

PROTOCOL

Have agreed, at the signing of the Agreement between the two States for the avoidance of double taxation with respect to taxes on income and capital, upon the following provisions, which shall form a part of the Agreement:

1. With reference to Article 7:
 - (a) Only that part of the profits of a building site or assembly project may be allocated to the Contracting State in which the permanent establishment is situated, as is derived from the carrying out of such activities. Where in connection with these activities or independently thereof, machinery or equipment is supplied by the head office or another permanent establishment of the enterprise or by unrelated persons, then the value of such supply shall not be attributed to the profits of the building site or assembly project.
 - (b) Income which is attributable to the drawing of plans, projects or construction or research activities, as well as engineering services, which a resident of a Contracting State prepares or carries out in that Contracting State and which are connected with a permanent establishment maintained in the other Contracting State, shall not be allocated to that permanent establishment.
 - (c) Notwithstanding the provisions of paragraph 3, no deduction shall be allowed in respect of amounts paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office or any other permanent establishment of the enterprise by way of:
 - (i) royalties, fees or other similar payments in return for the use of patents or other rights;
 - (ii) commissions for specific services performed or for management; and
 - (iii) interest on moneys lent to the permanent establishment, except in the case of a banking institute.
2. With respect to Article 8:

This Agreement shall not affect the provisions of Article 8 of the Agreement on shipping enterprises concluded between the two Contracting States on 31 October 1975 and the Exchange of Notes with respect to the taxation of air transport enterprises of both parties between the two Contracting States of 27 February / 14 March 1980.

3. With respect to Article 10:

- (a) As long as in a Contracting State the rate of corporate income tax on distributed profits is lower than the rate on undistributed profits and the difference between the two rates is 15 percentage points or more, then the tax on dividends paid by a company which is a resident of that State to a resident of the other Contracting State may, notwithstanding the provisions of paragraph 2, not exceed 15 per cent of the gross amount of the dividend.
- (b) The term “dividends” referred to in paragraph 3 shall also include income of a silent partner from his participation in a silent partnership and distributions on participations in an investment fund.

4. With respect to Articles 10 and 11:

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

- (a) are derived from rights or debt-claims carrying a right to participate in profits (including income derived by a silent partner from his participation as such, from a “partiarisches Darlehen” and from “Gewinnobligationen” within the meaning of the tax law of the Federal Republic of Germany) ; and
- (b) are deductible in the determination of profits of the debtor of such dividends or interest.

5. With respect to Article 12:

For the application of the percentage rate referred to in paragraph 2 there shall be taken as the taxable base of the royalties paid for the use of or the right to use any industrial, commercial or scientific equipment, 70 per cent of the gross amount of these payments.

6. With respect to Article 24, paragraph 2:

- (a) Where a company being a resident of the Federal Republic of Germany distributes income derived from sources within the People's Republic of China, paragraph 2 shall not preclude the compensatory imposition of corporation tax in accordance with the provisions of German tax law.
- (b) The provisions of paragraph 2, sub-paragraphs (a) and (c), shall only apply to profits of a permanent establishment and to the capital represented by movable and immovable property forming part of the business property of a permanent establishment, and to the gains from the alienation of such property, to dividends paid by a company and to the participation in a company, if the resident of the Federal Republic of Germany concerned proves that the receipts of the permanent establishment or company are derived exclusively or almost exclusively
 - (i) from one of the following activities carried on in the People's Republic of China: producing or selling goods or merchandise, giving technical advice or rendering engineering services, or doing banking or insurance business, or
 - (ii) from dividends paid by one or more companies, being residents of the People's Republic of China, more than 25 per cent of the capital of which is owned by the first-mentioned company, which themselves derive their receipts exclusively or almost exclusively from one of the following activities carried on in the People's Republic of China: producing or selling goods or merchandise, giving technical advice or rendering engineering services, or doing banking or insurance business.

If the provisions of paragraph 2, sub-paragraphs (a) and (c) are not applicable, then the Chinese tax which is payable under the laws of the People's Republic of China and in accordance with this Agreement on the above-mentioned items of income and capital shall, subject to the provisions of German tax law regarding credit for foreign tax against the German individual income tax or corporate income tax, be allowed as a credit against German individual income tax or corporate income tax payable on such items of income or against German capital tax payable on such items of capital.

7. With respect to Article 27:

It is understood that German tax law for the prevention of tax evasion provides under certain conditions, that, upon request, information may be supplied and that it is possible in accordance with these provisions, notwithstanding this Article, to supply information to the competent authorities of the People's Republic of China.

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

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

**For the Federal Republic
of Germany**