusively from activities within the meaning of nos. 1 to 6 of paragraph 1 of section 8 of the German Law on External Tax Relations (Aussensteuergesetz); the same shall apply to immovable property used by a permanent establishment and to income from this immovable property of the permanent establishment (paragraph 4 of Article 6) and to profits from the alienation of such immovable property (paragraph 1 of Article 13) and of the movable property forming part of the business property of the permanent establishment (paragraph 2 of Article 13).
- d) the Federal Republic of Germany, however, retains the right to take into account in the determination of its rate of tax the items of income and capital, which are under the provisions of this Agreement exempted from German tax.
- e) Notwithstanding the provisions of sub-paragraph a), double taxation shall be avoided by allowing a tax credit as laid down in sub-paragraph b)
- i) if in the Contracting States items of income or capital are placed under differing provisions of this Agreement or attributed to different persons (except pursuant to Article 9) and this conflict cannot be settled by a procedure in accordance with paragraph 3 of Article 25 and if as a result of this difference in placement or attribution the relevant income or capital would remain untaxed or be taxed lower than without this conflict or

- ii) if after due consultation with the competent authority of China, the German competent authority notifies the Chinese competent authority in writing of other items of income to which it intends to apply the provisions of sub-paragraph b). Double taxation is then avoided for the notified item of income by allowing a tax credit from the first day of the calendar year next following that in which the notification was made.

Article 24

NON-DISCRIMINATION

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

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

3. Except where the provisions of paragraph 1 of Article 9, paragraph 8 of Article 11, or paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

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

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

Article 25
MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the 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 Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

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

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. If necessary, representatives of the competent authorities and of the responsible tax administrations may meet for an exchange of opinions.

Article 26
EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States or their local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above with a view to the proper application of this Agreement and the tax laws. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 27

ASSISTANCE IN THE COLLECTION OF TAXES

1. The Contracting States shall endeavour to lend assistance to each other in the collection of revenue claims. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligations:

- a) to carry out administrative measures at variance with the law and administrative practice of that or of the other Contracting State;
- b) to carry out measures which would be contrary to public policy (*ordre public*).

Article 28

PROCEDURAL RULES FOR TAXATION AT SOURCE

1. If in one of the Contracting States the taxes on dividends, interest, royalties or other items of income derived by a person who is a resident of the other Contracting State are levied by withholding at source, the right of the first-mentioned State to apply the withholding of tax at the rate provided under its domestic law shall not be affected by the provisions of this Agreement. The tax withheld at source shall be refunded on application by the taxpayer if

according to this Agreement, there is no or reduced source tax.

2. Refund applications must be submitted within the time limits in accordance with the provisions of the laws of the Contracting State in which the items of income arise.

3. Notwithstanding paragraph 1, each Contracting State shall provide for procedures to the effect,

- a) that payments of income subject under this Agreement to no tax in the state of source may be made without deduction of tax;
- b) that payments of income subject under this Agreement to reduced tax in the state of source may be made with deduction of tax only at the rate provided for in the relevant Article.

4. The Contracting State in which the items of income arise may ask for a certificate by the competent authority on the residence in the other Contracting State.

5. The competent authorities may by mutual agreement implement the provisions of this Article and if necessary establish other procedures for the implementation of tax reductions or exemptions provided for under this Agreement.

Article 29

MISCELLANEOUS RULES

1. The benefits of this Agreement shall not be available where the main purpose for entering into certain transactions or arrangements was to secure these benefits and obtaining those benefits would be contrary to the object and purpose of the relevant provisions of this Agreement.

2. This Agreement shall not be interpreted to mean that a Contracting State is prevented from applying its domestic legal provisions on the prevention of tax evasion or tax avoidance.

3. Where a person considers that the application of the preceding paragraphs results for him in taxation not in accordance with the provisions of this Agreement, he may apply for a mutual agreement procedure.

Article 30

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

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

Article 31

PROTOCOL

The attached Protocol shall be an integral part of this Agreement.

Article 32
ENTRY INTO FORCE

1. This Agreement shall enter into force on the thirtieth day following the day on which the two Contracting States have notified each other that the domestic legal procedures for such entry into force have been fulfilled. The relevant date shall be the day on which the last notification is received.

2. The provisions of this Agreement shall have effect:

- a) in the case of taxes withheld at source, in respect of amounts paid on or after the first day of January of the calendar year next following that in which the Agreement enters into force;
- b) in the case of other taxes, for any tax year beginning on or after the first day of January of the calendar year next following that in which the Agreement enters into force.

3. With the entry into force of this Agreement, the Agreement between the People's Republic of China and the Federal Republic of Germany for the Avoidance of Double Taxation with respect to Taxes on Income and Capital signed in Bonn on 10 June 1985 shall expire. The provisions of the Agreement signed in Bonn on 10 June 1985 shall continue to apply to all tax cases having occurred prior to the date upon which this Agreement has entered into force. In any case, the provisions of the Agreement signed in Bonn on 10 June 1985 shall continue to be applicable until this Agreement shall become effective as provided for in paragraph 2 of this Article.

Article 33
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 and, in such event, this Agreement shall cease to have effect:

- a) in the case of taxes withheld at source, in respect of amounts paid on or after the first day of January of the calendar year next following that in which notice of termination is given;
- b) in the case of other taxes, for any tax year beginning on or after the first day of January of the calendar year next following that in which notice of termination is given.

