

**PROTOCOL  
TO  
THE AGREEMENT BETWEEN THE GOVERNMENT OF THE PEOPLE’S  
REPUBLIC OF CHINA AND THE GOVERNMENT OF THE BRITISH VIRGIN  
ISLANDS FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES**

The Government of the People’s Republic of China and the Government of the British Virgin Islands, desiring to facilitate proper interpretation and application of the Agreement between the Government of the People’s Republic of China and the Government of the British Virgin Islands for the Exchange of Information Relating to Taxes (hereinafter referred to as “the Agreement”), have agreed on the following Protocol, which shall form an integral part of the Agreement.

**Section I  
Interpretation of Article 3**

Information exchanged shall not be used for the purposes of taxes other than those covered by Article 3.

**Section II  
Interpretation of Article 4**

For the purposes of sub-paragraph (k) of paragraph 1 of Article 4, a “recognised stock exchange” means any stock exchange agreed upon from time to time by the competent authorities of the Contracting Parties.

**Section III  
Interpretation of Article 5**

The competent authorities of the Contracting Parties will not, pursuant to Article 5 of the Agreement, engage in fishing expeditions or request information that is unlikely to be relevant to the tax affairs of a given taxpayer.

**Section IV  
Interpretation of Article 6**

With respect to paragraph 1 of Article 6 of the Agreement, the term “in accordance with its domestic laws” refers to procedural matters to facilitate the entry of the representatives of a Contracting Party to the territory of the other Contracting Party for the purposes provided in Article 6.

## **Section V**

### **Interpretation of Article 10**

1. Pursuant to Article 10 of the Agreement, it is mutually decided that costs that would be incurred in the ordinary course of administering the domestic tax laws of the requested party will be borne by the requested party when such costs are incurred for the purpose of responding to a request for information. Such ordinary costs would normally cover internal administration costs and any minor external costs.

2. All other costs that are not ordinary costs are considered extraordinary costs and will be borne by the requesting party. Examples of extraordinary costs include, but are not limited to, the following:

- (a) reasonable fees charged by third parties for carrying out research;
- (b) reasonable fees charged by third parties for copying documents;
- (c) reasonable costs of engaging experts, interpreters, or translators;
- (d) reasonable costs of conveying documents to the requesting party;
- (e) reasonable litigation costs of the requested party in relation to a specific request for information; and
- (f) reasonable costs for obtaining depositions or testimony.

3. The Contracting Parties will consult each other in any particular case where extraordinary costs are likely to exceed \$US1000 to determine whether the requesting party will continue to pursue the request and bear the cost.

## **Section VI**

### **Interpretation of Article 11**

1. Pursuant to Article 11 of the Agreement, a "restrictive tax measure" is a measure applied by one Contracting Party to residents or nationals of the other Contracting Party on the basis that the other Contracting Party does not engage in effective exchange of information, and/or because it lacks transparency in the operation of its laws, regulations or administrative practices, or on the sole basis of no or nominal taxes.

2. Without limiting the generality of the meaning in paragraph 1, but subject to the domestic laws and regulations of the Contracting Parties, the term "restrictive tax

measure" includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or the black listing by one Contracting Party of the other Contracting Party, on the basis outlined in paragraph 1.

3. Notwithstanding paragraph 2, the Contracting Parties may issue their own list of jurisdictions for the purposes of facilitating their own internal tax administration.

4. The Contracting Parties undertake to utilize all necessary legal and administrative mechanisms to ensure the effective exchange of information under the Agreement.

5. For the purposes of paragraph 4, the following will be considered not to constitute effective exchange of information under the Agreement:

(a) where there is failure by a Contracting Party to establish relevant administrative systems and mechanisms to implement the provisions of the Agreement;

(b) where there is undue delay in processing a request for information without notifying the requesting party the reason for such delay;

(c) where there is refusal to provide information requested without complying with the grounds of refusal stipulated in Article 7.

6. If a Contracting Party forms the opinion that the other Contracting Party is not engaged in effective exchange of information under the Agreement, it may

(a) notify that other Contracting Party of such opinion; and

(b) invite and engage that other Contracting Party in a dialogue to resolve the matter that may be the subject of failure of effective exchange of information.

## **Section VII Miscellaneous**

1. The Competent Authorities of the Contracting Parties shall endeavour to meet on a periodic basis to discuss matters relating to the effective implementation of the provisions of the Agreement.

2. This Protocol shall come into effect on the entry into force of the Agreement and shall remain in effect as long as the Agreement is in force.

3. The Contracting Parties may amend this Protocol at any time in writing. The amended Protocol will come into effect on the date of the final letter arranging the amendment, or in such other manner as the Contracting Parties may agree.

DONE at London in duplicate this 7<sup>th</sup> day of December 2009, in the Chinese and English languages, both texts being equally authentic.

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

QIAN Guanlin

**For the Government of  
the British Virgin Islands**

Ralph O'Neal