The date of receipt of such notice by the other Contracting State shall be definitive for the determination of the deadline (the thirtieth day of June in any calendar year).

IN WITNESS whereof the undersigned, duly authorised thereto, have signed this Agreement.

Done at Berlin on the 28th day of March, 2014, in duplicate in the Chinese, German and English languages, all texts being authentic. In case of divergence in interpretation of the Chinese and the German texts, the English text shall prevail.

For the People's Republic of China

WANG Jun

For the Federal Republic of Germany

Markus EDERER
Michael MEISTER

PROTOCOL

At the signing of the Agreement between the People's Republic of China and the Federal Republic of Germany for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital signed on March 28, 2014 (hereinafter referred to as "the Agreement"), both sides have agreed upon the following provisions, which shall form an integral part of the Agreement:

1. With reference to the term "Contracting State":

In respect of the Federal Republic of Germany, the term "Contracting State" includes "Länder". The term "Länder" means German States in accordance with the Basic Law for the Federal Republic of Germany.

2. With reference to Article 7:

The Contracting States expressed their willingness to refer to the OECD Model Commentary (2008) in interpreting and applying the provisions of this Article.

3. With reference to sub-paragraph b) of paragraph 2 of Article 10:

In the case of the Federal Republic of Germany, an investment vehicle is a company according to paragraph 1 of section 1 of the German Act on German Real Estate Stock Corporations with Listed Shares (REIT Act).

4. With reference to Articles 10 and 11:

Notwithstanding the provisions of Articles 10 and 11 of this Agreement, dividends and interest may be taxed in the Contracting State in which they arise, and according to the law of that State,

- a) if they are derived from rights or debt claims carrying a right to participate in profits (including income derived by a silent partner ("stiller Gesellschafter") from his participation as such, or from a loan with an interest rate linked to borrower's profit ("partiarisches Darlehen") or from profit sharing bonds ("Gewinnobligationen") within the meaning of the tax law of the Federal Republic of Germany) and
- b) under the condition that they are deductible in the determination of profits of the debtor of such income.

5. With reference to Article 19:

- a) The provisions of paragraphs 1 and 2 shall also apply in respect of salaries, wages and other similar remuneration and pensions paid to individuals in respect of services rendered to the People's Bank of China and the Deutsche Bundesbank.
- b) The provisions of paragraph 1 shall likewise apply in respect of remuneration paid, under a development assistance programme of a Contracting State or a local authority thereof, out of funds exclusively supplied by that State or local authority, to a specialist

or volunteer seconded to the other Contracting State with the consent of that other State.

- c) The provisions of paragraphs 1 and 2 shall also apply in respect of salaries, wages and other similar remuneration and pensions paid:
 - (i) out of German governmental funds to individuals in respect of services rendered to the Goethe Institute;
 - (ii) out of Chinese governmental funds to individuals in respect of services rendered to the Chinese Cultural Center;
 - (iii) to other comparable institutions mutually agreed by the Contracting States.

6. With reference to Article 26:

If in accordance with domestic law personal data are exchanged under this Agreement, the following additional provisions shall apply subject to the legal provisions in effect for each Contracting State:

- a) "Personal data" shall mean any information relating to an identified or identifiable natural person; an identifiable person is one who can be identified through the information provided by the requesting agency.
- b) The receiving agency may use such data only for the purposes stated in Article 26 and shall be subject to the conditions prescribed by the supplying agency. Data and information communicated pursuant to this Agreement must not be used in criminal matters without the prior consent of the supplying Contracting State, which is to be given in accordance with national law and in compliance with any applicable bi- or multilateral agreements on mutual assistance in criminal matters.
- c) The receiving agency shall on request inform the supplying agency about the use of the supplied data and the results achieved thereby.
- d) Any subsequent supply to other agencies not mentioned in paragraph 2 of Article 26 may be effected only with the prior approval of the supplying agency.
- e) The supplying agency shall endeavour to their best efforts to ensure that the data to be supplied are accurate and that they are necessary for and proportionate to the purpose for which they are supplied. Any limitations on data supply prescribed under applicable domestic law shall be observed. If it emerges that inaccurate data or data which should not have been supplied have been supplied, the receiving agency shall be informed of this without delay. That agency shall then be obliged to correct or erase such data without delay.
- f) Upon application the person concerned shall be informed of the supplied data relating to him and of the use to which such data are to be put. There shall be no obligation to furnish this information if on balance it turns out that the public interest in withholding it outweighs the interest of the person concerned in receiving it. In all other respects, the right of the person concerned to be informed of the existing data relating to him shall be governed by the domestic law of the Contracting State in whose sovereign territory the application for the information is made.

- g) Where the domestic law of the supplying agency contains special provisions for the deletion of the personal data supplied, that agency shall inform the receiving agency accordingly. Irrespective of such law, supplied personal data shall be erased once they are no longer required for the purpose for which they were supplied.
- h) The supplying and the receiving agencies shall be obliged to keep official records of the supply and receipt of personal data.
- i) The supplying and the receiving agencies shall be obliged to take effective measures to protect the personal data supplied against unauthorised access, unauthorised alteration and unauthorised disclosure.

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

Done at Berlin on the 28th day of March, 2014, in duplicate in the Chinese, German and English languages, all texts being authentic. In case of divergence in interpretation of the Chinese and the German texts, the English text shall prevail.

For the People's Republic of China

WANG Jun

For the Federal Republic of Germany

Markus EDERER
Michael MEISTER